



ALL REAL ESTATE CONSULTANTS, INC  
CORPORATE OFFICE  
8491 HOSPITAL DRIVE, #208  
DOUGLASVILLE, GA 30134-24120

## CORPORATE POLICY AND PROCEDURES/NOTATION/GUIDELINE MANUAL

### CORPORATE POLICY AND PROCEDURES MANUAL/NOTATIONS/GUIDELINES

Note that;

These guidelines are not intended to and **DO NOT CREATE A CONTRACT OF EMPLOYMENT.**

Note that;

This policies and procedures/guidelines and notations manual may be revised at any time at employer's sole discretion.

### CORPORATE POLICY AND PROCEDURES MANUAL/ NOTATIONS

Note that;

According to Georgia license law, a broker is required to provide a written policy manual to all licensees working for them; therefore, all branch managers should/shall provide access to a copy of this manual on the company's website at [www.areciga.com](http://www.areciga.com) before entering any affiliation with employee or licensee.

Note that;

This policy manual needs to be reviewed thoroughly with the licensee/employee/contractor before entering an affiliation with a licensee/employee/contractor.

Note that;

All agents/branches/managing brokers/associate brokers/employees of All Real Estate Consultants, Inc. are to follow all corporate policy and procedures manual/ NOTATIONS unless it conflicts with law; however, any notations, policy, procedures not in conflict with law is and remains in full effect.

Note that;

All employees/licensees understand and acknowledge that all employment is "at will" and All Real Estate Consultants, Inc. may terminate affiliation/employment for any violation of this corporate policy and procedure, notation manual that is not in conflict with law.



### **ACCESS TO A COPY OF CORPORATE POLICY**

Note that;

All branches/managing brokers/managers must provide or provide access to a copy of this corporate policy and procedures manual to all licensees/employees/contractors **“BEFORE”** **ENTERING INTO AN AFFILIATION/EMPLOYMENT** with any licensee/employee/contractor and review this corporate policy and procedures manual with a licensee/employee/contractor “before”, entering into an affiliation with licensee/employee/contractor.

### **POLICY CHANGES**

Note that;

All managers are to provide access to a written copy or provide access to any policy changes to all licensees/employee/contractors within three business days of any change in this manual.

### **CLIENT PERSONAL INFORMATION**

Note that;

All licensees/employees/affiliated branches/managers/associate brokers are to keep client personal information in strict confidence.

Note that;

All client personal information should/must be secured always/at all times.

Note that;

Any discarded paper of personal information should/is to be shredded.

Note that;

Any electronic client personal information should/is to be protected always.



## **EQUAL OPPORTUNITY EMPLOYER**

Note that;

All Real Estate Consultants, Inc. is an equal opportunity employer

Note that;

All Real Estate Consultants, Inc. does not discriminate in employment base **ANY** Federal or State protected class including but not limited to:

- RACE
- COLOR
- RELIGION
- NATIONAL ORIGIN
- AGE
- SEX
- DISABILITY
- SEXUAL ORIENTATION

## **HUMAN RESOURCES MANAGEMENT**

### **EMPLOYEES**

Note that;

Office staff member will be considered employees of All Real Estate Consultants, Inc.

Note that;

For each employee of All Real Estate Consultants, Inc. shall have payroll check deductions for applicable item listed below:

- federal, state, and local payroll taxes
- employee's portion and paying company's portion of social security
- federal and state unemployment insurance
- worker's compensation insurance



## INDEPENDENT CONTRACTORS

Note that;

All salespeople/licensees will be considered as independent contractors of All Real Estate Consultants, Inc.

Note that;

All Real Estate Consultants, Inc. will not or does not deduct from commission/compensation any of the items listed above for consultants/agents/independent contractors/licensees.

Note that;

Branch managers are to ask themselves the following question to consider a staff member as independent contractor:

- Does the broker/manager have the right to control and **direct** the salespeople, not only as to the result to be accomplished, but also as to how the result is to be accomplished?

Note that;

An individual can be considered an independent contractor **ONLY** if the answer of the above question is NO!

Note that;

All **managers should not control or direct salesperson/licensee as it relates to result** to be accomplished or means by which the result is to be accomplished.

Note that;

The following broker/manager activities are permitted without putting at risk the salesperson's/licensees standing as an independent contractor:

- The broker/managing broker can examine any contract prepared by an independent contractor/licensee.
- The broker/managing broker can require an independent contractor/licensee to attend educational programs related to license law.
- The broker/managing broker can schedule sales meeting for salespersons.
- The broker/managing broker can review results with salespersons.



## **FEDERAL TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982**

Note that;

The requirements of the Federal Tax Equity and Fiscal Responsibility Act of 1982 **ONLY APPLY WHEN DETERMINING INDEPENDENT CONTRACTOR STATUS FOR FEDERAL INCOME TAX PURPOSES**

Note that;

In order for a salesperson to qualify as an independent contractor for federal income tax purposes, the following three conditions must be met:

- The salesperson/licensee must hold an active real estate license
- At least 90% of the licensee's/salesperson's compensation must be based on sales performance, not on the number of hours worked
- There must be a written contract between the broker and the salesperson/licensee which contains the following:

The salesperson/licensee will not be treated as an employee with respect to the services performed by such salesperson/licensee as a real estate agent for federal tax purposes

Note that;

Georgia license law and the rules and regulations of the Georgia Real Estate Commission have requirements regarding this contract.

Note that;

A written contract must be drawn up whether the salesperson/licensee will be working as an independent contractor or as an employee.

Note that;

The contract must indicate how the salesperson/licensee will be compensated during the term of affiliation and for work in process when the salesperson/licensee leaves the company.

Note that;

The contract may contain other terms as agreed upon by the broker and affiliated agent/licensee



Note that;

If the broker/managing broker exerts too much control over the way an independent contractor/licensee performs their tasks, this may put at risk the salesperson's/licensee standing as an independent contractor under other laws related to:

- ✓ State income taxes
- ✓ Unemployment compensation
- ✓ Worker's compensation

## **HUMAN RESOURCE MANAGEMENT**

Note that;

Human resources management includes activities for:

### **RECRUITMENT**

Managers note that;

It is important to select carefully the methods used to recruit salespeople and staff.

Managers note that;

Poor recruiting methods can result in severe financial and/or legal consequences for the company.

Managers note that;

Processing applicants is an expensive procedure for the company.

Managers note that;

The costs involved in processing applicants include materials and staff time.

Managers note that;

If the recruitment methods produce only unqualified applicants, the resources used in processing these applicants are wasted time and money for the company.

Note that;

All Real Estate Consultants, Inc. is required to comply with federal and state laws that have been developed to prevent unfair discrimination in employee/licensee selection.



Managers note that;  
Whether or not unfair discrimination has taken place often is determined by the demographic characteristics of those hired.

Managers note that;  
The characteristics of those hired is related to the characteristics of the applicants.

Managers note that;  
When recruitment methods do not produce a diverse group of applicants, the selection methods probably will not result in an appropriately diverse set of hires.

Managers note that;  
There are many methods of recruiting salespeople and staff which include: Advertising, employment agencies, college and new licensee recruiting, trade associations, employee referrals, and walk-ins.

### **ADVERTISING**

Managers note that;  
Advertising involves providing a message of a job opening in one or more types of media  
Managers note that;  
One popular method of advertising a job opening is the classified or help-wanted advertisement

### **EMPLOYMENT AGENCIES**

Managers note that;  
Employment agencies are organizations that maintain lists of individuals seeking jobs

### **COLLEGE AND NEW LICENSEE RECRUITING**

Note that;  
Branch manager may recruit salespeople and office staff by sending recruiters out to college campuses, and/or college career nights, or by contacting persons who have recently passed the exam



### **TRADE ASSOCIATIONS**

Note that;  
Some trade associations have job placement services

### **EMPLOYEE REFERRAL**

Note that;  
Current employees may inform acquaintances of job openings

Note that;  
Manager may use this method by combining with an incentive program whereby the existing salespeople and staff receive bonuses for bringing in new salespeople and staff

### **WALK-INS**

Note that;  
Positions often are filled by individuals who initiate contact with the organization

### **SELECTION**

Managers note that;  
After recruiting a group of applicants, you will need to decide which applicants to hire

Managers note that;  
There are many methods for selecting among applicants which include:

- Application forms
- Interviews
- Ability tests
- Personality inventories
- Reference checks





Managers note that;

The three commonly used selection instruments are: application forms, interviews and reference checks

▪ **APPLICATION FORMS**

Managers note that;

The laws designed to prevent unfair discrimination affect the types of information that can be obtained during the selection process

Managers note that;

The type of information often requested on application forms will be identified

**AVAILABILITY TO WORK ON HOLIDAYS AND WEEKENDS**

Managers note that;

Employers must make accommodations for an applicant's religious preference

Managers note that;

If such availability questions are asked, the employer must demonstrate that the questions do not exclude any applicant because of their religious preference

Managers note that;

Some suggestions are given regarding the types of questions that should be avoided during the selection process include:

- Avoid questions about national origin and marital status
- Avoid questions concerning gender and questions related to race, including hair and eye color
- Avoid questions that may give away the applicant's age, including the dates of their attended high school and college
- Avoid questions concerning marital status, children, and plans for child bearing
- Avoid questions that ask the applicant to list all physical disabilities

Note that;

It may be appropriate to ask the applicant to list any specific disabilities that might limit their ability to perform the particular job



Note that;

If an employer does ask question about an applicant's physical condition, the employer must be able to document the need for such questions

- Avoid question concerning an applicant's ARREST record because they are illegal

Note that;

Questions concerning an applicant's CONVICTION record may be acceptable if there is a relationship between the conviction and the applicant's suitability for a job

- Avoid questions about the type of military discharge

Note that;

Because minorities have higher percentages of undesirable discharges, question about the type of discharge may result in unfair discrimination

Note that;

It may be appropriate to ask questions about any training the applicant received in the military which is related to the job

#### **CREDIT RATING**

Note that;

- Questions concerning an applicant's credit rating are considered illegal

#### ▪ **FRIENDS/RELATIVES WORKING FOR THE EMPLOYER**

Managers note that;

Although accepting referrals from current employees is a method of recruiting applicants, there may be a problem if an applicant is asked if they have any friends or relatives working for the company



Managers note that;  
Questions such as this could be illegal if hiring friends and relatives of the employees mean that there will be fewer employment opportunities for minorities

- **INTERVIEWS**

Managers note that;  
In using interviews to select employees, there are some guidelines you should follow:

- Ask only job-related questions
- Use a prepared set of questions to make sure you ask only job-related questions and to make sure you obtain the same information from all applicants

Manager note that;  
You should avoid asking the questions identified in the selection from the application forms

Managers note that;  
You may wish to consult published materials such as books and personnel journals to learn more about new interviewing techniques

- **REFERENCE CHECKS**

Managers note that;  
Reference checks involve contacting individuals who are acquainted with the applicant in order to get information about the applicant

Managers note that;  
As with other selection methods, the goal of the reference check is to obtain job-related information in order to predict whether or not the applicant is likely to succeed in the position for which they are applying

Managers note that;  
The goal is to avoid unfair discrimination in the selection process



Note that;

Managers may use these guidelines for using reference checks:

- Contact the applicant's previous immediate supervisor

Note that;

Typically, the information provided by this individual is more valuable in predicting whether or not the applicant will succeed on the job

- Ask the reference about specific job-related behavior, not general impressions

Note that;

Asking about an applicant's character is not likely to result in specific job-related information

- Ask the reference what his/her position is and how long he/she has known the applicant

Note that;

This information will indicate whether or not the individual contacted is in a position to adequately evaluate the applicant

Managers note that;

When using telephone contacts, use prepared questions and a standard method of recording/documenting responses so that the same information is obtained for all applicants

- Be careful when using negative information to disqualify an applicant

Note that;

If negative information is used, verify the information and be sure that the information used will help predict whether or not the applicant will succeed on the job

- Obtain each applicant's written consent to contact references



Managers note that;

There are several methods of conduction reference checks:

- A reference can be contacted by telephone and asked a series of prepared questions
- A reference can be mailed a questionnaire and asked to complete and return the questionnaire

Note that;

There are several problems with using reference checks to select employees:

- ✓ Typically, an applicant only provides the names of individuals who will provide positive information, so the information obtained is limited
  - ✓ The individual contacted during a reference check may have had limited contact with the work behavior of the applicant, and therefore, they may be unable to provide adequate information about the applicant
  - ✓ Some evidence has shown that the information provided during reference checks is not very useful in predicting if an applicant is likely to succeed on the job
- A letter of recommendation can be obtained from a reference

Note that;

Letters of recommendation have additional problems that telephone contract and questionnaire do not have:

- ✓ The same information is not obtained for each applicant
- ✓ Topics of importance to the company may not be included in a letter of recommendation
- ✓ The quality of the information provided in a letter of recommendation is related to the amount of effort put forth by the writer



Note that;  
Because of the problems associated with letters of recommendation, managers are to use telephone contacts or questionnaires that ask the same questions of applicants

### **RECORD KEEPING**

Managers note that;  
There is one additional legal requirement regarding selection programs

Note that;  
Employers are required to keep thorough records related to employee selection such as:

- The demographic characteristics of applicants and employees

### **GOALS**

Managers note that;  
Regardless of which selection method is used, there are two overall goals of a selection program:

- To obtain information that predicts success in the job

Note that;  
The goal is to obtain information that is job-related

Note that;  
The process of obtaining job-related information is not an easy task; there are complex legal and statistical procedures that must be followed to show that information is job-related

- To ensure that unfair discrimination is not allowed in the selection process

Note that;  
The selection program is to make sure that the program does not result in unfair discrimination against individuals



Note that;

If the selection program is found to be unfairly discriminatory, All Real Estate Consultants, Inc. may be subject to lawsuits and may have to pay costly settlements and attorney fees.

Note that;

All managers need to be aware of the current laws related to personnel selection

Managers note that;

Laws involving employee selection change frequently

Note that;

To obtain information on employee selection, you should consider engaging in the following activities:

- Enrolling in a personnel selection course at a college or university, a trade association or any other source
- Purchasing a current textbook on personnel selection

## **TRAINING**

Managers note that;

There are many choices available when selecting training programs

Managers note that;

The training program can be conducted by:

- The broker
- An office manager
- A coworker
- In house training director
- An outside trainer

Managers note that;

The methods used to present the training can also vary such as:

- Viewing training video tapes
- Observing an experienced worker and then practicing the same activities
- Observing demonstrations of specific work-related activities



- Completing any additional training activities as selected by the trainer
- New salespeople and staff may be trained one-on-one or in small groups

Managers note that;

The environment for the training can also vary and could include:

- In a classroom
- In the office
- At a property site
- At some other location
- Skype
- Video chat

#### **COMPENSATION OF SALESPEOPLE AND OFFICE STAFF**

Managers note that;

It will be considered a violation of All Real Estate Consultants, Inc. policy to discuss with another employee/licensee the amount of commission or salary that a licensee or employee is compensated.

Managers note that;

- All sales persons/agents/licensee's compensation will be based on commission/1099.
- All employees/contractors will be paid by W2

#### **SALESPEOPLE/LICENSEE**

Note that;

Compensation for salespeople/licensee is usually based on commission

Note that;

There is no maximum or minimum limit to the amount of the gross commission the broker must share with their salespeople/licensee

Note that;

Managers, it is extremely important to choose the commission schedule carefully because it will impact the company profits and the company ability to attract and retain salespeople





Managers note that;

There are many different ways to set up the commission schedule for salespeople/licensee such as:

- A specified percentage of the gross commission for each listing sold and each sale made
- On a sliding scale such that the salesperson receives a higher percentage of the gross commission as specified production levels are met
- 100% of each commission and charge the salesperson a monthly fee to cover the company expenses
- A higher-than-average share of the commission and charge a monthly fee to cover a portion of the company expenses

#### **OFFICE STAFF**

Managers note that;

Office staff members typically are paid salaries

Managers note that;

To determine an appropriate compensation level of office staff, you may want to contact a local employment agency

#### **MANAGER**

Note that;

There are different ways to compensate managers

Note that;

A manager can be paid:

- A straight salary
- A commission based on his/her own listing and selling
- A percentage of the commissions earned by the salespeople they supervise
- An incentive based on net profit
- A combination of these compensation plans

#### **OWNER**

Note that;

The owner of a company will need to determine a method for compensating themselves



Note that;

If the owner will be involved in listing and selling, they should plan on paying themselves the appropriate commission

Note that;

If the owner will be involved in management activities only, they should pay themselves an appropriate salary

Note that;

If the owner does not develop a specific plan for their own compensation, the owner will find it difficult to determine when the company is making a profit

#### **BROKER/ASSOCIATE BROKERS**

Note that;

It is the custom in the real estate brokerage industry for brokers/associate brokers to be paid on a commission basis.

Note that;

The right to collect a commission can be established in either of two ways:

- It is usually established by writing it into a listing contract
- It can also be established by writing it into a buyer agency contract or a sales contract

Note that;

When the right to a commission is established in a listing contract, the listing contract should specify the amount of the commission in terms of EITHER:

- A stated amount, such as a flat fee
- A percentage of the sales price

#### **EARNING A COMMISSION**

Note that;

An agent's (broker's) commission is earned when he/she produces a buyer who is:

- Ready
- Willing



- Able to purchase the property:
  - ✚ On the terms originally stipulated by the seller
  - ✚ On any other terms acceptable to the seller

Note that;

A buyer is considered “ready and willing” to buy when a signed contract is offered at the seller’s terms

Note that;

A buyer is considered “able” to buy if he/she is financially able to purchase or when the sale actually closes

Note that;

If a buyer is “ready and willing” to buy at the terms OTHER THAN THOSE IN THE CONTRACT, a commission is not earned UNLESS the seller subsequently agrees to sell at the terms offered, as evidenced by his/her agreeing to and signing a written offer, and the sale actually closes

Note that;

If a broker/agent procures a ready, willing and able buyer who offers to buy at precisely the terms and conditions specified in the listing agreement, the seller **MUST** pay a commission regardless of whether he/she goes through with the sale; the seller may choose not to sell but **MUST** still pay a commission to the listing broker

Note that;

If the offer made by a buyer does not meet the terms in the listing agreement, the broker/agent still earns a commission if the seller agrees to sell on other terms negotiated with the buyer however if a sale fails to close because of a failure on the part of the **BUYER**, the listing broker does not earn a commission. Example:

- ✚ The buyer decides not to buy after an offer is made and accepted by seller
- ✚ The buyer is unable to obtain financing to close a sale

#### **COLLECTING A COMMISSION IN COURT**

Note that;

If a seller refuses to pay a commission earned by a broker/agent, the only recourse of the broker is to go to court to sue for collection and the broker **MUST** prove he/she is entitled to a commission



Note that;

The requirements for proving that a broker is entitled to a commission are different, depending on whether the broker had an exclusive right to sell listing or some other type of listing agreement.

Note that;

To enforce the right to a commission under an **EXCLUSIVE RIGHT TO SELL LISTING** in court, a broker must prove the following:

- ✚ He/she held a license in good standing **AT THE TIME THE COMMISSION WAS EARNED**
- ✚ He/she had the authority to negotiate the sale as an agent for the seller, and the seller had agreed to pay a commission; this is usually established through the existence of a written listing agreement

Note that;

Some court ruling has indicated that a broker's commission may be at risk if he/she does not actively participate in bringing about the sale even under an exclusive right to sell listing

Note that;

If a broker did NOT have an exclusive right to sell listing, he/she must first prove:

- ✚ He/she held a license in good standing at the time the commission was earned
- ✚ He/she has the authority to negotiate the sale as an agent for the seller, and the seller had agreed to pay a commission
- ✚ The broker must prove that he/she was responsible for the sale

Note that;

To prove that the broker was responsible for the sale, the broker must prove that he/she was either:

- ✚ The procuring cause of the sale

Note that;

A broker is the procuring cause if he/she produces a ready, willing, and able buyer at the seller's terms and the seller refused to sell



- ✚ The proximate cause of the sale

Note that;

A broker is the proximate cause of the sale if the broker did something (such as advertise or show the property) that put into motion a series of events which led to the sale of the property

### **SAFETY CLAUSE**

Note that;

The safety clause is a clause in a listing agreement that protects the broker's right to commission on SOME sales occurring after the listing agreement has expired.

Note that;

A safety clause is **ALSO CALLED THE PROTECTIVE CLAUSE**

Note that;

The safety clause/protective clause specifies a safety period of certain duration after the listing has expired.

Note that;

There is no set length of time for a safety period by law and the length of the safety period must be negotiated with the principal when the listing agreement is made.

Note that;

The length of the safety period MAY NOT be preprinted on a listing agreement form, It must be entered by hand.

Note that;

The broker is entitled to a commission when a safety clause is included in a listing agreement if the following conditions are met:

- ✚ The broker shows a property during the listing period
- ✚ When the listing expires, the broker provides the seller with a list of those people to whom the property has been shown
- ✚ The buyer to whom it was shown buys the property within a specified period after expiration of the listing, called: the safety clause/protective clause/period.



## **SETTING COMMISSION RATES**

Note that;

All commission rates must be the result of negotiation between the broker and the principal (typically the seller).

Note that;

Any rate acceptable to both the principal and the broker is allowed

Note that;

**THERE IS NO LEGALLY PERMITTED OR REGULATED COMMISSION RATE.**

Note that;

Brokers for different companies MAY NOT CONSPIRE to “set” commission rates and this is a violation of the Sherman Antitrust Act.

Note that;

All Real Estate Consultant’s Inc. charges a 6% commission for its listing/seller professional real estate services which can/may be split 50/50 with the cooperative broker or selling broker and 3% commission for its buyer’s services, which may be paid from seller or buyer.

Note that;

Any commission charges that are below 6% for seller or 3% for buyer must be approved by management or corporate office of All Real Estate Consultants, Inc. before entering into a listing/seller or buyer agreement with a principal.

## **PAYMENT OF COMMISSION/COMPENSATION TO A SALESPERSON**

Note that;

A licensed salesperson/licensee may receive compensation only from **his/her broker** as payment for any real estate service.

Note that;

Bonuses may be paid by the seller (either in cash or merchandise) to the selling salesperson/licensee only with permission of the salesperson’s/licensee’s broker.

Note that;

A salesperson/licensee may not receive any compensation that is not disclosed & approved by to all parties in the transaction in written.



## PAYMENT OF REFERRAL FEES

Note that;

Although referral fees are not part of a commission earned when a broker is responsible for a sale, they/referral fees constitute one form of compensation which “brokers” can receive.

Note that;

There are several points a licensee should remember about the payment of referral fees in general.

Note that;

An UNLICENSED person may receive a referral fee as long as it does not come from:

- ✚ The person being referred
- ✚ A licensed broker, associate broker, salesperson or community association manager.

Note that;

The UNLICENSED person to whom the referral is made may pay a referral fee to another unlicensed person:

- ✚ The manager of an apartment complex may pay a referral to a tenant for referring a new tenant

Note that;

**A REAL ESTATE LICENSEE “MAY NOT” PAY A REFERRAL FEE TO AN UNLICENSED INDIVIDUAL UNDER ANY CIRCUMSTANCES!!!!**

Note that;

A broker may pay referral fees to other LICENSED individuals, such as their salespersons or other brokers



### **EMPLOYEE CLASSIFICATION**

Note that;

- Employees and affiliated licensees of All Real Estate Consultants, Inc. will be considered AT WILL employment.
- Employees and affiliated licensees of All Real Estate Consultants, Inc. will be considered EXEMPT employment.
- Employees will be considered contract employment.

### **PERFORMANCE REVIEW**

Note that;

A performance review of all employees/licensees should be held annually from the date of employment/affiliation by management.

Note that;

Manager may provide a performance review earlier than annually however should provide a performance review annually.

### **TARDINESS AND ADSENCE BY EMPLOYEES**

Note that;

Any tardiness more than 15 minutes should be communicated with supervisor and should be monitored by management for excessive tardiness by any employees

Note that;

Any absence should be communicated to supervisor as soon as possible by employees

### **LEAVE**

Note that;

All leave must be approved by management for all employees

Note that;

Management/agent/licensees are to make sure any client is professionally covered during leave





### **ILLNESS**

Note that;  
Any time off from work will not be compensated for any employee/licensee

Note that;  
All managers are to ensure that all clients are professionally covered during any employee/affiliate licensee illness.

### **DRUGS AND ALCOHOL**

Note that;  
All Real Estate Consultants Inc. prohibits the use of any illegal or abuse of alcohol and drugs.

### **HARASSMENT**

Note that;  
Harassment is prohibited.

Note that;  
Racial, religious, ethnic or sexual harassment is illegal.

Note that;  
Sexual/racial harassment is prohibited in all forms and is strictly prohibited and could result in immediate termination of the relationship/employment with All Real Estate Consultants, Inc.

### **PROHIBITED**

- Any unwelcome verbal or physical conduct of any kind
- Any unwelcome requests for sex acts or favors of any kind
- Requests for sexual acts or favors in return of for advancements OR threats of loss of employment or benefits if refused
- Displays of sexually explicit or suggestive materials of any kind
- Any conduct that **has the purpose of or effect** of an unreasonable interfering with an individual's work performance



- Creating a hostile, intimidating or offensive work environment of any kind

## **REPORT**

Note that;

Any individual who believes that he/she has been sexually or racially harassed or believe that there is a hostile, intimidating or offensive work environment by another employee/licensee should report the problem to the attention of his/her supervisor, a human resources staff person, an attorney or an executive officer of All Real Estate Consultants, Inc.

Note that;

All reports will be kept confidential; information about any sexual harassment or any charge will be made known only to an individual directly involved either as a party, witness, an investigatory team member or an executive officer of All Real Estate Consultants, Inc.

Note that;

All reported incidents by witnesses/individuals are to be without fear of reprisal

Note that;

All reports will be investigated in a prompt and vigorous manner by management

Note that;

Any employee/licensee engaged in sexual harassment is subject to severe discipline, including termination and is subject to additional sanctions by the real estate commission or any applicable law

Note that;

Any unfounded complaint will result in appropriate disciplinary measures that may be taken against the employee who brought the complaint, if the sexual harassment complaint is found to be totally and completely without basis.

Note that;

All managers are to follow up with all parties involved to ensure that the harassment has ceased and to find out if retaliation has occurred after the reported problem.



### **DISCIPLINARY ACTION**

Note that;

Managers are to document any incidents of misbehavior and/or performance problems.

Note that;

All conversation with employees/licenseses regarding those incidents, any memorandums, employee/licensee responses and other information pertinent to the misbehavior or performance problems should be included in personnel file.

Note that;

Managers are to document facts and be objective when documenting violation or performance/misbehavior problems.

Note that;

Managers should not include personal feelings or opinions about the employee/licensee when documenting incidents of misbehavior/performance.

Note that;

Any misbehavior and/or violation of corporate policy and procedures/notations will be subject to:

- Verbal warning
- Written warning
- Probation
- Suspension
- Termination

### **COURTESY**

Note that;

All employees/licenseses are to provide services in a courteous manner which includes but not limited to cheerful greeting, a pleasant smile and or giving a sympathetic ear which will help establish and maintain the proper atmosphere.

### **PERSONAL TELEPHONE CALLS**

Note that;

Personal telephone calls should be conducted outside work place areas and do not/should not interfere with any work/assignment or any other employee/licensee



### **PERSONAL USE OF E-MAIL AND THE INTERNET/COMPANY EQUIPMENT**

Note that;  
Personal use of company's e-mail and/or the internet/computer/all equipment is strictly prohibited.

Note that;  
All employees/licenses are strictly prohibited from accessing any sexually oriented sites on any company equipment.

Note that;  
All employees/licenses are subject to a charged for any damages caused by prohibited use of equipment including but not limited to computer equipment/software/hardware/phone/internet/email/copiers, etc.

Note that;  
All employees/licenses should not open any unsolicited email/links.

Note that;  
Licensee/employees may not install/delete/up load/down load any software/program/web site on any company equipment.

### **PERSONAL VISITORS**

Note that;  
Personal visitor will be allowed however the managing broker/manager may provide reasonable restrictions for security of client information/work place areas.

### **CONFLICTS OF INTEREST**

Note that;  
Any employee/licensee or related party that is in a position to profit directly or indirectly because of the employee/licensee's position is strictly prohibited without the express consent and approval from All Real Estate Consultants, Inc. corporate office and/or legal counsel.

Note that;  
Any behavior/actions/statements/comments/posting by any employee/licensee that will brings a negative opinion against All Real Estate Consultant's Inc. will be subject to immediate termination



### **STAFF GRIEVANCES**

Note that;

If problems or grievances develop among employees, a forum/meeting should be available for them to air such grievances.

Note that;

A supervisor/manager will be involved and is responsible for the performance of staff and therefore will be at the forum/meeting.

Note that;

At the conclusion of the forum/meeting, the manager and all parties involved will come to a final resolution.

Note that;

Any violation of harassment/conflict of interest will be subject to immediate termination.

### **SMOKING**

Note that;

Smoking/vaping will be allowed only in designated areas outside of office building.

### **DRESS CODE POLICY**

Note that;

As an affiliate of All Real Estate Consultants, Inc. each employee/licensee is responsible for maintaining a professional image and appearance during business hours or business activities.

Note that;

Employees/licensees are expected to present a clean and neat appearance always.

Note that;

Employees/licensees who appear to work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, to the extent permitted by applicable law. Employee will not be compensated for the time away from work.



Note that;

Managers are responsible for enforcing this policy, as is the human resources department. Full compliance of this policy will ensure a full understanding of All Real Estate Consultants, Inc. expectations and instill a **SENSE OF PRIDE THAT WILL ENHANCE OUR COMPANY'S PROFESSIONAL IMAGE.**

Note that;

The satisfaction of All Real Estate Consultants, Inc. clients is the most important aspect of the company's business.

Note that;

A professional appearance is essential in creating a favorable impression and underscoring the quality of All Real Estate Consultants Inc. work.

Note that;

Whether or not an individual employee's/licensee's job takes him or her directly in front of the client, he or she represents All Real Estate Consultants, Inc. in appearance as well as actions.

Note that;

All managers will be responsible for monitoring all aspects of professional image and should encourage employees/licensees to discuss any issues regarding proper attire.

**UNACCEPTABLE DRESS CODE; NO:**

- No Blouse OVER leggings/tights
- No Club attire or leather clothing
- No Work- out clothes, spandex/velour outfits/yoga pants
- No Dirty soiled garments of any kind
- No Flip Flops-any sandal with a flapping sound or motion
- No Tennis shoes/sports shoes
- No sandals with a thong between the big and second toe that moves with a flapping sound
- No Mini- skirts/dresses, shorter than 3" above the knee
- No short pants
- No Hoodies
- No Torn or ripped clothing
- No frayed clothing
- No tank tops
- No cleavage/low cut tops
- No clothing with any language nor any graphics



- No haircuts with graphics/designs/language
- No ear rings in nose/lip/face
- No facial/neck tattoos

### **STAFF MEETINGS**

Note that;

All managers should set up monthly or weekly meeting with sale staff and may include meeting by: skype, phone/computer/office or any agreed upon place/location.

### **INDUSTRY KNOWLEDGE**

Note that;

All managers should ensure that all employees/licensees possess a basis understanding of current events in the real estate industry.

Note that;

All licensees are encouraged to read real estate publications to keep abreast of the real estate industry.

### **NONE RESIDENT BROKER**

Note that;

In GA a non-resident broker can serve as the qualifying broker for a business licensed as a broker in GA however must have approval from all parties involved in writing.

Note that;

A broker can be the qualifying broker for more than one business licensed as a broker however must get approval from all parties involved in writing prior to a broker being qualifying broker for more than one business.

Note that;

All Real Estate Consultants, Inc. corporate office will obtain none resident license and local license from any state that licensee of All Real Estate Consultants, Inc. is operation in.



### **ASSOCIATE BROKER**

Note that;

An associate broker licensed under one broker may serve as the qualifying broker with another firm as long as he/she notifies and get approval from the broker holding his/her licensed in writing before serving as the qualifying broker with another firm.

Note that;

All associated brokers must meet all requirements for broker's license.

### **MANAGERS**

Note that;

Managers must open trust account if the branch intends to hold trust funds.

Note that;

The qualifying broker must have signatory power on ALL trust accounts which the branch maintains.

Note that;

**THE QUALIFYING BROKER WILL BE DETERMINED BY ALL REAL ESTATE CONSULTANTS, INC. CORPORATE OFFICE FOR ALL BRANCHES;** unless written approval/agreement is obtained from corporate office.

Note that;

Managers are to draw up a written partnership agreement between branch and corporate office and include it with the license application.

Note that;

The partnership itself is not required to meet any educational or exam requirements to apply for a license, **ONLY THE QUALIFYING BROKER MUST MEET ALL REQUIREMENTS FOR BROKER LICENSE.**

Note that;

Managers are to obtain a charter and copy of articles of incorporation from the corporate office of All Real Estate Consultants, Inc.





Note that;

Managers are to apply to the secretary of state using transmittal form 231 or the form in the state in which the branch is located and include the reservation number for name, if applicable, article of organization and all other required information including filing fee; this fee should be included in startup budget and apply to the Real Estate Commission for a branch license using the opening a real estate firm form and attach any exhibits requirement by the application.

### **LICENSING OF BUSINESS**

Note that;

Under GA license law, a firm/business may be licensed as: Broker, Associate broker, salesperson

- Broker

Note that;

A broker's license may be issued to a business structure operating as:

- ✓ Sole proprietorship
- ✓ Corporation
- ✓ Partnership and limited Partnership
- ✓ Limited Liability Company

Note that;

For the business structure to be eligible for a broker's license, the firm must designate one individual broker as the QUALIFYING BROKER.

Note that;

The qualifying broker for the firm, regardless of the business structure, must be licensed as a broker.

Note that;

The qualifying broker is responsible for insuring:

- ✓ That the business complies with the license law and rules
- ✓ That any licensees affiliated with All Real Estate Consultants comply with license law and rules
- ✓ That anyone who acts as a licensee for All Real Estate Consultants is licensed



Note that;

If a licensee/employee violates the license law or rules, the qualifying broker is subject to sanctions.

Note that;

When a brokerage firm is issued a broker's license, there are two licenses required:

- ✓ One broker's license for the firm itself
- ✓ One broker's license for the qualifying broker

#### **SOLE PROPRIETORSHIP**

Note that;

When a sole proprietorship is issued a broker's license, there is only one broker's license required

Note that;

The broker or qualifying broker of any real estate firm must have signatory powers on all trust accounts which the firm maintains

Note that;

When the firm is issued a broker's license, the business may employ:

- ✓ Associate brokers
- ✓ Salespersons

Note that;

When a firm employs any associate broker or salesperson they must be supervised by the qualifying broker.

Note that;

All employees employed by the broker NEED NOT be licensees, only those who are engaged in real estate brokerage activity must be licensed.

Note that;

An individual is engaging in real estate brokerage activity if they do any of the following:

- ✓ List property
- ✓ Sells property



- ✓ Solicits prospects
- ✓ Refers prospects
- ✓ Collects rents

- Associate Broker

Note that;

To be eligible for an associate broker's license, the firm must designate an individual associate broker as the qualifying associate broker

Note that;

The qualifying associate broker must be an individual licensed as an associate broker

Note that;

A firm which is licensed as an associate broker will involve two licenses:

- ✓ An associate broker's license for the firm
- ✓ An associate broker's license for the qualifying associate broker

Note that;

When a sole proprietorship is issued an associate broker's license, there is only one license required, the license for the associate broker who is the sole proprietor

Note that;

The qualifying associate broker of the brokerage firm licensed as an associate broker is responsible for insuring that the firm complies with the license law and rules

Note that;

If the firm violates the law or rules, the qualifying associate broker is subject to sanctions

Note that;

The qualifying associate broker must be the **ONLY** licensee of the brokerage firm licensed as an associate broker

Note that;

There **MUST NOT** be any other licensees (or unlicensed individuals) who engage in real estate brokerage activities on behalf of the firm.



Note that;

The reason for this is other associate brokers and salespersons must work directly for a broker

Note that;

Since a firm is licensed as an associate broker, not a broker, it **MAY NOT HAVE OTHER LICENSEES AS EMPLOYEES.**

Note that;

When a brokerage firm is licensed as an associate broker, it **MAY NOT ENGAGE IN REAL ESTATE BROKERAGE ACTIVITY** unless the firm licensed as an associate broker is affiliated with a broker, just as an individual associate broker must be affiliated with a broker.

Note that;

The license of a firm licensed as an associate broker must be assigned to (held by) a licensed broker

Note that;

A firm licensed as an associate broker may NOT engage in real estate brokerage activities except on behalf of the licensed broker

- Salesperson

Note that;

A salesperson rather than as an individual may operate as a:

- ✓ Sole proprietorship
- ✓ Corporation
- ✓ Partnership
- ✓ Limited Partnership
- ✓ Limited Liability Company

Note that;

This is possible under the Georgia license law, since any of these business structures may be issued a salesperson's license.

Note that;

To be eligible for a salesperson's license, the firm must designate an individual as the qualifying salesperson



Note that;  
The qualifying salesperson must be licensed as a salesperson.

Note that;  
The qualifying salesperson is responsible for insuring that the firm complies with license law and rules

Note that;  
If the firm violates the law of rules, the qualifying salesperson is subject to sanctions

Not that;  
A firm licensed as a qualifying salesperson, the qualifying salesperson must be the ONLY licensee of a brokerage firm licensed as a salesperson

Note that;  
When the firm is licensed as a salesperson, the license must be:

- ✓ Assigned to (held by) a licensed broker
- ✓ May not engage in real estate brokerage activities except on behalf of the licensed broker

Note that;  
If a business licensed as a salesperson violates the license law or rules, the qualifying broker is subject to sanctions.

## **BUSINESS STRUCTURE**

Note that;  
According to GA Real Estate commission, a firm may be operated as any business structure:

- Sole proprietorship
- Corporation
- Partnership and limited partnership
- Limited liability Company



### **SOLE PROPRIETORSHIP**

Note that;

If the firm is a sole proprietorship, the **QUALIFYING BROKER MUST BE THE SOLE PROPRIETOR.**

### **CORPORATION**

Note that;

If the firm is a corporation, the **QUALIFYING BROKER MUST BE "AN OFFICER" OF THE CORPORATION WHO IS LICENSED AS A BROKER.**

Note that;

The **QUALIFYING BROKER IS NOT REQUIRED TO HAVE OWNERSHIP IN THE CORPORATION**, only an officer of corporation.

Note that;

If stockholder, officer or director only investing capital in the corporation or acts in a purely administrative capacity and does not participate in brokerage activities in any way, he/she need not be licensed.,

Note that;

When a corporation is issued a broker's license, there are two licenses required:

- ✓ One broker's license for the corporation itself
- ✓ One broker's license for the qualifying broker

### **PARTNERSHIP**

Note that;

If the firm is a partnership, the **QUALIFYING BROKER MUST BE A PARTNER IN THE FIRM WHO IS LICENSED AS A BROKER.**

Note that;

If a partner only invests in the business and does not participate in brokerage activities in any way, they need not be licensed.

### **LIMITED PARTNERSHIP COMPANY/CORPORATION**

Note that;

If the firm is a limited partnership, the **QUALIFYING BROKER MUST BE THE GENERAL PARTNER.**



Note that;

If the **GENERAL PARTNER** of a limited partnership is **A CORPORATION, THE QUALIFYING BROKER MUST BE ONE OF THE CORPORATION OFFICERS WHOSE ACTIONS ARE BINDING ON BOTH THE CORPORATION AND THE GENERAL PARTNER.**

#### **LIMITED LIABILITY COMPANY**

Note that;

If the firm is a limited liability company, the **QUALIFYING BROKER MUST BE A MEMBER OR A MANAGER** if the articles of organization state this in writing.

Note that;

Managers are to complete and file a document called: articles of organization; which is/are in compliance with the GA limited liability company Act or any document required in the state in which the branch is located and must contain the words: limited liability company in the articles of organization.

Note that;

When a limited liability company is used, the firm is to reserve the name with secretary of state and there must be three requirements met:

- Contain the words: Limited Liability Company or abbreviation: LLC
- May not be duplicate name of LLC already filed with secretary of state
- May not exceed 80 characters including punctuations and spaces

Apply to the secretary of state using transmittal form 231 and include the name reservation number, copy of the article of organization and all other required information, including filing fee.

#### **CONSTRAINTS ON THE SELECTION OF A BUSINESS NAME**

Note that;

License law places certain constraints on the selection of a business name.

Note that;

The **business name used by a broker must be the same as that under which the broker's license is issued.**



Note that;

The name in which the broker's license is issued depends on the type of business:

- ✓ Sole proprietorship
- ✓ Corporation
- ✓ Partnership
- ✓ Limited partnership
- ✓ Limited liability Company

Note that;

The business name/trade name for all branches will be:

**ALL REAL ESTATE CONSULTANTS, INC.**

#### **SOLE PROPRIETORSHIP**

- The full name of the sole proprietor
- A registered trade name

Note that;

If the full name of the sole proprietor appears in the business name, the name need not be registered as a trade name.

Note that;

If the full name **is not** in the business name and the business uses a trade name, then that name must be registered with **clerk of the superior court for the county in which the business is located.**

Note that;

The registered trade name will be that same name that is used for the application for a license.

#### **CORPORATION**

Note that;

The broker's license must be issued in the same name as the name appearing on the corporation charter.





Note that;

The corporate charter is registered with the Corporation Division of the secretary of state office and must be submitted with the corporation's application for a license.

Note that;

If the corporation wants to use a trade name different from the name on the corporate charter, the applicant must check with the corporation division on whether the name should be registered as a trade name

Note that;

The license will be issued in the name registered with the corporation division of the secretary of state.

#### **PARTNERSHIP/LIMITED PARTNERSHIP**

Note that;

The name in which the broker's license is issued:

- Full names of **ALL PARTNERS**
- A registered trade name for the partnership/limited partnership

Note that;

When a registered trade name is used, a copy of the certificate of trade name must be included with the license application.

#### **LIMITED LIABILITY COMPANY**

Note that;

The name in which the broker's license is issued will be:

- The official name of the limited liability company as registered with the state of Georgia
- The registered trade name of the limited liability company as registered with the superior court for the county in which the business/branch is located

Note that;

When a registered trade name is used, a copy of the certificate of trade name must be included with the license application.



## **OPENING OF BRANCH/BROKERAGE OFFICE**

### **BROKERAGE OFFICE**

Note that;

When opening a brokerage, there are several requirements that must be met

### **DISPLAY OF LICENSES**

Note that;

The license of a salesperson affiliated with a broker is delivered or mailed to the broker by the real estate commission.

Note that;

The license remains in the custody and control of the broker while the license is active

Note that;

The broker must conspicuously display in their place of business:

- Their own license
- The licenses of all affiliated licensees

Note that;

The real estate commission will provide a pocket card to each licensee

Note that;

The pocket card certifies that the person named on the card is licensed

Note that;

The pocket card is the only copy of the license which is in the possession of a licensed salesperson or associate broker

## **BROKER'S RELATIONSHIP WITH LICENSEES**

Note that;

Associate brokers and salespersons/licensees of All Real Estate Consultants, Inc. may engage in real estate brokerage activities only when licensed under the qualifying broker of All Real Estate Consultants, Inc.



Note that;  
Associate brokers and salespersons may be licensed under only ONE broker/qualifying broker.

Note that;  
When an individual makes application for an original salesperson's license, that individual may begin brokerage activities ONLY when the broker/qualifying broker receives the licensee's wall certificate.

### **TYPES OF EMPLOYMENT**

Note that;  
When a salesperson affiliates with a broker, there are two types of employment arrangements possible:

- An employee of the broker
- An independent contractor to the broker

Note that;  
License law does not stipulate whether a salesperson or associate broker who is affiliated with a broker will be either an employee or an independent contractor.

Note that;  
It will be up to the individual broker and salesperson to determine employment category/arrangement.

Note that;  
The license law does require there be a written agreement between a broker and any affiliated licensee covering the terms under which the licensee will be compensated for work:

- Completed during their affiliation
- Work begun but not completed prior to the termination of the affiliation

Note that;  
The real estate commission does not regulate the content of the agreement between the broker and licensee. It simply requires a written agreement covering the above topics be in place.

Note that;  
When a dispute between a broker and licensee arises concerning the agreement, such a dispute must NOT be used as grounds for the broker's refusal to release a salesperson's license.



Note that;

A broker must always release a licensee from employment/affiliation immediately when the licensee request it.

Note that;

The disagreement may NOT be the basis for either party filing a complaint with the real estate commission

Note that;

Any dispute between broker and licensee must be settle in the courts if the disagreement cannot be resolved among the parties

#### **TERMINATION OF AFFILIATION**

Note that;

When a salesperson/licensee chooses to terminate affiliation with a broker, the salesperson must:

- Transfer the license to another broker
- Go inactive within 30 days of the return of their license to the commission by the previous broker

#### **TRANSFER OF LICENSE**

Note that;

A salesperson must not act as a licensee for any other broker than the one holding their license

Note that;

For a licensee to work for a different broker than the one holding their license, the licensee must transfer their license to the new broker

Note that;

When a licensee leaves a broker to transfer to the employment of a new broker, the old employing broker must forward the licensee's license to either:

- The real estate commission
- The new broker with whom the licensee will affiliate

Note that;

If the license is sent to a new broker, **the old broker must notify the real estate commission in writing.**



Note that;

A licensee transferring to a new broker may continue to act as a licensee for the old broker for some transactions:

- The transactions must have begun PRIOR to the transfer
- Both brokers, new and old must agree in writing
- The transactions covered must be listed in the written agreement between the BROKERS
- The old broker agrees in writing to assume full responsibility for the salesperson actions in the transaction covered in the agreement
- The agreement specifies the terms of compensation by the old broker for the transaction covered

Note that;

**The old broker must NEVER withhold their signature on a release form for any reason**, even if there is a dispute between the broker and the licensee concerning some condition of employment.

Note that;

**License law requires that a broker have a written employment agreement with each licensee which covers provisions for compensation should the salesperson transfer.**

Note that;

If the salesperson/licensee later fails to comply with the provisions in this written agreement, the broker:

- May not use this as grounds for refusing to release a licensee/salesperson's license
- May file a written complaint with the real estate commission against the departing licensee

Note that;

When a salesperson or associate broker transfers to a new broker, they should leave:

- Any written listings
- Names of prospects, sellers, lessors and lessees
- All plats, keys, for sale signs, notebooks, listing cards, etc.



## **BROKER'S RESPONSIBILITY**

Note that;

Typically, a broker may find themselves delegating to other individuals many of the tasks involved in operating a real estate company

Note that;

According to Georgia licensing law, there are some activities for which the broker must be responsible

Note that;

A broker or qualifying broker is responsible for:

- The acts of any affiliated salesperson or associate broker
- Instructing affiliated licensees in the provisions of the license law and associated rules
- Must notify the real estate commission of any violations of the license law or rules by the licensee or non-licensee

## **PENALTIES FOR VIOLATING LICENSE LAW**

Note that;

The Georgia Real Estate Commission has the authority to enforce compliance with the license law

Note that;

The Georgia Real Estate Commission can levy penalties against:

- Non-licensed individuals who engage in activities that require a license

Note that;

It is a violation of the license law to engage in any real estate brokerage activity that requires a license (broker, associate broker, salesperson, or community association manager) without first obtaining a license.

Note that;

Anyone who receives compensation for conducting activities related to the purchase or sale or lease of real estate must be licensed.



Note that;

When a “**NON-LICENSEE**” engages in real estate brokerage activities without a license, **THE REAL ESTATE COMMISSION HAS THE POWER TO IMPOSE FINES OF UP TO \$1000.00 PER VIOLATION.**

Note that;

Each day that a person engages in regulated activity without a license constitutes one violation

- “**LICENSEES**” who violate a provision of the license law

Note that;

The most common violations of the license law involve individuals who are licensed

Note that;

When a licensee engages in an act that constitutes a violation of the license law, the Real Estate Commission has the authority to:

- ✚ Issue a citation
- ✚ Reprimand or censure a licensee
- ✚ Revoke a license
- ✚ Suspend a license
- ✚ Fine a licensee
- ✚ Require the completion of courses
- ✚ Require independent accountant reports on licensee’s trust accounts

Note that;

When a fine is imposed against a licensee, the amount of the fine is limited to:

- ✚ \$1000.00 for a single violation
- ✚ \$5000.00 for multiple violations in any one hearing/transaction

### **INVESTIGATION AND HEARING PROCESS**

Note that;

The Real Estate Commission may investigate potential violations of the license law under two sets of conditions:



- ✦ It **must investigate** any charge brought by an individual in a sworn, **written complaint.**
- ✦ It may investigate the actions of a licensee on its own initiative

Note that

The actions that may be investigated may involve:

- ✦ Violations of the license law
- ✦ Violations of the rules and regulations issued by the real estate commission, including unfair trade practices

### **COMPLAINTS**

Note that;

If an individual brings a sworn, written complaint against a licensee, the commission is **REQUIRED** to investigate the complaint

Note that;

Normally, the commission will **INVESTIGATE ONLY ACTS OCCURRING WITHIN THE LAST 3 YEARS**

Note that;

When a sworn, written charge is brought by an individual against a licensee, the charge is handled by the **Director of investigations** of the Real Estate Commission.

Note that;

The Director of Investigations assigns the case to **an investigator** who gathers information from all relevant sources.

Note that;

The investigator or anyone else acting for the commission will have access to all documents and materials related to the investigation.

Note that;

If necessary, the **commissioner or commission chairperson has the power to issue subpoenas** to require the production of evidence for either party in an investigation. Failure to comply will result in punishment for contempt of court





Note that;

**When the investigation is completed**, the Director of investigations reviews the report and submits it to the “**Real Estate Commissioner**”, who can take **one of four courses of actions**:

- ✚ Require further investigation
- ✚ Refer the case directly to the Attorney General’s office for review if it appears that a serious violation has occurred
- ✚ Recommend to the full commission to close the case if it is clear that a violation has not occurred
- ✚ Present the case to the full commission to determine an appropriate course of action

Note that;

When the case is submitted to the full commission, it may take one of the following actions:

- ✚ Investigate the case further
- ✚ Close the case if it determines that no violation occurred
- ✚ Begin the formal disciplinary process if it concludes that sufficient evidence exists that a violation has occurred

Note that;

**The disciplinary process can take one of two courses:**

#### **FIRST**

- ✚ If there is evidence of a violation, but there does not appear to be any significant harm to the public, the commission may offer to settle with the licensee without a hearing
- ✚ The commission proposes a sanction, such as a reprimand, a fine, or educational courses.

Note that;

The licensee can agree with the proposal, or he/she may suggest an alternative settlement or request a hearing



## SECOND

- ✦ When there is evidence of a violation and the commission believes that the violation resulted in significant harm to the public.
- ✦ In this situation, the commission may request a formal hearing with the Attorney General's office

Note that;

**When a case is referred to the Attorney General**, the "hearing" process begins according to the procedures outlined below:

Note that;

When a case is presented to the Attorney General's office after an investigation by the commission, it is **first reviewed by an Assistant Attorney General**

Note that;

If he/she/assistant attorney general determines that there is NOT sufficient evidence to pursue the matter, the case is returned to the commission, who must decide whether to investigate the case further, or dismiss it

Note that;

If the assistant attorney general determines that there is sufficient evidence to pursue the case, he/she will issue either:

- ✦ A proposed "consent settlement"
- ✦ A notice of hearing to the licensee involved

Note that;

When the licensee receives a consent settlement, he/she has two options. The licensee may:

- ✦ Enter into the consent settlement with the commission

Note that;

**A consent settlement is an agreement between the licensee and the commission which allows the commission to impose a settlement without holding a hearing**



Note that;

During the negotiation of a consent settlement, the licensee may present any evidence that might lead the commission to dismiss the charges

Note that;

In a typical case, the charge is not dismissed, and the parties agree to a settlement, which may involve any of the penalties available to the commission under the law, including:

- Reprimand
- Suspension
- Revocation of a license
- The taking of education courses
- A fine

- ✚ Decline to enter into a consent settlement, at which time a formal hearing is held

Note that;

If the two parties do not reach an agreement on a consent settlement, A FORMAL HEARING IS HELD BEFORE AN ADMINISTRATIVE LAW JUDGE

Note that;

When a formal hearing is held, the licensee should **seek legal counsel from an attorney**

Note that;

The **licensee who is charged in the hearing** is referred to as the **respondent**

Note that;

If a respondent is given reasonable notice of a hearing and fails to appear, the hearing may proceed anyway

Note that;

After a hearing is concluded, the administrative law judge makes a report to the commission, which includes:

- ✚ A full report of the findings in the case



- ✚ A proposed decision, which recommends either a specific sanction or a dismissal of the charges

Note that;

When the proposed decision is submitted to the commission, the respondent may:

- ✚ Take no action, in which case the proposed decision becomes the Final Decision of the commission in 30 days
- ✚ Request that the commission review the proposed decision

Note that;

If the respondent disagrees with the proposed Decision of the Administrative Law Judge and requests a review by the commission, he/she has the right to:

- appear before the commission to make an oral presentation and to submit written briefs

Note that;

After the commission hears the presentation by the respondent, the commission then makes a Final Decision in the case

Note that;

When the proposed decision is presented to the commission by the Administrative law Judge, the commission itself may disagree with the proposed decision and could then choose to review the case itself

Note that;

If the commission reviews the case on its own initiative and then renders a Final Decision which differs from the proposed decision by the Administrative Law Judge, and which is adverse to the respondent, the commission:

- ✚ Must state its reasons for changing the decision
- ✚ Afford the respondent an opportunity to present objections to the decision rendered by the commission

Note that;

After a final decision is rendered by the Real Estate Commission, if the licensee is not satisfied with the decision, he/she is entitled to judicial review in court and may bring a suit in court for this purpose



Note that;

When a hearing is completed, anyone may request to see any of the public records in the case, which include:

- ✚ The notice of hearing
- ✚ The Administrative Law Judge's proposed decision
- ✚ The final decision of the commission

Note that;

The above documents are available for review in the commission's office at no charge. A copy of these documents may also be purchased by submitting a written request to the commission.

Note that;

Whenever the **commission revokes a license or suspends** the license of a licensee, school, or instructor for **more than 60 days**, "the name of the person against whom the action" is taken is **published in the commission's official newsletter**

Note that;

When an investigation is completed, but **THE CASE DOES NOT PROCEED TO A HEARING, THE RESULTS OF THE INVESTIGATION ARE REPORTED ONLY TO THE COMMISSION AND ARE NOT TO BE DISCLOSED PUBLICLY**

Note that;

The results from an investigation are not released by the commission except for the following reasons:

- ✚ A hearing is held
- ✚ Another estate's commission or law enforcement agency requests the information in a subpoena
- ✚ The person being investigated requests to review the information after receiving a Notice of Hearing
- ✚ An appeal of the decision has been filed in court



## **RESPONSIBILITY OF BROKER CONTINUE**

Note that;

The broker/managing broker must:

- Review advertising to make sure it is in compliance with:
  - ✓ Fair Housing Laws
  - ✓ The Georgia license law and license law in the state the branch is in
  - ✓ The rules and regulations of the Georgia Real Estate Commission and/or the state the branch is in.

Note that;

In making decisions about advertising and developing specific materials for advertising, there are several considerations that a qualifying broker/licensee must take into account.

Note that;

There are three major sources of legislation that regulate advertising that must be taken into consideration:

- ✓ The provisions of the **Georgia license law and rules and/or license law/rules the branch is located**
- ✓ The provisions of state and federal laws relating to **discrimination in advertising**
- ✓ The provisions of the **consumer credit protection act**

### ❖ **THE PROVISIONS OF THE GEORGIA LICENSE LAW AND RULES**

Note that;

Georgia license law and rules contain a number of specific provisions that relate to advertising and these provisions include those that deal with:

- Misleading advertising
- Advertising by salespersons and associate brokers
- Written authority to advertise
- The use of trade names in advertising
- Advertising on the internet
- Discrimination in advertising



✓ Misleading advertising

Note that;

It is illegal to engage in any advertising in any media that is misleading or inaccurate or which in any way misrepresents any of the following:

- Any property
- The terms of any sale or other transaction
- The value of any property
- Any policy of a brokerage firm
- Any service provided by a brokerage firm or its licensees

✓ Advertising by salespersons and associate brokers

Note that;

Georgia license law and rules related to advertising by salespersons and associate brokers when they advertise for sale or lease of their own property has provisions that deal with:

**The requirements for ADVERTISING in their own name**

Note that;

Salespersons and associate brokers **MUST** advertise to buy, sell or lease their **OWN** property in their Broker's name with exceptions.

Note that;

Salespersons and associate brokers may advertise in their own name **ONLY IF** with the following exceptions:

- The property **IS NOT** listed under a brokerage agreement with a broker
- The licensee's **BROKER IS NOTIFIED IN WRITING**
- The **BROKER GIVES WRITTEN PERMISSION** to the licensee to advertise in his/her own name

Note that;

These provisions are different from the requirements for **SELLING** property as a licensee.



Note that;

To SELL property which he/she owns, a licensee MUST simply notify the broker in writing of the intent to sell.

Note that;

When a licensee wants to **ADVERTISE** the property for sale in his/her own name, the licensee MUST notify the broker, and **RECEIVE PERMISSION TO ADVERTISE IN THE LICENSEE'S OWN NAME.**

Note that;

In addition, a licensee MUST disclose his/her license status in any advertisement.

Note that;

A licensee **MUST NOT LEAD SOMEONE TO BELIEVE THE AD WAS PLACED BY AN UNLICENSED PRIVATE PARTY.**

Note that;

When placing an ad, the licensee MUST place the following words in the ad:

- Seller, buyer, landlord, tenant-licensee (name of licensee)- holds a real estate license

Note that;

Alternatively, the ad can contain the following:

The legend "Georgia/Real Estate License #.... (Insert licensee's six-digit number)

Note that;

Georgia Real Estate License may be abbreviated to GA R.E. License #

#### **BLIND ADS**

Note that;

Failure to disclose one's license status using the statement(s) above in an ad is called a BLIND AD, which is illegal.





✓ Written authority to advertise

Note that;

A third provision of the Georgia License law and rules relating to advertising deals with the authority to advertise property for sale.

Note that;

**The broker/agent must never advertise a property for sale in any manner without written permission of the owner or owner's authorized agent.**

Note that;

This requirement for written authority to advertise property also extends to an open listing, even if it is oral.

Note that;

With an open listing, the broker/agent may get oral approval and there is no written agreement, however this requires a broker/agent get a separate written authorization from the seller to advertise the property.

✓ The use of trade names in advertising

Note that;

A fourth provision of the Georgia license law and rules relating to advertising deals with advertising by a licensee that uses a trade name.

Note that;

When any licensee, individual or firm that uses a trade name advertises property in any way, **THE TRADE NAME MUST BE CONSPICUOUSLY DISPLAYED IN THE ADVERTISEMENT** or sign so as to attract the public's attention.



✓ Advertising on the internet

Note that;

The Georgia license law and rules also cover advertising on the internet

Note that;

A licensee who advertises a property for sale, lease, or exchange on the internet **MUST REMOVE THE ADVERTISEMENT WITHIN 10 DAYS AFTER THE LISTING EXPIRES AND/OR IS CANCELLED.**

❖ The provisions of state and federal laws relating to discrimination in advertising

✓ Discrimination in advertising

Note that;

The second major source of laws relating to advertising comes from the law and regulation relating to discrimination in housing.

Note that;

There are three primary sources of law and regulation in this area:

- The Federal Fair Housing Act of 1968, as amended in 1988
  - The Georgia Fair Housing Act
  - The Georgia License Law
- The federal Fair Housing Act of 1968, as amended in 1988

Note that;

The major provisions of the federal Fair Housing Act (as amended) and those of the Georgia Fair Housing Act are essentially the same in all important respects, therefore will be called Fair Housing Laws collectively.

Note that;

Under the Fair Housing Laws, it is illegal to discriminate in the purchase, sale, lease, or other conveyance of real property.



Note that;

The Fair Housing Laws prohibit discrimination on the basis of:

- ✚ Race
- ✚ Color
- ✚ Religion
- ✚ Sex
- ✚ National origin
- ✚ Handicap
- ✚ Familial status

Note that;

The Fair Housing Laws prohibit the following acts of discrimination when they are based on race, color, religion, sex, national origin, handicap, or familial status:

- ✚ Refusing to sell, rent, negotiate or otherwise deal with any person
- ✚ Changing the terms or conditions for buying or selling
- ✚ Changing the terms or conditions for financing the sale of property
- ✚ **ADVERTISING THAT HOUSING IS AVAILABLE TO ONLY SOME BUYERS OR OTHERWISE EXCLUDING SOME BUYERS**
- ✚ Claiming that housing is not available for inspection, rent, or sale when it actually is available
- ✚ Excluding access to real estate services, such as multiple listing services, or brokers associations

Note that;

Of the list above, the provision which is relevant here is the one that relates to advertising.

Note that;

Under the Fair Housing Laws, it is illegal to use advertising that is discriminatory on any protected class of persons; specifically:

- ✚ Indicating a preference for a prospective buyer or tenant
- ✚ Indicating any limitation on the sale or rent of property



✚ Indicating any discrimination in the sale or rent of property

## GEORGIA

Note that;

In Georgia discriminating when advertising the sale or rent of a property **BASED ON AGE** may be a legal basis for discriminating when advertising the sale or rent of properties/units; all branch managers in other states must investigate if age discrimination is permissible in the state they operate in.

## HUD

Note that;

In support of the Fair Housing Laws, the Department of Housing and Urban Development (HUD) has established regulations that provide guidelines on the implementation of this provision of the Fair Housing law.

Note that;

Among these requirements is a requirement that a brokerage office prominently display the HUD fair housing poster which contains the fair housing slogan and fair housing logo.

Note that;

In addition, HUD has developed guidelines for use in determining what is permissible and non-permissible in the language used in advertising.

Note that;

According to these guidelines, there are certain words or phrases that should be avoided **in any context** where their meaning suggests exclusion of protected categories. These include the following:

- ✚ Private
- ✚ Integrated
- ✚ Traditional
- ✚ Membership approval required



Note that;

The HUD guidelines also deal with advertising that refers to recognized landmarks as a way of identifying the location of the property.

Note that;

An explicit reference to **the proximity of a property to a commonly known and recognized ethnic landmark, such as a synagogue, ethnic center or predominantly black institution constitutes** a violation of the advertising provisions of the Fair Housing Laws.

Note that;

The final issue addressed by the HUD guidelines is the use of human models in real estate advertising.

Note that;

Under some conditions, the exclusive use of white models has been held to be advertising that expresses a preference for white applicants or prospects only.

Note that;

The Fair Housing Laws do not include any specific requirements as to the use of minority individuals in such advertising however **A BROKER/MANAGER WOULD BE WELL ADVISED TO MAKE AN EFFORTS TO INSURE AN ADEQUATE MIX OF WHITE AND MINORITY MODELS IN ANY SUCH ADVERTISING.**

Note that;

Another important aspect of the HUD Fair Housing provisions on advertising is that there are **no exceptions to the laws regulating advertising.**

Note that;

There are some owners who are exempted from the coverage of the primary provisions of the federal Fair Housing Law of 1968, as amended in 1988, and the Georgia Fair Housing Law.



Note that;

Under the Fair Housing Laws, the following categories are exempt from **some of the provisions** of the law which makes discrimination illegal:

- A single-family house sold or rented by an owner, if:
  - ✚ The owner **does not own more than 3 houses at the same time**
  - ✚ The owner **does not live in the house, but sells no more than one house in a 2-year period**
  - ✚ The owner **sells the house without the assistance of a broker/agent**
  
- A dwelling with 2-4 units which is sold or rented by an owner if the owner lives in one of the units

Note that;

**WITH REGARD TO THE PROVISIONS OF THE FAIR HOUSING LAWS DEALING WITH ADVERTISING, THERE ARE NO EXEMPTIONS**

Note that;

**ANYONE** who advertises for the sale or rent of real property is subject to the advertising provisions of the law covered by Fair Housing, including the HUD guidelines for the writing of advertising.

Note that;

The penalties for violating the Fair Housing laws, including the provisions on advertising are severe.

Note that;

If an individual or licensee engages in a discriminatory activity, the penalties can include: actual, punitive and attorney/court cost

- ✚ Actual damages
- ✚ Punitive damages up to \$50,000.00 for the first violation, and \$100,000.00 for subsequent violations



✚ Payment of attorney fees and court costs

- The Georgia Fair Housing Act

Note that;

The major provisions of the federal Fair Housing Act (as amended) listed above and those of the Georgia Fair Housing Act are essentially the same/similar in all important respects; therefore, both federal Fair Housing Act and Georgia Fair Housing Act will collectively be known as: Fair Housing Laws

- The **Georgia license law**

Note that;

Under the license law, advertising must not be directed at or refer to persons of ANY particular: race, creed, color, religion, national origin, handicap or familial status.

Note that;

The major impact of this prohibition is that if a licensee engages in discriminatory advertising, he/she is subject to sanctions under the license law, as well as those resulting from a violation of a state or federal Fair Housing Law.

Note that;

A licensee, who engages in discriminatory advertising, under the license law, is subject to the following sanctions by the Georgia Real Estate Commission:

- ✚ Reprimand
- ✚ Suspension of license
- ✚ Revocation of license
- ✚ Fines up to \$1000.00 per violation, and a total of \$5000.00 per hearing



## **FEDERAL CONSUMER CREDIT PROTECTION ACT**

- ❖ The provisions of the Consumer Credit Protection Act which among other things, regulates advertising.

Note that;

The Federal Consumer Credit Protection Act was enacted in 1969

Note that;

It is commonly referred to as the "Truth-In-lending Act"

Note that;

It has three primary purposes:

- To require full disclosure of the cost of credit
- To allow the borrower to rescind some credit transactions for a period of time
- To regulate the use of ANY advertising for credit

Note that;

It is administered by the Federal Trade Commission under a set of regulations known as Regulation Z

Note that;

Compliance with the consumer credit protection act and regulation Z is required of ALL firms or persons that provide credit, unless they are excluded under the conditions listed below:

- Business or commercial loans
- Loans to government agencies
- Loan in amount over \$25,000.00 when secured by personal property
- Loans made without finance charges (including interest) and paid with four or fewer installment payments





Note that;

There are three primary provisions of the consumer credit protection act which deal with:

- A required disclosure statement

Note that;

The act provides that the borrower must be given a disclosure statement before a permanent contract is made

Note that;

The specific items that must be included in the disclosure statement depend on the type of loan

Note that;

Two of the most important disclosures in a real estate transaction are:

- ✚ The total of all credit charges over the life of the loan
- ✚ The annual percentage rate (APR)

Note that;

The annual percentage rate combines the interest rate with other cost of the loan into a single figure that reflects the actual annual cost of the loan

Note that;

This provision of the law came about as a result of the fact that prior to the implementation of the act, lenders often advertised a particular rate for a loan but wound up charging the borrower a higher rate

- The right to rescind some credit transactions

Note that;

The consumer credit protection act includes provisions in the act that gives the borrower the right, in some situations, to rescind/cancel a credit transaction until midnight of the third day following the closing of the transaction or the delivery of the credit statement



Note that;

The right to rescind/cancel protects homeowners from losing their home to sellers of home improvements, appliances, furniture, etc., who secure loans by taking a second mortgage on the buyer's home

Note that;

If a loan is secured by a lien on the borrower's principal residence, the buyers are generally given the right to rescind

Note that;

The right to rescind provision came about as a result of unscrupulous sellers of home improvements and/or appliances who provide credit involving liens on entire properties

Note that;

This right to rescind does NOT apply to a residential mortgage transaction, in which the loan is made to finance the purchase or construction of a principal residence

- Advertising

Note that;

The consumer credit protection act also includes provisions related to ANY advertising for credit

Note that;

These **PROVISIONS APPLY TO ANYONE WHO ADVERTISES CONSUMER CREDIT**, not just creditors; therefore, any builder or real estate broker/agent who advertises credit must comply

Note that;

The provisions related to the disclosure statement, described earlier, **apply only to creditors**

Note that;

Under the provisions of the consumer credit protection act, any advertisement may state the cash price and the APR (if it is identified as such) without having to disclose any other credit information



Note that;

If an ad mentions ANY other specific credit term from the following list of “triggering term”, then additional disclosures must be made:

- ✦ The down payment
- ✦ The amount of any payment
- ✦ The number of payments
- ✦ The period of repayment
- ✦ The amount of the finance charge (or statement that there is no charge for credit)

Note that;

If the advertisement includes any of the “triggering terms” mentioned above, then the advertisement must also disclose all of the following:

- ✦ The down payment
- ✦ The terms of repayment
- ✦ The APR

Note that

Penalties for violating the consumer credit protection act include: Criminal and Civil penalties.

**Criminal penalties** for willfully violating the Act:

- ✦ Up to 1 year in jail and/or
- ✦ A fine of up to \$5000.00 and

**Civil penalties:**

- ✦ Punitive damages up to twice the finance charges involved, up to a maximum of \$5000.00
- ✦ Actual damages, attorney fees, and court cost



### **BROKER RESPONSIBILITY CONTINUES**

- Providing licensees with educational programs covering the Georgia License Law and the rules and regulations of the Georgia Real Estate Commission and/or the state the branch is located in.
- Reviewing all contracts negotiated by licensees to make sure these contracts are in compliance with the Georgia license law and the rules and regulations of the Georgia Real Estate Commission
- Monitoring the trust accounting procedures to make sure the procedures are in compliance with the Georgia License Law and the rules and regulations of the Georgia Real Estate Commission

### **TRUST ACCOUNT**

Note that;

At this time, All Real Estate consultants, Inc. does not collect or hold earnest money deposits. All earnest money or security deposit should be held by operative/listing broker as it relates to purchase transactions.

Note that;

A trust account is **DEFINED AS A BANK CHECKING ACCOUNT** that is separate from other bank accounts that a broker may have.

Note that;

For purposes of trust accounts, a bank can be considered to be: any bank, a savings and loan association or a credit union.

Note that;

The trust account **MAY NOT BE IN A MONEY MARKET FUND WITH A BROKERAGE HOUSE OR SAVING ACCOUNT**; a trust account must be in a checking account.

Note that;

Any trust account a broker maintains in a separate bank checking account **MUST** also meet two additional requirements and the broker is responsible for insuring these requirements are met when the account is established:

- ❖ It must be designated as a trust or escrow account
- ❖ The broker must have signatory power on the account



Note that;

The broker should ask the bank to include the word “trust” or “escrow” in the name of the account.

Note that;

All **TRUST ACCOUNTS MUST BE MAINTAINED IN FEDERALLY INSURED BANK ACCOUNTS** which offer protection by the Federal Deposit Insurance Corporation (FDIC)

Note that;

The FDIC insures up to \$250,000.00 of deposits for each account owner in each member bank; in addition, the fiduciary accounts such as trust accounts, the FDIC offers “pass-through” insurance.

Note that;

With pass-through insurance, each owner of funds in a broker’s trust account is treated as separate account owner. Therefore, each buyer, owner, tenant, or association who has funds on deposit in the broker’s account is protected up to \$250,000.00

Note that;

In general, the Georgia license law governs activity in four major areas: **the requirements for trust accounts, requirement for broker/licensee as principals, escrow violations and record keeping.**

### 1) The requirement for trust accounts

Note that;

Under the Georgia license law, any broker who accepts or intends to accept funds belonging to others in a real estate transaction MUST establish and maintain a designated “trust account” in a bank.

Note that;

The purpose of the required trust account is twofold:

- ❖ To hold the funds of others that has been entrusted to the broker
- ❖ To keep these funds, separate from funds that belong to the broker or his/her company

Note that;

Usually, a broker will have at least two bank accounts, a business account and a trust account.



Note that;

There are three primary reasons why the law requires brokers to keep trust funds in a trust account:

- ❖ If a broker dies, the funds in a properly maintained trust account do not become part of his/her estate and will not be divided among the broker's heirs
- ❖ If a broker is "sued" in court and a judgment against the broker results, the funds in a properly maintained trust account are not subject to attachment or garnishment by the courts as the broker's personal assets are
- ❖ If a broker files for bankruptcy, the funds in a properly maintained trust account do not become part of the broker's personal estate and cannot be divided among the broker's personal creditors by the bankruptcy trustee as his/her personal assets

Note that;

The trust account provides protection for the person to whom the funds belong, and the trust account insure that the funds in the trust account will be returned to their owner regardless of the broker's personal or financial condition or that of his/her estate

Note that;

A broker who does not intend to accept trust funds is not required to have a trust account.

Note that;

If a broker who does not have a trust account and receives funds belonging to another in a real estate transaction, the broker must open a trust account within 1 business day

#### **NOTIFICATION**

Note that;

The license law also includes requirements for notifying the Real Estate Commission of certain information concerning trust accounts



Note that;

**Within 1 month of opening each trust account**, the broker MUST notify the Real Estate Commission of:

- ❖ The name of the bank where the account is located
- ❖ The name and/or the account number of the account

Note that;

After a trust account has been established, the broker MUST notify the Real Estate Commission in writing if:

- ❖ The account is changed to a different bank
- ❖ The bank changes the account number for the account

Note that;

This information must be submitted using a form supplied by the Real Estate Commission

Note that;

The broker must also notify the Real Estate Commission in writing if:

- ❖ A trust account is closed
- ❖ The bank changes names

Note that;

This information may be submitted in the form of a letter to the Real Estate Commission

Note that;

A broker may have more than one trust account:

- ❖ An account for earnest money received on sales
- ❖ An account for rental collections
- ❖ An account for security deposits on rental property

Note that;

With the advent of interest-bearing accounts in banking institutions, many brokers would like to use these accounts for their trust accounts.



Note that;

A broker may open an interest-bearing trust account at any time as long as the standard notification is supplied to the Real Estate commission for a trust account with conditions.

Note that;

A broker may not place trust funds into an interest-bearing trust account unless additional conditions are met:

- ❖ The sales contract or lease agreement MUST include language showing that both parties to the transaction have agreed to the placement of the funds in an interest-bearing account
- ❖ The contract or agreement MUST specify to whom the interest earned in the account will be paid

Note that;

Because trust accounts MUST be maintained in federally insured bank accounts, brokers are typically not permitted to use uninsured money market fund account as trust accounts; however, trust funds may be deposited in a money market account if all parties to the transaction agree in writing and the broker MUST make sure the account is properly designated and registered with the Real Estate Commission.

#### **OUT-OF-STATE BROKERS**

The commission may allow a non-resident broker to maintain a trust account in the non-resident broker's home state provided:

- ❖ The commission is given authorization to examine the account as needed
- ❖ The broker complies with all other rules concerning maintenance of the account





## 2) REQUIREMENT FOR BROKER/LICENSEES AS PRINCIPALS

Note that;

When a broker, associate broker, or salesperson **acts as a principal** in the sale or rental of real property, there are some additional requirements he/she must do to protect the public and among these is a requirement for handling trust funds.

Note that;

The rules for dealing with trust funds are slightly different when dealing with the sale of property and the rental of property

### SALE OF PROPERTY-EARNEST MONEY

Note that;

When a broker/associate broker/salesperson receives earnest money as the seller of a property, **the licensee is required by law to deposit the “earnest money” in a designated trust account** and to handle the funds as any other trust funds.

### RENTAL OF PROPERTY

Note that;

The situation is slightly different when a broker/licensee collects trust funds from a renter on property owned by the broker/licensee and the difference depends on the specific type of trust funds received: rental payments or security deposits.

Note that;

The requirements for handling rental payments are different from those for handling security deposits.

Note that;

If a broker/licensee is the sole owner of a rental property and the broker/licensee receives rental payments, **the rental payments MUST be placed in an account “other than a trust account”** because the rents belongs to the broker/licensee, so it is not appropriate to deposit them into a trust account.



### **SECURITY DEPOSITS FOR RENTAL PROPERTY**

Note that;

The requirements for handling security deposits are slightly different

Note that;

The law requires **that ALL security deposits MUST be placed in a trust account under any conditions.**

### **SPECIAL SITUATIONS**

#### **WRAPAROUND MORTGAGE**

Note that;

When a broker/licensee sells property and remains liable for certain payments after the sales is finalized; for example, if a broker/licensee sells property using a wraparound mortgage, the buyer makes mortgage payments to the broker/seller after the sale is complete and the broker then **MUST** continue to make mortgage payments to the original lender who financed the property; in this situation, **the broker MUST deposit into a trust account any portion of any payment received from the buyer that is necessary to meet the mortgage payment to the original lender.**

Note that;

The broker **CAN NOT** use any part of the buyer's payment until the broker has made the mortgage payment to the original lender

#### **LAND SALES CONTRACT**

Note that;

The broker receives installment payments from the buyer but continues to be liable for certain payments such as:

- ❖ An existing mortgage payment
- ❖ The payment of property taxes
- ❖ An insurance payment
- ❖ Any other encumbrance: second mortgage/HELOC/etc.



Note that;

The broker MUST place into a trust account any portion of the buyer's payment required to pay the encumbrance and any remainder would be disbursed to the broker as appropriate

#### **SALESPERSONS AND ASSOCIATE BROKER AS PRINCIPAL**

Note that;

If the salesperson or associate broker is the sole owner of a property and receives trust funds, the funds MUST be deposited in:

- ❖ A trust account maintained by the BROKER with whom the licensee is affiliated

Or

- ❖ A designated trust account approved by the broker

Note that;

It is up to the broker to determine whether the licensee will use his/her own trust account or the brokers' trust account

Note that;

If a separate trust account approved by the broker is used, **the broker is responsible for assuring that the account is designated as a trust account and notifying the commission of the name of the bank and the account.**

Note that;

When a broker allows a salesperson or associate broker to use his/her own trust account, **the broker remains liable under the law for the transaction in that account.**

Note that;

Because the broker remains liable under the law for the transactions when the salesperson or associate broker uses their own trust account, **the law requires that the salesperson or associate broker in this situation maintain certain records and provide certain information to the broker about the account.**

Note that;

If the salesperson or associate broker **IS NOT THE SOLE OWNER OF THE PROPERTY**, any trust funds received MUST be deposited in the broker's trust account.



### **ESCROW VIOLATIONS**

Note that;

The commission must file a report to the attorney general if either of the following situations occurs:

- ❖ A violation of the law or the rules and regulations concerning the maintenance of escrow accounts by brokers
- ❖ A refusal by a broker to allow the commission to examine an escrow account

Note that;

If either situation occurs, the Attorney General may bring court action to enjoin (stop) the broker from continuing the violation

Note that;

In addition, the court has the power to:

- ❖ Impound the property
- ❖ Appoint a receiver to take over the control and management of the broker's property and business

### **UNFAIR TRADE PRACTICES**

Note that;

The following activities has been designated as unfair trade practices and are violations under the license law:

- ❖ Failing to account for or failing to remit money in the broker's possession which belongs to others
- ❖ Commingling money or property of principals/client with that of the broker and/or salesperson.
- ❖ Failing to put money held for others in a separate trust account (unless all parties agree in writing).

Note that;

Any violation of the provisions of the license law or rules relating to trust accounts, including the unfair trade practices, can subject the licensee to any of the sanctions available to the Real Estate Commission, which includes:



- ❖ Reprimand
- ❖ Suspension or revocation of license
- ❖ Fines up to \$1000 per violation, and a \$5000 maximum for multiple violation in any one hearing

Note that;  
The broker is responsible for:

- ✓ The procedures for receiving trust funds and depositing them into a trust account
- ✓ The maintenance of records for trust fund accounts and accounting for all funds

#### **RECORD KEEPING**

Note that;  
One of the most important steps in the process of accounting for trust funds is accurate record keeping.

Note that;  
There are two elements to the record keeping process that are required by the license law and commission rules: The accounting system and monthly reconciliation for trust funds.

#### ❖ **THE ACCOUNTING SYSTEM**

Note that;  
A trust account accounting system must be maintained for money held in a trust or escrow account.

Note that;  
The records must be made available for inspection by the Real Estate Commission.

Note that;  
The Real Estate Commission does not specify that the accounting system be in any particular form.



Note that;

It is up to the individual qualifying broker or brokerage firm to determine the form that its accounting system will take and the form that is appropriate will vary with the nature and size of the brokerage business

Note that;

In addition to maintaining the accounting system for trust funds, a broker must keep the following items/records on file for 3 years:

- ❖ Bank deposit slips
- ❖ Bank statements
- ❖ Receipts
- ❖ Offers
- ❖ Listing and sales contracts
- ❖ Closing statements
- ❖ Leases
- ❖ Management agreements
- ❖ Other documents related to real estate transactions

Note that;

The Real Estate Commission does require that certain minimum information be included and must contain the following details about each deposit or disbursement:

The names of the parties involved in the transaction:

- ✓ The purchaser and seller or
- ✓ The landlord and tenant or
- ✓ The member and association or
- ✓ The broker
- ✓ The amount and date of the deposit
- ✓ Identification of the property involved
- ✓ The payee, amount, and date of any check drawn on the deposit

Note that;

This information will allow the broker to track the source of all funds as well as the disposition of all funds.



Note that;

It is up to the individual qualifying broker or brokerage firm to determine the form that its accounting system will take.

#### ❖ **MONTHLY RECONCILIATION**

Note that;

The license law and commission rules require that the trust account be reconciled at least monthly

Note that;

The reconciliation process involves three steps:

- ✓ Reconcile the account checkbook to the bank statement

Note that;

The first step in the reconciliation process is to reconcile the bank trust account

Note that;

The procedure to reconcile the trust account is the same as that used to balance or reconcile your personal checking account

Note that;

To reconcile the trust account means simply that you check to MAKE SURE THAT THE BALANCE SHOWING IN THE CHECKBOOK FOR THE ACCOUNT MATCHES THE AMOUNT OF THE BALANCE SHOWING IN THE BANK STATEMENT; it means your records of how much money is in the account match up with the bank's records of how much money is in the account

- ✓ Compare the account information to the accounting system

Note that;

To compare the account information to the accounting system; once the account itself has been reconciled, THE NEXT STEP IS TO COMPARE THE RECONCILED BALANCE IN THE ACCOUNT TO THE ACCOUNTING SYSTEM



Note that;

The reconciled account balance should be the same as the amount of trust funds the accounting system shows the broker should be holding at the time the account is reconciled

- ✓ Prepare a written summarizing statement

Note that;

PREPARE A STATEMENT IS THE NEXT STEP; THE THIRD STEP IN THE MONTHLY RECORD KEEPING PROCESS IS TO TAKE THE INFORMATION FROM THE RECONCILIATION OF THE ACCOUNT BALANCE AND THE COMPARISON OF THE ACCOUNT INFORMATION TO THE ACCOUNTING SYSTEMS AND INCORPORATE THIS INFORMATION INTO A WRITTEN STATEMENT

Note that;

The written statement should include and summarize all the information from the three sources involved:

- ❖ The bank statement
- ❖ The checkbook for the account
- ❖ The trust account accounting system

Note that;

When the statement is completed, it must be maintained in the broker's records for three years.

Note that;

If there is a discrepancy between the bank balance and the amount of trust funds the accounting system, the broker is holding; the discrepancy can be either a shortage or overage.

Note that;

If the account shows a negative balance/shortage, this can/may be from a fee showing in the bank statement or a non-sufficient funds fee in the account to cover a check or a check written that has not been cleared/cashed for an overage/positive amount in the account.





Note that;  
If either of the above situations occurs, the reconciliation statement must include:

A description or explanation of why the discrepancy or negative balance occurred, and the description of the efforts taken by the broker to correct the situation.

### **RENTAL TRUST ACCOUNTS**

Note that;  
Brokers who manage rental property for an owner may keep a separate designated RENTAL trust or escrow account, or they may use the same trust account for both sales transaction and rental transactions

Note that;  
Regardless of which approach is used, rental receipts received by a broker are trust funds and must be deposited in a trust account

Note that;  
Security deposits are also trust funds and must be placed in a trust account

Note that;  
Security funds may also be placed in a separate rental trust account if the broker desires

Note that;  
In all cases, the security deposits must be clearly identified, so that they may be distinguished from other funds, such as rent receipts and when security deposits are deposited in a trust account, they must be credited to the tenant

Note that;  
If rental receipts are placed in the rental trust account, the broker may pay bills on behalf of the owner from the trust account under one condition:

- ❖ There must be enough money deposited in the account FROM RENT RECEIPTS to cover all checks written against the account for the purpose of paying the owner's bills



Note that;

When security deposits are kept in such an account along with rent receipts, this means that there must always be a balance in the account equal to or greater than the total security deposits

Note that;

Security deposits cannot be paid out of the account or used for any purpose (such as to pay the owner's bills)

#### **COMMISSION REVIEW OF ACCOUNTS**

Note that;

Any records or documentation related to escrow accounts must be made available to the commission:

- ❖ Upon reasonable request
- ❖ At reasonable cost to the commission

Note that;

Copies of any documents required to be kept for 3 years must also be made available to the commission on the same basis

Note that;

The commission has the authority to examine a broker's trust account(s) during each renewal period

Note that;

A broker must submit, along with the renewal application, data summarizing the condition of his/her trust account(s)

Note that;

The commission may also accept a certified report from a CPA in lieu of reviewing a broker's account directly and when such a report is supplied to the commission in lieu of a review, it must certify that the account is in compliance with the license law and rules of the commission



Note that;

The above provision can be of benefit to brokers as follows:

- ❖ When a broker hires a CPA to audit the books of the company, he/she may elect to have the accountant review the trust accounts of the company as part of the audit
- ❖ When the accountant completes the audit, he/she then provides a letter to the broker to place in the file which certifies the accounts are in compliance with the license law and commission rules
- ❖ When the Real Estate Commission later requests to review the broker's trust accounts, the broker may request to submit the report that was prepared by the CPA in lieu of the going through the commission's review; however the commission may, at its discretion, choose to accept this report in lieu of its own review of the accounts

Note that;

The form of the report that the CPA must complete is specified in the rules of the Georgia Real Estate Commission and if the broker choose to utilize this option, the broker should use the form as specified by the commission

### **SALESPERSONS AND ASSOCIATE BROKERS**

Note that;

If a broker allows a salesperson or associate broker to maintain their own trust account, the licensee in whose name the account is held **MUST** maintain the same records as those maintained for trust account maintained by a broker

Note that;

The licensee must periodically provide a report to the broker about the status of the account

Note that;

The report which must be provided to the broker consists of a written reconciliation statement which compares the licensee's total trust liability (from the accounting system) with the reconciled bank balance of the licensee's trust account



Note that;

This written report MUST be furnished to the broker on at least a quarterly basis statement reconciling the account balance to the accounting system

Note that;

When a licensee maintains a trust account in this situation, the licensee MUST maintain the same types of records required by law for a broker's trust account and the records include an accounting system and monthly reconciliation statements

#### **CASH REPORTING REQUIREMENT**

Note that;

Real Estate Brokers are required to notify the Internal Revenue Service (IRS) when they receive more than \$10,000.00 in cash in a single transaction or two or more related transactions

Note that;

This notification must be made using an IRS form 8300, which must be filed with the IRS no later than the 15<sup>th</sup> day after the transaction occurs

Note that;

The broker must also provide a copy of form 8300 to the individual who made the cash payment

Note that;

The broker must also keep a copy of every form 8300 filed with the IRS for 5 years from the date of filing

Note that;

If a broker fails to submit form 8300 when required or files a fraudulent report, he/she is subject to:

- ❖ Civil penalty
- ❖ Criminal prosecution



Note that;

Licensee can obtain additional information on this IRS requirement by contacting the local IRS office

### **TWO BASIC PRINCIPLES**

Note that;

In accounting for funds in trust accounts, there are two basic principles that are fundamental to the accounting process:

❖ Zero balance

Note that;

The total of all checks written against any deposit made into a trust account must always result in a zero balance in the account for that particular transaction therefore, when trust funds are received and deposited in the trust account, the amount of all checks written against that deposit must be equal to the amount of the deposit itself

Note that;

If the checks that are written against the deposit total more than the deposit, this will result in a negative balance for that transaction, which is not allowed

Note that;

If the checks written against the deposit total less than the deposit, this will result in excess funds being left in the account for that transaction. This is also not allowed

Note that;

The total amount of all checks written against any deposit must be exactly the same as the amount of the deposit, resulting in a zero balance after the transaction is completed

Note that;

There is one minor variation on this rule which licensee should be aware of which is, if a broker transfers funds into a different account maintained by that broker as part of the legitimate disbursement of funds for the transaction, the transfer is considered to be the same as writing a check and in this situation, the total of all checks plus transfers against



a given deposit must equal the amount of the deposit, so that a zero balance results for the transaction

❖ **Commingling**

Note that;

Under Georgia license law, certain practices have been defined as “unfair trade practice” and engaging in such practices is a violation of the license law

Note that;

Among these unfair trade practices is that of commingling

Note that;

Commingling means failing to keep separate “money or other property of the licensee’s principals” from the licensee’s own funds

Note that;

Commingling would result from doing any of the following:

- ❖ Placing trust funds in a business account not property designated as a trust account and registered with the Real Estate Commission
- ❖ Placing trust funds into a licensee’s personal account
- ❖ Cashing a check for trust funds rather than depositing the check into a trust account
- ❖ Placing the personal funds or other business funds of a licensee in a trust account

Note that;

Placing personal funds or other business funds of the licensee into a trust account is commingling however there are three exceptions to this rule allowed under the license law



Note that;

A broker may maintain his/her OWN funds (either personal or business funds) in a designated escrow account ONLY when they are identified as the broker's funds and ONLY under the following conditions:

- ❖ To maintain a minimum balance required by the bank
- ❖ To cover service charges required by the bank
- ❖ When a commission due the broker out of the money held in the trust account is allowed to remain in the trust account, and proper documentation is maintained in the accounting system

#### **MINIMUM BALANCE REQUIRED**

Note that;

When the broker's funds are placed in a trust account to satisfy a minimum balance required by a bank, the broker may deposit the amount of the minimum balance required for the account

#### **SERVICE CHARGES**

Note that;

When the broker's funds are placed in a trust account to cover service charges for the account, there is no specific limit on the amount of funds which may be deposited for this purpose

Note that;

Under the rules of the Real Estate Commission, the broker may maintain a "reasonable amount" of his/her own funds in the account to cover the service charges for the account

Note that;

When a broker allows earned commissions to accumulate in a trust account, the commissions must be removed monthly

Note that;

The broker may disburse these funds ONLY through a check payable to the broker



Note that;

A broker may NEVER pay other persons money which the broker owes to them by writing a check on the trust account

- ✓ The disbursal of funds from a trust account

Note that;

When a broker receives and holds trust funds, he/she is responsible for insuring that any and all of those funds are disbursed properly

Note that;

Under the rules of the Real Estate Commission, a broker will be considered incompetent by the commission if he/she:

- ❖ Disburses trust funds under terms different from those specified in the contract
- ❖ Fails to disburse funds as called for in a contract

Note that;

The rules of the Real Estate Commission also address the issue of when and under what conditions funds should be disbursed

Note that;

While these rules provide guidelines about the disbursal of trust funds, they are not always adequate to determine what action to take, particularly when both parties make a claim to the trust funds

Note that;

In any situation where it is not obvious to the broker how to proceed with the disbursal of trust funds, it is best to seek legal counsel before taking action on the disbursal of funds

### **DISBURSAL OF EARNEST MONEY**

Note that;

The Real Estate Commission provides some specific guidelines about when and how to disburse earnest money received by a broker





Note that;

When an offeror (buyer) makes a contract offer and pays earnest money along with it, the earnest money at that point belongs to the offeror (the buyer)

Note that;

Because the contract offer form has been signed ONLY by the buyer, it is not yet a valid contract, and the earnest money remains the property of the buyer, held in trust by the broker

Note that;

Once the purchaser's offer has been accepted by the seller and the seller has signed the contract, the situation changes and when the contract form has been signed by both parties, a valid contract has been created

Note that;

Once a valid contract has been created, BOTH the purchaser/buyer and the seller have an interest in the earnest money; the earnest money no longer belongs to the buyer alone

Note that;

Because the earnest money belongs to different people at different points in the sales transaction, the rules for disbursing earnest money are different

Note that;

There are two general categories of situations in which earnest money is disbursed:

- ❖ Before a valid contract is created

Note that;

Before the seller signs the offer and creates a valid contract, the buyer is normally due a refund in two situations:

- ✓ When the seller REJECTS the offer

Note that;

When the offeree/seller rejects an offer by the offeror/buyer for which earnest money was paid, the broker may return the earnest money to the person who paid him/her (the offeror/buyer)



- ✓ When the purchaser WITHDRAWS the offer

Note that;

The broker should also return the offeror earnest money when an offer is made but then withdrawn BEFORE the offeree/seller accepts the contract

Note that;

The handling of the earnest money in each of these situations is governed by the fact that the only party who has an interest in the earnest money at this point is the buyer, After a valid contract is created.

Note that;

After both the buyer/offeror and seller/offeree have signed a contract form and created a valid contract, there are two possible outcomes:

- ✓ The transaction closes, and the sale is completed

Note that;

When a sale is closed, the earnest money is either:

- Applied to the purchase price

Note that;

If the earnest money is applied to the purchase price, it is credited to the buyer account, and the purchase price is effectively reduced by the amount of the earnest money paid

- Returned to the buyer

Note that;

If the earnest money is returned to the buyer, the buyer is not credited with the amount of the earnest money against the purchase price paid at closing

- ✓ The transaction fails to close, and the transaction is not completed



Note that;

In some situations, in which a valid contract is created but the sale is not completed, the seller may ask for all or part of the earnest money. This occurs most often when the buyer backs out of the contract without a legal, valid reason and the seller may feel that he/she is entitled to all or part of the earnest money as liquidated damages

Note that;

It is the responsibility of the listing broker to disburse earnest money in the above situation

Note that;

Before disbursing any funds, the broker should consult a lawyer to determine if the seller is entitled to any of the earnest money under an interpretation of the contract

Note that;

If a broker decides to make a disbursement to which all parties do not expressly agree, the broker must notify all parties IN WRITING of the intent to disburse

Note that;

There are four possible conditions under which the earnest money may be disbursed:

- After a written AGREEMENT among the parties involved

Note that;

When a contract fails to close, the best procedure is for the broker to attempt to have all parties agree in writing as to whom the funds will be disbursed

Note that;

This helps to:

- Protect both parties interest and avoid court action



- Protect the broker against disciplinary action for improper disbursement of funds
- Upon filing an INTERPLEADER action in court

Note that;

When a contract fails to close, the broker may not be able to get the parties to agree on a disbursement of the earnest money

Note that;

When an interpleader action is filed, the broker may elect to ask the court to decide on a disbursement plan by filing what is called: an interpleader action

- Upon COURT ORDER

Note that;

When a contract fails to close and the broker is unable to get the parties to agree on disbursement, the broker may also leave the funds in escrow and wait for one of the parties to take legal action

Note that;

The resulting court order will then direct the broker how to disburse the funds

- Upon REASONABLE INTERPRETATION of the contract

Note that;

When a contract fails to close and the broker does not want to file an interpleader action or wait for a court order, the broker may disburse funds even if both parties do not agree to the disbursement

Note that;

The broker has the authority to do this upon “reasonable interpretation” of the contract



Note that;  
The broker determines to whom the funds should be disbursed, based on an interpretation of the contract

Note that;  
When a broker does this, he/she must notify all parties in writing

Note that;  
Determining who has a right to trust funds under a contract is a legal matter; consequently, the first step a broker should take, before disbursing trust funds based on an interpretation of the contract, is to consult a lawyer to determine to whom the funds are owned

Note that;  
Consulting a lawyer is particularly important since a broker who disburses funds contrary to the terms of a contract is considered incompetent and in violation of the license law, and is subject to strong sanctions

Note that;  
In each of these situations, the earnest money disbursement is based on the fact that both parties have an interest in the money

Note that;  
Because both parties have an interest in the funds, the first step in each case is to determine to whom the funds should be disbursed, and this is done in different ways in each case

### **WHO CAN RETURN EARNEST MONEY**

Note that;  
The only person authorized to return earnest money to a buyer is A BROKER

Note that;  
A salesperson or associate broker may NEVER make a decision to return earnest money without express permission from his/her broker



Note that;

A salesperson may return earnest money only when directed to do so by his/her broker

Note that;

If a buyer states a desire to have earnest money returned, the salesperson should reply by saying something like:

- ❖ That is my broker's responsibility and I will turn the matter over to the broker; it should be a neutral statement of the broker's role

Note that;

If a buyer specifically asks to have earnest money returned, the salesperson should advise the buyer to make the request to his/her broker in writing, stating his/her reason for the request

Note that;

The salesperson's reply should not give any indication of what the broker's response will be, so as not to prejudice the broker's position

### **PAYMENTS OUT OF EARNEST MONEY**

Note that;

In some situations, you may have a buyer who requests that certain items involved in the transaction be paid for out of the earnest money; such as:

- ❖ Appraisal
- ❖ Credit report
- ❖ Termite letter
- ❖ Etc.

Note that;

This may be done ONLY IF ALL PARTIES AGREE IN WRITING



## TRUST FUNDS

Note that;

Trust funds consist of money or anything else of value which belongs to someone other than the broker and is held by the broker on behalf of others

Note that;

While money is the most common type of trust funds, they can take many forms and consist of anything of value

Note that;

There are two types of trust funds that a broker may receive:

### ❖ Depositable items

Note that;

Depositable items, as their name implies, are those items that may be deposited in a bank account and these include such things as:

- ✓ Cash
- ✓ Personal checks
- ✓ Cashier's checks
- ✓ Money orders
- ✓ Bank drafts
- ✓ Postdated checks

### ❖ Non-depositable items

Note that;

Non-depositable items are those things that cannot be deposited in a bank account and these include such things as:

- ❖ Promissory notes
- ❖ Personal property such as automobiles, jewelry, rare coins, stamps, etc.
- ❖ Services, such as repair or maintenance work on the property involved



Note that;  
Both depositable and non-depositable items are legitimate forms of trust funds

Note that;  
The different forms require different procedures for handling them

Note that;  
It is the broker's responsibility to establish written procedures for handling each type of trust fund and for insuring that affiliated licensees are adequately trained in and knowledgeable about these procedures

Note that;  
As a minimum, these procedures should be addressed in:

- ❖ The company policy and procedures manual
- ❖ Training sessions
- ❖ Sales meetings

Note that;  
Any trust funds that are non-depositable will require that a promissory note be drawn up between buyer and seller, itemizing/describing the non-depositable trust funds in the promissory note and must be signed and dated and notarized at time of initial executed contract

Note that;  
The non-depositable trust funds promissory note must specify the agreed upon value of the non-depositable funds and specify if the item will be depreciated or appreciated over time and the promissory note should specify who will hold the non-depositable trust funds while the contract is executory, before closing

Note that;  
In the brokerage business, there are a number of different sources from which a broker may receive depositable trust funds, including the following:

- ❖ Earnest money
- ❖ Down payments
- ❖ Rent payments





- ❖ Security deposits
- ❖ Assessments
- ❖ Installment payments on wraparound mortgage or land sales contracts
- ❖ Advance payment of expenses

### **EARNEST MONEY**

Note that;

The source of trust funds that is dealt with most often by most brokers is that of earnest money and is the most common form of trust funds

Note that;

Earnest money is the commitment of anything of value to indicate the intention to go through with the terms of a sale contract

Note that;

### **EARNEST MONEY IS NOT REQUIRED BY LAW OR BY THE REAL ESTATE COMMISSION**

Note that;

The payment of earnest money and the amount paid is often a good indication of the sincerity of the person who makes a contract offer

Note that;

Anything of value is an acceptable form of earnest money

Note that;

Earnest money may also provide for liquidated damages in the event the buyer fails to complete the sale; if the buyer defaults, the seller may elect to retain the earnest money as liquidated damages

Note that;

If a seller elects to retain the earnest money deposit as liquidated damages, this may prevent the seller from obtaining two other possible remedies for default:

- ❖ Suing for additional monetary damages
- ❖ Suing for specific performance



Note that;

Although the payment of earnest money is not required, it is a good business practice

Note that;

A managing broker may want to establish a policy that requires salesperson to collect a certain minimum amount of earnest money with any contract they prepare that is approved or agreed to by seller

Note that;

The appropriate amount of earnest money may vary from case to case

Note that;

If the buyer only provides a small amount of earnest money, the seller is not well protected against default by the buyer and if the buyer decides not to buy and walks away from the contract, refusing to honor it, this will usually result only in the buyer forfeiting the earnest money

Note that;

The seller will usually not sue the buyer, although the buyer is still legally bound to go through with the contract and the result is the seller loses a contract, and the broker loses a commission and the seller received a small sum as liquidated damages

Note that;

It is appropriate to require a more substantial sum as the earnest money to compensate both the seller and broker for their losses if the buyer defaults

Note that;

The amount of earnest money required may be specified by:

- ❖ The broker and/or
- ❖ The seller

Note that;

A licensee should discuss the role of earnest money with the seller so he/she understands its purpose



Note that;

The seller is then in a better position to help licensee select an appropriate amount of earnest money or understand your company policy on earnest money

Note that;

If the seller instructs the listing broker to require a certain amount of earnest money, and a potential buyer makes a written offer but fails to provide the amount of earnest money specified by the seller, the broker/salesperson must still present the offer to the seller

#### **PROCEDURES FOR HANDLING EARNEST MONEY**

Note that;

The most common situation in which a broker holds trust funds is when a buyer pays earnest money along with a sales contract offer

Note that;

When a broker or a salesperson receives earnest money from a buyer, there are certain responsibilities the broker has and certain responsibilities the salesperson has in handling the earnest money

#### **SALESPERSON/LICENSEE RESPONSIBILITIES FOR EARNEST MONEY**

Note that;

When a salesperson/licensee receives earnest money on a contract offer, the law requires that he/she turn the earnest money over to the cooperative broker AS SOON AS IS PRACTICALLY POSSIBLE after receipt of the money

Note that;

TURNING OVER THE MONEY to the broker does not mean that the salesperson physically has to hand the money to the broker

Note that;

It is up the broker to set policies for how the money is to be turned over



Note that;

Any licensee that receives earnest money from buyer may turn the earnest money over to listing broker's firm/seller representative and must get receipt from listing broker's firm/seller representative

Note that;

The broker may allow or require the salesperson to give the earnest money to the company bookkeeper or deposit it in the company safe if the bookkeeper is not available to process it and whatever the company/broker policies are, salesperson are responsible for knowing them and following them to the letter.

Note that;

What is meant by as soon as practically possible, in general the following guidelines should be followed:

- ❖ The earnest money should be turned over the same business day if it is physically possible to deliver it to the designated location
- ❖ It should be delivered the next business day if it is not possible to deliver it during working hours of the same day
- ❖ It is more important for the salesperson to turn the check over to his/her broker than to take it with him/her to present the offer to the seller

## **BROKER'S RESPONSIBILITIES FOR EARNEST MONEY**

### **CHECKS**

Note that;

The most common form of earnest money is a personal check

Note that;

The earnest money check should be payable to the Real Estate Firm, unless there is written authority to do otherwise



Note that;

Earnest money check should be payable to listing broker's firm or attorney firm/escrow company because currently, All Real Estate Consultant's Inc. doesn't not hold earnest money

Note that;

Licenses that has a listing contract with a seller are to have earnest money check made out to buyer's agent firm or attorney closing firm/escrow company

Note that;

A salesperson should NEVER accept an earnest money check made payable to him/her personally. They should have the buyer make the check out to the name specified in company policy and it is the responsibility of the salesperson to make sure the earnest money check is properly filled out before turning it over to the broker and it is the broker's responsibility to insure the salesperson is adequately trained in this area

#### **POSTDATED CHECKS**

Note that;

A buyer may give a broker or salesperson a postdated check and ask that it not be cashed until a later date

Note that;

This is acceptable, but licensee should remember the following:

The licensee must disclose to the seller that a postdated check was given as earnest money

Note that;

A salesperson must still turn the check over to his/her broker/cooperative broker/attorney/escrow company as soon as practically possible

Note that;

Only a broker/attorney/escrow company is allowed hold the check



### **CHECKS/PAYEE**

Note that;

When there are two brokerage firms involved in a sale (a co-op sale), the check can be made payable to either firm

Note that;

The contract indicates to which firm the check should be made payable

Note that;

Regardless of which procedure is used, the broker to whom the check is made payable is obligated to deposit the check immediately or according to the procedure in the contract

### **PROBLEMS WITH CHECKS**

Note that;

When a personal check is given as earnest money, there are some problems that can arise

Note that;

The buyer may stop payment on the check; if this happens, the stop payment action does not cause the contract to become void if the seller signs the contract

Note that;

A problem can arise if the seller rejects the offer, in which case, the buyer is entitled to a refund of the earnest money

Note that;

If the broker refunds an earnest money check because the seller rejected the offer and the buyer has stopped payment on the original check, the broker's escrow account balance will not be equal to zero for the transaction, which is a violation of commission rules

Note that;

A similar problem can occur if a buyer gives a check but has insufficient funds to cover it and in this case, if the seller rejects the buyer's offer, and the broker issues a refund check to the buyer for the earnest



money, the broker's trust account balance will again fail to equal zero for that transaction, a violation of commission rules

Note that;

There are three possible solutions to these problems:

- ❖ Require the buyer to use a cashier check or certified check
- ❖ Include a special stipulation in the contract that requires the buyer wait a reasonable amount of time for the earnest money check to clear the bank before asking for a refund
- ❖ Include a stipulation in the contract that authorizes the broker to hold the earnest money check without depositing it until the offer is accepted

Note that;

Of the above solutions, the first is the least practical, while the last is the most commonly used

### **CASH AS EARNEST MONEY**

Note that;

Earnest money can also be paid in cash

Note that;

When cash is used as earnest money, filling in the amount of cash paid on the "form" sales contract will serve as the buyer's receipt for payment

Note that;

Although accepting cash as earnest money is permissible, payment in cash is not as desirable as a check, since a number of problems can be associated with cash payment

Note that;

Examples for problems that can arise are:

- ❖ Questions are more likely to arise about the amount and receipt of cash
- ❖ The proper use handling of cash



- ❖ cash is susceptible to be loss, rather than a check, which a check can be replaced

Note that;

Because problems can arise from accepting earnest money in cash, a licensee should always ask a buyer who offers cash as earnest money to purchase a money order

Note that;

A licensee should NEVER take cash from a buyer and then obtain a money order themselves

Note that;

A licensee should NEVER deposit cash in his/her personal bank account or any other bank account for ANY reason

Note that;

A general rule that is a good guide for salesperson for cash as earnest money as well as others is:

- ❖ Never change the form of earnest money received from the buyer
- ❖ Never change cash to a money order by purchasing it himself/herself
- ❖ Never change cash to a check by depositing the cash in a bank
- ❖ Never change a check to cash by cashing the check

#### **OTHER FORMS OF EARNEST MONEY**

Note that;

Other forms of earnest money besides checks and cash can be accepted

Note that;

The most common alternate forms of earnest money that you may encounter include:

- ❖ Automobiles
- ❖ Jewelry
- ❖ Stocks or bonds
- ❖ Promissory notes





❖ Services

Note that;

A tenant who wants to purchase leased property may offer his/her services to paint the property as earnest money for a sales contract

Note that;

When one of these alternate forms of earnest money is used, the contract should specify the dollar value of the goods or services offered, since this may change before the sale closes

Note that;

If silver coins are offered as earnest money, their value may increase or decrease considerably between the time the contract is signed and closing

Note that;

In the absence of a stated value at which they are accepted, there could be considerable disagreement over their value at closing

Note that;

If an alternate form of earnest money is used, the language similar to the following should be used in the contract:

- ❖ The parties hereto agree that the purchaser shall perform the following and list the items given as earnest money or the services to be performed
- ❖ Such work/services shall be considered earnest money in the transaction at a value of \_\_\_\_\_
- ❖ If the contract/sales doesn't close, the alternate form of earnest money/services will not be compensated by either seller or buyer and will be considered forfeited

Note that;

Regardless of the form of earnest money used, whether it is check, cash, goods, or services, the seller MUST always be informed in the contract of the form of the earnest money



Note that;

When a broker receives earnest money in the form of cash, check, money order, cashier check, the Real Estate Commission rules require that the broker deposit those funds immediately into a designated trust account UNLESS THE BROKER HAS WRITTEN AUTHORITY TO DO OTHERWISE

Note that;

In actual practice, most "form" sales contracts include a clause which gives the broker authority to hold earnest money and not deposit it until both parties have signed the contract, creating a binding contract

Note that;

It is important to understand the difference in the commission rule which requires immediate deposit and the common practice of using WRITTEN AUTHORITY to hold the earnest money until a contract is finalized

Note that;

Even when written authority is given, it is important to remember:

- ❖ ONLY the broker may hold an earnest money deposit with written authority
- ❖ A salesperson may NEVER hold an earnest money deposit

Note that;

Under the rules of the Real Estate Commission, trust funds may be placed in an interest-bearing account

Note that;

When trust funds are placed in an interest-bearing account, both parties to the transaction must agree in writing that an interest-bearing account will be used and to whom the interest will be paid

Note that;

The determination of who gets the interest is negotiable and should be included in the contract.



Note that;

Many contracts include a provision that the interest will be payable to the broker holding the trust funds

Note that;

Salespersons should never include provisions to use an interest-bearing account in a contract unless they first CONSULT THEIR BROKER

Note that;

The only form of earnest money acceptable to be collected by licensee is money order or cashier check or wire; All Real Estate Consultant's Inc. does not collect checks or cash

#### **DOWN PAYMENTS**

Note that;

A broker may receive all or part of a down payment on behalf of a seller, usually when a contract offer is made

Note that;

When funds for a down payment are received, they are trust funds since they are funds held by the broker on behalf of the principal

Note that;

Consequently, they should be handled in accordance with procedures for handling trust funds

#### **RENT PAYMENTS**

Note that;

When a broker manages rental property for an owner, an important duty is to collect the rent payments from tenants

Note that;

The rent collected constitutes trust funds since they are held by the broker on behalf of the owner and must be deposited in a trust account



Note that;

A broker may also collect rent payments on behalf of a seller when a buyer moves into a property before closing and pays rent until the day of closing

Note that;

A broker may collect rent payments on behalf of a buyer if the seller remains in the property after closing and pays rent during the period of extended occupancy

Note that;

While the broker is not required to collect and handle the rent payments in either of these situations, if the broker does so, the rent payments must be placed in a trust account since they are trust funds

#### **SECURITY DEPOSITS**

Note that;

Another common source of trust funds involved in the management of rental property is security deposits

Note that;

A security deposit is a refundable fee charged to a tenant as security against damage to the property by the tenant

#### **ASSESSMENTS**

Note that;

A broker may collect payments from members of a condominium, cooperative, homeowners, or other type of community association

Note that;

If a broker collects or controls funds belonging to a community association, the broker must place these funds in a trust account



### **INSTALLMENT PAYMENTS**

Note that;

Another source of trust funds occurs when a broker is the seller as if the broker sells property using a wraparound mortgage or land sales contract and received installment payments from the buyer

Note that;

If the broker must make payments against an encumbrance, such as mortgage payments to the original lender, the payments received from the buyer are trust funds and must be placed in a trust account

### **ADVANCE PAYMENT OF EXPENSES**

Note that;

Often a broker will receive funds in advance to pay for items such as a credit report, property inspection, appraisal or repairs to a property

Note that;

Any funds paid in advance in this manner are trust funds and must be deposited in a trust account. Trust funds are funds received on behalf of someone else

Note that;

If a broker receives an advance payment for his/her services, the funds paid are not trust funds, since the funds belong to the broker, not someone else.

### **REQUIREMENTS FOR HANDLING TRUST FUNDS**

Note that;

The section of the Georgia license law and rules which deals with handling of trust funds includes the following provisions:

- ❖ All trust funds (in any form) received by a licensee, such as an earnest money check, must be placed in the custody of the broker as soon as practically possible



Note that;

Unless otherwise agreed to by the parties in writing, the broker must promptly do one of the following:

- ❖ Deposit the funds in a separate designated trust account if they are depositable items
- ❖ Make appropriate arrangements for the safekeeping of any funds that are not depositable

Note that;

Under the provisions of the license law and rules, different arrangements for handling trust funds are acceptable as long as all parties involved agree to a different arrangement in writing

Note that;

It is not uncommon for a contract to contain a provision that allows the broker to hold an earnest money check, for example, until both parties have signed the contract

Note that;

It is also possible to deposit trust funds in an interest-bearing account as long as all parties agree in writing and the written agreement specifies to whom the interest will be paid

Note that;

In general, the broker is liable under the license law for the actions of any affiliated licensees.

Note that;

If an affiliated licensee violates the license law, the broker, as well as the licensee, is subject to sanctions by the real estate commission

Note that;

The broker can limit their liability for the actions of licensees under some conditions

Note that;

The broker is not generally held liable for acts of a licensee which violate the license law if:

- The broker has reasonable written policies and procedures in place for supervising the licensee's action (which the licensee violates)
- The broker did not participate in the violation
- The broker did not ratify the violation



## TYPES OF BROKERS

Note that;

There are three types of brokers:

- Associate broker

Note that;

An associate broker holds a broker's license but continues to perform the activities of a salesperson

Note that;

An associate broker must be affiliated with a broker who holds the license of the associate broker

Note that;

The associate broker may not engage in brokerage activities on their own, but must perform all such activities on behalf of the broker who holds their license

Note that;

An associate broker may continue to represent clients in listing and selling property, or they may perform other duties within the brokerage firm

- Managing broker

Note that;

A managing broker is usually someone who manages a branch of a brokerage office for a brokerage firm

Note that;

The managing broker is not the qualifying broker for the branch but is usually licensed as an associate broker and works under the qualifying broker for the entire firm

Note that;

The managing broker is not subject to the liabilities of a qualifying broker or a company owner



Note that;

The managing broker is usually a branch manager that is usually responsible for selecting, training and supervising salesperson

Note that;

A managing broker typically does little, if any:

- Listing
- Selling

Note that;

Georgia license law does not require a branch manager to hold a broker's license or an associate broker's license, but specific real estate companies may have this requirement

- Company owner/broker/qualifying broker

Note that;

The sole owner of a real estate brokerage company is required to hold a broker's license

Note that;

Georgia license law, a brokerage company must be licensed as a broker

Note that;

If the firm has a sole owner, they must have a broker's license

Note that;

The license law requires that any corporation licensed as a brokerage firm must have a qualifying broker

Note that;

The three types of broker listed above ARE NOT different types as defined by the real estate license law but represent three types of functions that a broker may perform in a brokerage firm

Note that;

These three types of brokers ARE NOT mutually exclusive

Note that;

One broker MAY engage in the activities associated with one or more of these three types





## **SOLE PROPRIETORSHIP**

Note that;

When a sole proprietorship is used, the following requirements apply:

- ✓ The qualifying broker is to make sure the proprietor meets the requirements for an individual broker's license
- ✓ Decide on a business name base on the above guidelines
- ✓ Open a trust account if the firm intends to hold trust funds
- ✓ Apply to the real estate commission for a license, using the opening a real estate firm form and attach any exhibits required by the application

Note that;

In a sole proprietorship, one person is the sole owner of the company

Note that;

Georgia license law requires the sole proprietor of a real estate company to hold a broker's license

## **ADVANTAGES**

Note that;

There are several advantages of a sole proprietorship:

- The owner has complete control over the business
- The owner receives 100% of the profits
- The amount of capital needed to start the business is low
- Compared to corporation, a sole proprietorship is subject to relatively few government regulations
- The owner can operate the business from their residence, if doing so complies with:
  - ✓ Local zoning requirements
  - ✓ Subdivision regulations
  - ✓ Condominium regulations

## **DISADVANTAGES**

Note that;

There are several important disadvantages of a sole proprietorship:

- ✓ The owner's liability is unlimited



- ✓ It is difficult to borrow capital for the business
- ✓ Income of the business is dependent on the performance of one person, that income may be at risk
- ✓ The death of the owner terminates the business

### **PARTNERSHIP OR LIMITED PARTNERSHIP**

Note that;

When a partnership or limited partnership is used, the following requirements apply:

Designate a qualifying broker who must hold an individual broker's license

- ✓ Draw up a written partnership agreement and include it with the license application
- ✓ Decide on a business name base on the above guidelines
- ✓ Open a trust account if the firm intends to hold trust funds
- ✓ Apply to the real estate commission for a license, using the opening a real estate firm form, and attach any exhibits required by that application

Note that;

The only difference in the application process for a partnership and a sole proprietorship is that the partnership must specify a qualifying broker and must include a copy of the partnership agreement with the application

Note that;

The partnership itself is not required to meet any educational or exam requirements to apply for a license, but the qualifying broker must have met those requirements to obtain a broker's license

Note that;

In a partnership, two or more people own the company

Note that;

There is no limit to the number of partners

Note that;

Authority is divided among the partners

Note that;

Company profits are divided among the partners



Note that;  
Georgia license law requires a written partnership agreement

Note that;  
The written agreement should include:

- ✓ Name of the company
- ✓ Name of the partners
- ✓ Location of the company
- ✓ Description of the type of business
- ✓ Term of the partnership agreement
- ✓ Capital contribution of each partner
- ✓ Procedure for distributing profits
- ✓ Compensation, including salaries, draws, etc.
- ✓ Responsibilities and authority of each partner
- ✓ Procedures for adding partners
- ✓ Procedures for ending the partnership
- ✓ Procedures for ending the partnership

Note that;  
Georgia license law requires that at least one partner in a real estate partnership company hold a broker's license and that only one partner serve as the qualifying broker

Note that;  
Georgia license law also requires that any partner involved in brokerage activities hold a real estate license either as associate broker's or a salesperson's license

Note that;  
Partners who are not involved in brokerage activities are not required to be licensed

### **LIMITED PARTNERSHIP**

Note that;  
One variation of the partnership is the limited partnership

Note that;  
With the limited partnership there are two types of partners:



- General partner

Note that;

Georgia license law requires that a general partner serve as the qualifying broker

Note that;

The general partners make decisions and actively participate in the operation of the business

Note that;

There must be at least one general partner and there can be more than one

- Limited partner

Note that;

There is no limit to the number of limited partners

Note that;

Limited partners are not permitted to make decisions or otherwise participate in the operation of the business

### **ADVANTAGES**

Note that;

There are several advantages of a partnership:

- The amount of capital needed to start the business is low
- Because more than one person is involved in a partnership, there is a larger pool from which to obtain capital
- Compared to a corporation, a partnership is subject to fewer government regulations

### **DISADVANTAGES**

Note that;

There are also several disadvantages of a partnership:

- It is difficult to borrow capital for the business
- Because authority is divided among more than one person, there may be problems if disagreements between the partners emerge



- **THE DEATH OF THE PARTNERS TERMINATE THE BUSINESS**
- The partnership's liability is unlimited
- One partner may be liable for the actions of another partner

Note that;

The exception to this liability is with the limited partnership; although the liability for a general partner is unlimited, **THE LIABILITY FOR A LIMITED PARTNER IS LIMITED TO THE AMOUNT THEY INVESTED**

### **CORPORATION**

Note that;

When a corporation is used, the following requirements apply:

- ✓ Designate a qualifying broker who must hold an individual broker's license
- ✓ Obtain a charter for the corporation, register it with the corporation division of the secretary of state's office, and attach a copy with the license application, along with a copy of the articles of incorporation
- ✓ Decide on a business name, based on the above requirements
- ✓ Open a trust account if the firm intends to hold trust funds
- ✓ Apply to the real estate commission for a license, using the opening a real estate firm form and attach any exhibits required by that application

Note that;

The only difference in the application process for a corporation and a sole proprietorship is that the corporation must specify a qualifying broker and must include a copy of the corporate charter and articles of incorporation with the application

Note that;

The corporation itself is not required to meet any educational or exam requirements to apply for a license, but the qualifying broker must have met those requirements to obtain a broker's license

Note that;

In a corporation, individuals become part-owners (stockholders) by purchasing stock in the corporation



Note that;

In a corporation, officers of the corporation make decisions and participate in the daily operation of the business

Note that;

In a corporation, a board of directors oversees the management of the corporation while looking out for the stockholder's best interest

Note that;

Georgia license law requires that at least one individual in a real estate corporation hold a broker's license and that only one individual serve as the qualifying broker

Note that;

The qualifying broker must be an officer, but they is not required to have ownership interest in the corporation

Note that;

Georgia license law also requires that any stockholder officer or director involved in real estate brokerage activities hold an associate broker's or salesperson's license

Note that;

Stockholders, officers or directors who are not involved in real estate brokerage activities are not required to be licensed

### **ADVANTAGES**

Note that;

There are several advantages of a corporation:

- The liability for an individual involved in a corporation is limited to the amount of stock that has been issued to them
- If a lawsuit results from a real estate transaction, the stockholders, officers and directors real and personal property are not at risk
- Corporate ownership can be flexible
- Compared to a sole proprietorship or a partnership, a corporation is able to obtain capital more easily

Note that;

There are two reasons for this:



- It is easier to borrow capital for the business. Lenders are more likely to provide a loan to a corporation than to a sole proprietorship or a partnership
- Capital can be raised by issuing new stock and bringing in new owners

Note that;

By assigning stock certificates, ownership interest can be transferred

Note that;

Because of these advantages, it is generally considered preferable to form a corporation, rather than a partnership, when there will be more than one company owner

Note that;

The deaths of the stockholders, officers, and/or directors do not terminate the business

### **DISADVANTAGES**

Note that;

There are several disadvantages of a corporation:

- The amount of capital needed to start the business is high
- Compared to a sole proprietorship or a partnership, a corporation is subject to more government regulations
- Extensive records must be maintained
- The corporate charter may be too restrictive

Note that;

The corporate charter may contain restrictions which are appropriate when the business is started but become too restrictive as the corporation changes

### **LIMITED LIABILITY COMPANY**

Note that;

When a limited liability company is used, the following requirements apply:

- ✓ Designate a qualifying broker who must hold an individual broker's license
- ✓ Open a trust account if the firm intends to hold trust funds



- ✓ Complete and file a document called articles of organization, in compliance with the requirements of the Georgia limited liability company act, with the secretary of state's office
- ✓ Decide on a business name base on the guidelines above
- ✓ Reserve the name with the secretary of state's office

Note that;

The name must meet these three requirements:

- ✓ Must contain the words "limited liability Company" or "limited company" or "LLC", LC
- ✓ May not be a duplicate name of an LLC already on file with the secretary of state
- ✓ May not exceed 80 characters, including punctuation and spaces
- ✓ Apply to the secretary of state using transmittal form 231 and include the name reservation number, articles of organization copy, and all other information, including filing fee
- ✓ Once the limited liability company name and business structure is approved, apply to the real estate commission for a license, using the opening a real estate firm form and attach any exhibits required by the application

Note that;

The application forms used for all business structures are the same

### **INCOME AND CORPORATE TAXES**

Note that;

Depending on the situation, the tax treatment for a particular type of business may be an advantage or disadvantage

Note that;

A partnership might result in tax-related advantages for one individual but might result in tax-related disadvantages for another individual

### **THE BROKER'S LICENSE**

Note that;

Regardless of which type of business selected, before opening a brokerage office, a broker's license for the company must be obtained from the Georgia Real Estate Commission





Note that;

The steps involved in obtaining a broker's license for a sole proprietorship, partnership or corporation differs however the exam is the same for each

### **TAX CONSEQUENCES**

Note that;

The tax consequences for operating a business differ for the three types of businesses

### **SOLE PROPRIETORSHIP**

Note that;

Profits are considered personal income for the owner of the sole proprietorship

### **PARTNERSHIP**

Note that;

Profits are considered personal income for the partners

### **CORPORATION**

Note that;

Taxes must be paid on corporate profits and dividends

Note that;

A specific type of corporation that has been approved by the internal revenue service is the S corporation

### **S-CORPORATION**

Note that;

If the agreement is unanimous, the stockholders can forgo paying corporate income taxes when the numbers of stockholders are not exceeding 34

Note that;

Each stockholder is required to report his/her share of the profits as personal income

Note that;

The stockholder must report these profits as income even if they are not distributed



## **SIZES OF REAL ESTATE COMPANIES**

Note that;

The size of the company in which a broker works can vary from a company made up of a single person to a company with an international market

### **SMALL COMPANIES**

#### **ADVANTAGES**

Note that;

A real estate company with fewer than ten people can offer some advantages:

- The company can offer specialization in the service it provides
- The company can provide personalized attention to clients and customers

#### **DISADVANTAGES**

Note that;

A real estate company with fewer than ten people can have some disadvantages:

- The broker often continues to list and sell properties in a small company
- The broker may not provide adequate supervision of licensees because they are busy working on sales
- Turnover can be a serious problem; the loss of even one person can be a significant loss

### **MEDIUM SIZE COMPANIES**

#### **ADVANTAGES**

Note that;

A real estate company with more than 10 people may be able to offer:

- A medium sized company may be able to be more widely recognized than a smaller company
- A medium sized company may be able to offer a larger range of services
- The salespeople can be provided with better equipment and advertising materials
- Material may be less expensive when they are purchased in larger quantities



### **DISADVANTAGES**

Note that;

There are some disadvantages associated with growing from a small real estate company to a medium size company:

- Financial record keeping becomes more complex
- Company policies become more detailed and more complex
- Communication between the broker and each licensee becomes less frequent
- If the company grows too quickly, costs may increase faster than income

### **LARGE COMPANIES**

Note that;

A large company may have multiple locations and hundreds or thousands of salespeople

### **ADVANTAGES**

Note that;

Some of the advantages with having a large company are:

- The company controls a larger market share
- The company is less likely to suffer serious consequences when one area experiences a downturn
- The company can benefit from name recognition
- There are funds available for hiring staff members with specialized skills such as marketing, training, financial management, etc.
- New licensee may be attracted to the company because of the opportunity to transfer from one location to another
- The company can easily expand the range of services offered

Note that;

There are no legal restrictions regarding the types of services that can be added to a real estate company unless the additional services result in a conflict of interest

Note that;

Some services that may be added include:

- Home building
- Subdivision development



- Insurance
- Financial planning

#### **DISADVANTAGES**

Note that;

There are disadvantages with larger real estate companies:

- Licensees have little, if any, contact with the qualifying broker
- Profits earned in one location may be negated by losses in other locations

Note that;

The firm's market share is a good index of how a large firm is performing in the marketplace

Note that;

Market share is the percentage of the total business transaction in a specified area that a particular company controls

Note that;

Market share can be calculated using the number of transaction or the dollar value of those transactions

#### **NATIONWIDE COMPANIES**

Note that;

A larger company may be able to be a nationwide company

#### **ADVANTAGES**

- The company can benefit from name recognition
- The company can develop nationwide advertising programs
- There is access to capital
- The company can offer nationwide relocation network
- With many staff members, there is access to individuals with specialized skills such as marketing and management

#### **DISADVANTAGES**

- The value of real property is determined by local factors
- Procedures that are appropriate in one area may not be appropriate in another area



- Problems may arise when one office must comply with procedures that have been developed in another office located in another area

Note that;

Any procedure that is outside of corporate policy and procedure manual must be approved by the corporate office in writing in advance

### **INTERNATIONAL COMPANIES**

#### **DISADVANTAGES**

Note that;

There may be complications for international companies:

- Marketing procedures differ in different countries
- Language barriers may exist
- Currency exchanges can be complicated

Note that;

International real estate should be undertaken only after specialized training

### **FRANCHISES**

#### **FRANCHISE COST**

Note that;

The cost involved in joining a franchise includes:

- Purchase price

Note that;

A franchise is purchased for a specified price

Note that;

The purchase price for a franchise adds to the costs involved in starting the business and needs to be included in the startup budget

- Franchise fees

Note that;

Typically there are franchise fees which must be paid on a regular basis



Note that;

The franchise fee may be a flat fee, or the amount may vary based on some factor, such as, a franchise fee may be based on the number of salespeople or on company profit

Note that;

A fee based on company profit may be calculated either as a percentage of gross profit or as a percentage of net profit

Note that;

The franchise fees add to the operating costs of a company and must be included in the operating budget

- Advertising fees

Note that;

Within a franchise, each company may be required to contribute to a fund for area or nationwide advertising

Note that;

Each franchisee may be required to purchase material in specified quantities on a regular basis

Note that;

The advertising fees/cost must be included in the operating budget of the franchisee

### **BENEFITS OF A FRANCHISE**

Note that;

If you are considering joining a franchise, but you do not need the benefits listed below, you should find out if the services are optional

Note that

As a business owner, you would not want to end up paying for services that are not needed and can be avoided

Note that;

As a business owner, you need to evaluate both the costs and the benefits to determine if joining a franchise is appropriate



Note that;

In addition to evaluating the cost and the benefits of joining a franchise, there are other issues that must be address when deciding whether or not to join a franchise, such as:

- Territorial exclusivity

Note that;

When territorial exclusivity is granted, a franchisee may be prohibited from soliciting business outside of the territory

Note that;

When joining a franchise, the franchisee needs to know whether or not territorial exclusivity is granted

- Limitation on company policies

Note that;

A franchiser typically sets standards that a company is required to meet before permitted to join the franchise

Note that;

When you join a franchise, you may find that these requirements sometimes limit your right to develop you own company policies

Note that;

As a business owner, you need to identify and evaluate these limitations before deciding whether or not to join a franchise

- Compatibility with the company mission

Note that;

As a business owner, you need to determine if the franchise program is compatible with your company mission statement

Note that;

If the franchise program is not compatible with your mission statement, you may decide to change your mission statement, or you may decide not to join the franchise



- Procedures for ending the franchise agreement

Note that;

As an owner of a business, the owner needs to determine what are the procedures are available should you wish to end the franchise agreement if you decide to join a franchise

Note that

Knowing the procedures in advance with help the owner should the agreement become unsatisfactory in the future

Note that;

The benefits associated with belonging to a franchise include:

- Name recognition

Note that;

If the franchise name has been associated with member companies that have a good reputation, a franchisee can benefit from name recognition

Note that;

Name recognition can be a disadvantage if the name has been associated with member companies that do not have a good reputation

Note that;

It is particularly important that the franchise you join have positive name recognition with the clientele you plan to serve

- Marketing programs

Note that;

Even though costs may be incurred for advertising, the franchisee is likely to benefit from these advertising programs

- Training programs

Note that;

Often, the owner of a company, the franchisee, lacks specific skills needed to run a business





Note that;

Franchisers are experienced in the various aspects of running a business, and many of them offer training programs to franchisees

- Relocation opportunities and referral networks

Note that;

Some franchises offer relocation opportunities and referral networks that might not be available to independent owners

Note that;

When the owner of a company joins a franchise, the franchiser grants the owner of the company, the franchisee, the right to sell a product or provide a service under the name of the franchiser

Note that;

The franchisee may be required to meet certain standards set by the franchiser

Note that;

A franchise differs from a nationally owned company

Note that;

A nationally owned company has central ownership

Note that;

A nationally owned company, authority over company policy is centralized

Note that;

With a franchise, each franchisee is locally owned

Note that;

With a franchise, each real estate company within a real estate franchise has its own ownership profile and its own qualifying broker



Note that;

With a franchise, the owner of a franchise has some degree on control over their own company policies

### **PLANNING FOR GROWTH**

Note that;

Although a real estate company may remain the same size throughout its existence, most companies will expand in some way

Note that;

Regardless of the type of expansion, a broker needs to be careful in calculating the profit generated by the expansion

Note that;

If a new expansion is profitable, the broker must make sure that the new expansion is charged the appropriate portion of the company expenses including advertising, management, etc.

Note that;

There are three types of company growth:

- Internal growth

Note that;

When a company's growth is internal, it means that the company adds additional salespersons

Note that;

One reason for adding salespeople is to spread existing overhead cost across several salespeople, thereby increasing profits

- Horizontal growth

Note that;

When a company's growth is horizontal, it means that the company is opening a branch office in a different location

Note that;

Before deciding to open a branch office, the same careful planning undertaken when opening the first office must be repeated



Note that;

An important step in opening a branch office is the hiring of a branch manager

Note that;

The steps include:

- Developing a startup budget
- An operating budget
- Business plan
  
- Vertical growth

Note that;

When a company's growth is vertical, it means that the company is expanding the range of services offered

Note that;

Some of the services that a company can add in vertical growth are:

- Home building
- Subdivision development
- Insurance
- Financial planning

Note that;

When a commercial real estate company is involved, the company may add services such as commercial appraisals or commercial development

### **BRANCH OFFICE**

Note that;

A broker may maintain more than one office if desired

Note that;

The real estate commission does not have any requirements regulation branch offices



Note that;

The qualifying broker is responsible for the actions of any affiliated licensee, either in a main office or branch office

### **CHANGE OF ADDRESS**

Note that;

If a broker changes their business address, they must notify the commission in writing within 30 days

### **CLOSING A BROKERAGE OFFICE**

Note that;

The closing of a brokerage office is a significant step involving many factors and should not be undertaken without sound legal advice and corporate approval

Note that;

There are two general situations in which a brokerage office is closed:

- **A VOLUNTARY CLOSING OF AN OFFICE**

Note that;

The following steps must be taken:

- ✓ Submit certain information to the real estate commission

Note that;

The broker must secure an application from the commission which is used to notify the commission properly of:

- The date the firm is closing
  - The location where records will be stored
- ✓ Take appropriate action on all licenses involved

Note that;

The broker must return all wall certificates of licenses to the commission



Note that;

The broker must also take appropriate action on the licenses held by the business and qualifying broker:

#### **SOLE PROPRIETORSHIP**

Note that;

The broker must either transfer to a new firm or place their license on inactive status

#### **CORPORATION/PARTNERSHIP/LIMITED PARTNERSHIP OR LIMITED LIABILITY**

Note that;

The qualifying broker must either transfer to a new firm or place their license on inactive status

#### **▪ A SUSPENSION OR REVOCATION OF A LICENSE**

Note that;

If the license of a brokerage firm, regardless of the business structure, is suspended or revoked, the business must stop operating upon the date of the suspension or revocation

Note that;

If both the licenses of the firm and the qualifying broker are suspended or revoked, the broker must return all wall certificates of licenses to the commission

Note that;

If the commission suspends or revokes only the license of the qualifying broker, the firm may select a new qualifying broker

Note that;

The firm cannot conduct business until a new qualifying broker is selected



### **BUSINESS TERMINATION**

Note that;

If a firm holds a license, and one of the partners in a partnership or officer in a corporation or members in a limited liability company has their license revoked or suspended, the firm has two choices:

- It may sever the relationship between the firm and the individual whose license was suspended or revoked
- If it fails to do this, the license of the firm itself will be suspended or revoked

### **ALL REAL ESTATE CONSULTANTS, INC CORPORATE OFFICE/BRANCH OFFICES**

Note that;

All Real Estate Consultants, Inc. corporate office will meet the requirements for branch license unless otherwise authorized by the corporate office

Note that;

All Real Estate Consultants, Inc. will be the name for all branches

Note that;

Managing broker/managers are to obtain local business licenses depending on the location selected for office.

Note that;

Managers may use:

- Home office, subject to locate laws/restrictions
- Post office box which has street address for correspondence
- Local office rental for meeting clients
- Meeting clients at their home
- Meeting clients at home office
- Meeting clients at agreed upon location

Note that;

The county may levy a license, occupational or professional tax.



Note that;

This tax should be accounted for in operating budget.

Note that;

According to GA law, these taxes can only be applied where the broker has a principal office or branch office.

Note that;

If the municipality or county levies a tax based on the company's gross receipts, transaction are only included when the property is in the boundaries of the jurisdiction.

Note that;

Only property transaction within the corporate limits of the municipality can be included for a municipal gross receipts tax.

Note that;

Only property transactions within UNINCORPORATED areas of the county can be included for a county gross receipts tax.

Note that;

All managers are to find out if there is any county, municipality, occupational or professional tax in which the branch is located.

Note that;

All managers are to find out of any existence of any restrictions related to the location of office such as:

- Zoning requirements
- Deed restrictions
- Sub division regulations
- Condo regulations
- Etc.

Note that;

According to the American with disabilities act, sales offices are considered public accommodations and require such offices to be:

- Accessible to individuals with disabilities
- Large print material with visually impaired
- Telecommunications for the hearing impaired



Note that;

All managers must become familiar with the law and make sure the office conforms to all requirements of law.

Note that;

All managers are to open a trust account if the office intends to hold trust funds and comply with all requirements for handling trust funds.

Note that;

Qualifying broker must have signatory power on all trust account which the office maintains.

Note that;

The designated qualifying broker for all branches will be determined by the corporate office of All Real Estate Consultants, Inc.

Note that;

Managers are to draw up a written partnership agreement and include it with the application for opening a branch office.

Note that;

Management to apply to real estate commission for a license, using the opening a real estate firm form and attach any exhibits requirements by the application.

Note that;

Managers are to obtain charter for the corporation and copy of articles of incorporation from the corporate office, as applicable.

### **ACCOUNTING METHODS**

Note that;

#### **ALL BRANCHES ARE TO USE THE CASH ACCOUNTING METHODS**

Note that;

Before opening a business, the type of accounting method to use must be selected

Note that;

There are two accounting methods:

- Cash





- Accrual

### **CASH METHOD**

Note that;

With the cash method

- Income is considered income when it is **RECEIVED**
- Outgo is considered outgo when a **PAYMENT IS MADE**

Note that;

With the cash method, the financial statement may be deceiving because the company's financial status will look good if the bills are not paid

### **ACCRUAL METHOD**

Note that;

With the accrual method

- Income is considered income when it is **EARNED**
- Outgo is considered outgo when an **ORDER IS MADE**

Note that;

The accrual method is more complex than the cash method

Note that;

The financial status of the company is easier to see with the accrual method

Note that;

With the accrual method, occasional adjustments may be required

Note that;

When a contract is signed, a commission is earned, and this commission is recorded as an account receivable

Note that;

If the sale is not closed, the account receivable must be canceled

Note that;

When an item is ordered, it is recorded as an account payable



Note that;  
If the item is returned, the account payable must be canceled

### **RECORD KEEPING SYSTEMS**

Note that;  
A financial record keeping system must be selected before starting a business

Note that;  
The record keeping system must be set up in a way that allows the company owner to receive financial reports on a regular basis

Note that;  
Each of these record keeping systems has its advantages

Note that;  
Regardless of which record keeping system is selected, an annual audit conducted by a certified public accountant is recommended

Note that;  
There are at least three possible alternatives for keeping financial records:

- The financial record keeping system can be set up and maintained by an accountant or accounting firm

Note that;  
When record keeping is done by an accountant or accounting firm, the financial records may be considered more credible than if they were kept in-house

Note that;  
The use of an accountant or accounting firm is necessary when the owner and manager lack financial record keeping skills

- The financial record keeping system can be set up and periodically reviewed by an accountant or accounting firm

Note that;  
The daily record keeping would be done by in-house employees



- The financial record keeping system can be set up and maintained in-house with little outside assistance

Note that;

With an in-house record keeping system, the cost of hiring an accountant is not incurred

Note that;

With an in-house record keeping system, financial information is readily available to the owner when needed

Note that;

Financial record keeping tasks should NOT be performed by only one person

Note that;

To prevent problems of embezzlement:

- ✓ Make sure every individual who will be handling money is bonded
- ✓ Divide the financial record keeping tasks among a group of employees, including the owner or manager
- ✓ Closely supervise anyone performing financial record keeping tasks
- ✓ Calculate the amount that should be in the trust account on a monthly basis and compare the amount to the statement
- ✓ Calculate the amount coming in each month and compare the amount to deposits
- ✓ Hire a certified public accountant to conduct annual audits

## **BUDGETS**

Note that;

All branches/managing brokers/managers must set up two budgets and maintain an operational budget and both budgets must be submitted for approval by the corporate office:

- Startup budget

Note that;

A start up budget includes all expenses that are incurred before a company opens for business

Note that;



The expenses to be included in a startup budget include:

- Building facilities

Note that;

Building facilities include:

- ✓ Office space
- ✓ Furniture
- ✓ A communications system

Note that;

There are some costs related to office space that may be incurred at the start up

Note that;

The following items are startup cost:

- ✓ The purchase price for an office building or condominium
- ✓ The purchase price or premium paid for a lease
- ✓ Any interior improvements that are the responsibility of the tenant when space is rented

Note that;

Office furniture can be purchased or leased

Note that;

When furniture is purchased, the initial purchase price is a start-up cost

Note that;

It may be more economical in the long run to purchase office furniture because the costs of leasing are typically a substantial percentage of the cost of the furniture

Note that;

Before opening a business, a communication system must be set up and includes:



- ✓ Telephone equipment
- ✓ Telephone lines
- ✓ Lines for fax machines and computer terminals

Note that;

Any required deposits and or installation for a communication system costs are start-up costs

- Equipment and supplies

Note that;

The following pieces of office equipment are needed:

- ✓ Typewriters
- ✓ Computers
- ✓ Copying machines
- ✓ Fax machines
- ✓ Television sets, VCR's and camcorder
- ✓ shredder

Note that;

The items listed above may be needed for training salespeople and/or showing property

Note that;

The initial purchase price for a piece of office equipment is a start-up cost

Note that;

Office supplies also must be purchased before starting a business, such as:

- ✓ Letterhead
- ✓ Signs
- ✓ Business cards
- ✓ Business forms
- ✓ Typical office supplies

Note that;

The initial purchase price of the above supplies is a start-up cost



Note that;

The professional services that may be required to start a business include:

- ✓ An attorney

Note that;

There are situations where the advice of an attorney is needed when started a business

Note that;

An attorney can:

- Draw up a partnership agreement
- Complete the incorporation process
- Can review errors and omission policy before one is purchased

- ✓ An accountant

Note that;

An accountant or accounting firm may be employed to set up the financial record keeping system

Note that;

The cost of setting up the financial record keeping system is a start-up cost

- ✓ An artist

Note that;

When starting a business, a company logo must be developed before letterhead, signs, business cards, and business forms can be ordered

Note that;

If an artist is hired to design this logo, the costs must be included in the start-up budget



- Other miscellaneous expenses

Note that;

Other costs incurred at start up include:

- ✓ Insurance

Note that;

When starting a business, you should carry insurance against:

- Fire
- Theft
- An accident occurring on company property
- A disability
- An interruption in business
- An employee taking company funds
- Errors and omissions

Note that;

The initial purchase price of a particular insurance policy is a start-up cost

- ✓ Advertising

Note that;

Advertising may be needed to notify potential clients of the opening of a new business

Note that;

The cost of advertising the opening of the business must be included in the start-up budget

- ✓ Licenses and membership fees

Note that;

At start up, the fees for all required licenses must be paid

Note that;

Membership fees must be paid if joining a multiple listing system and or trade associations



Note that;

The licenses and membership fees paid before a business opens are start-up costs

- Operating budget

Note that;

Although the operating budget is developed at the start up, it must be maintained on a monthly basis throughout the course of running the business to make sure that company income is adequate to cover expenses

Note that;

Operating budget includes:

- Building facilities
- Equipment and supplies
- Professional services
- Personnel
- Training expenses
- Employees' salaries
- Benefits
- Sales awards, banquets, etc.
- Payroll taxes
- Compensation for owner/broker of the company
- Other miscellaneous expenses
- Utilities
- Custodial services
- Furniture lease payments
- Office space lease payments
- Leasing communications system
- Any lease payments
- Maintenance, repair, replacement of office equipment
- Replenishing office supplies
- The cost for attorney services needed during the course of running the business
- An accountant or accounting firm that maintain the financial record keeping system and annual audits
- Insurance
- Advertising





- Licenses and membership renewal fees
- Taxes
- Interest on loans
- Postage
- Subscriptions to publications
- Vehicle expenses if vehicles are provided by the company

Note that;

An operational budget includes expenses that occur during the course of running business

Note that;

When office space is leased, the lease payments are operating cost NOT start-up costs

Note that;

When furniture is leased, the lease payments are operating costs NOT start-up costs

Note that;

When telephone equipment is leased, the lease payments are operating cost, NOT start-up cost

Note that;

When office equipment needs to be repaired or replaced at a later date, the cost is an operating cost

Note that;

When supplies need to be replenished, the cost is an operating cost

Note that;

If an accountant or accounting firm is employed to maintain the system and/or conduct audits, these costs are operating costs

Note that;

Subsequent renewal payments for insurance are operating cost

Note that;

Advertising costs incurred after the business has opened are operating cost



Note that;  
The renewal fees for licenses, membership to multiple listing system and trade associations are operating costs

Note that;  
If you do not include the salary for the owner/broker in the operating budget, you will find it difficult to determine when the company is making a profit

### **DESK COST/COMPANY DOLLAR**

Note that;  
Desk cost is a method for determining how much income each salesperson must generate for the company in order for the company to break even

Note that;  
Desk cost is calculated by determining the total monthly operating costs for the company and dividing that total by the number of salespeople

Note that;  
All branches/managing brokers/managers to charge desk cost and is determined by how much each agent/person must generate for office or company to break even:

$$\text{Total operation cost}/\text{total number of salesperson} = \text{desk cost.}$$

Note that;  
Desk cost can be used in a number of ways:

- If each salesperson will be paying a set fee to the company, instead of sharing the commissions with the company, desk cost may be useful in determining the amount of the monthly fee
- Desk cost can be used as a standard for evaluating the performance of salespeople; if the monthly income generated by a salesperson is less than desk cost, their performance is not adequate; if a salesperson does not meet the desk cost standard, they may need additional training or may need to be replaced



### **COMPANY DOLLAR**

Note that;

Company dollar refers to the gross commissions for a company/branch LESS all:

- Commission
- Referral fees
- Bonuses paid
- Cooperating broker's expense

Note that;

All expenses are paid from company dollar.

Note that;

The company dollar can be used to compare one real estate company to other real estate companies

Note that;

Trade associations often publish information on how much average companies spend, expressed as a percentage of the company dollar, on different expense items

Note that;

The owner of a company may be able to use this information to determine if the company is spending too much or too little on a particular expense

### **PRIORITY OF BUSINESS**

Note that;

The first priority in business is survival

Note that;

There are many reasons why real estate businesses don't survive and some of these reasons are:

- Inadequate managerial skills
- Insufficient capital
- A downturn in the real estate cycle
- A combination of any of the above



Note that;

To increase the chances of survival, there are several issues that must be addressed prior to starting a real estate business such as:

- The need for a business plan
- The existence of local business licenses and taxes
- The restrictions related to company location
- The need for insurance

### **BUSINESS PLAN**

Note that;

The business plan consists of:

- Plans
- Tactics
- Objectives

Note that;

When developing objectives, plans, and tactics, it is important to include timelines which specify the dates by which each activity is to be completed

Note that;

All branches are to adhere to business plan of corporate office.

### **BUSINESS PLAN**

Note that;

Business plan starts with a mission statement which is a brief description of the company which includes:

- The purpose of the company
- The services to be provided
- The customers and clients to be served
- The market area to be covered



### **MISSION STATEMENT**

Note that;

The purpose of All Real Estate Consultants, Inc. is:

**TO PROVIDE "FULL SERVICE" PROFESSIONAL REAL ESTATE CONSULTATION/RELOCATION SERVICES TO ALL STATES IN THE UNITED STATES.**

### **SERVICES**

Services to be provided

Note that;

All Real Estate Consultants, Inc. provides:

- Consultation related to all facades of real estate
- Advise to clients services
- Relocation real estate services
- Seller agency services
- Buyer agency services
- Landlord agency services
- Commercial agency services
- Dual agency services
- Sub-agency services
- Property management services
- Review and complete real estate contracts services
- Review and complete lease contracts services
- Review and complete commercial contracts services
- Submit/accept offers for client's services
- Negotiate price with buyers and sellers and landlords and tenants services
- Vendor selection list services



### **CUSTOMER AND CLIENTS TO BE SERVED**

Note that;

All Real Estate Consultants, Inc. customers/clients base:

- Minimum list/sale price of \$200,000.00
- Minimum lease/rent \$500

Note that;

Any licensee that engage customer/client below the minimum list/sale price/lease/rent listed above are to refer customer/client to another brokerage firm and may charge referral fee to broker of the other firm.

Note that;

Managers are allowed on an exception basis to engage clients with below minimum however must not engage any list/sale price below \$100,000.00 and all such contracts must be referred to another brokerage firm.

### **MARKET AREA**

Market area to be covered

Note that;

All Real Estate Consultants Inc. market area is Georgia:

- All major county/municipalities in the state in which the branch is located

Note that;

In GA the market area is:

- Carroll County
- Clayton County
- Cobb County
- DeKalb County
- Douglas County
- Fulton County, North Fulton County, South Fulton County
- Gwinnett County
- Henry County
- Paulding County



## **OBJECTIVE**

Note that;

Objectives are overall accomplishments that need to be met in order to achieve the goals of the mission statement.

Note that;

All licensees' objectives should include:

- Developing/market brand name
- Staying current with real estate trends by educating themselves on all aspects of real estate
- Staying current with all laws, both state and federal
- Staying current with all types of contracts
- Staying current with property for sale in market area
- Staying current with property for rent/lease in market area
- Staying current with commercial properties for sale/rent/lease in market area
- Staying current with trends in real estate market area
- Staying current with relocation of populations/people trends
- Develop relationship with developers
- Develop relationship with builders
- Develop relationship with businesses
- Develop relationship with professionals
- Market buyers in market area
- Market sellers in market area

## **PLANS**

Note that;

Plans are the general procedures to follow to meet the specified objectives

Note that;

Licensees should:

- Engage educational material to stay up to date with all laws
- Give business card out to everyone licensee comes into contact with
- Engage industry material to stay up to date with market trends



- Engage MLS/FMLS/HUD/WEB SITES to stay up to date with properties in the market in market area
- Engage/Market festival in market area
- Engage/Market builders in market area
- Engage/Market businesses in market area
- Engage/Market professionals in marker area
- Engage/Market chamber of commerce in market area
- Engage/Market travel site/magazine/publication in market area
- Engage/Market buyers in marker area
- Engage/Market sellers in marker area

### **TACTICS**

Note that;

Tactics are specific activities you will need to engage in to complete the plans

Note that;

Licensees should:

- Give business card to everyone
- Set up and attend regular festival booths in market area
- Become members with real estate associations
- Read real estate industry materials
- Develop relationship with businesses with regular solicitation
- Offer businesses employee benefit credit at closing of \$1000.00
- Develop relationship with builders with regular visitation to builder developments
- Develop relationship with chamber of commerce in market area with regular solicitation
- Develop relationship with travel agencies with regular solicitation
- Develop relationship with teacher associations

### **LOCAL BUSINESS LICENSES AND TAXES**

Note that;

Depending on location, you may be required to obtain local business licenses

Note that;

The local business licenses are required in addition to the real estate license for the company and the licenses for the individuals working at the company





Note that;

A particular municipality or county may levy a license, occupational or professional tax

Note that;

According to Georgia law, these taxes can only be applied where the broker has a principal office or branch office

Note that;

According to Georgia law, if the municipality or county levies a tax based on the company's gross receipts, transactions are only included when the property is in the boundaries of the jurisdiction

#### **LOCATION**

Note that;

Depending on location, there may be restrictions related to the location

Note that;

The location of a real estate company must conform to all of the following restrictions which apply:

- Local zoning requirements
- Deed restrictions
- Subdivision regulations
- Condominium regulations

Note that;

According to the Americans with Disabilities Act, sales offices are considered "public" accommodations

Note that;

The American with Disabilities Act is a federal law requiring sale offices to be assessable to individuals with disabilities

Note that;

The American with disabilities act may require sale offices to provide special services, such as large print materials for the visually impaired and telecommunications for the hearing impaired



## **INSURANCE**

Note that;

When starting a business, the business should consider carrying insurance against the following risks:

- Fire
- Theft
- An accident occurring on company property
- A disability
- An interruption of business
- An employee taking company funds
- Errors and omissions insurance policy; errors and omissions policies insure a company and its salespeople against a customer or client filing a lawsuit

Note that;

Errors and omissions policies typically cover the costs of the lawsuit and any subsequent losses

Note that;

In some states, real estate companies are required by law to carry errors and omissions policies

Note that;

Errors and omissions policies are NOT required in Georgia

Note that;

Errors and omissions policies can vary greatly; the following features should be examined carefully when purchasing policy:

- The types of actions that are NOT covered by the policy
- Coverage for lawsuits filed during the term of the policy, but related to transactions occurring before the policy went into effect
- Coverage for lawsuits filed after the policy expires, but related to transactions occurring while the policy was in effect
- Coverage for a salesperson or associate broker who leaves to go to another company
- Decisions regarding out of court settlements—is this decision made by the insurance agent or the policy holder
- The amount of the deductible—lowering the deductible raises the cost of the policy



Note that;

Before purchasing an errors and omissions policy, it is wise to have an attorney go over the policy to make sure the coverage provided is adequate

### **REAL ESTATE MATH**

Note that;

There is one general math concept

Note that;

Assuming a parcel of land represent a square that measures 4 miles on each side, there are two ways this square can be described:

- 4 miles square, if each side of the square is 4 miles long
- 16 square miles

Note that;

The area of a square is defined as the length of the two sides multiplied by each other and if the length of each side of the square is 4 miles long then the total area of the square would be  $4 \times 4 = 16$  square miles

Note that;

There are basic facts in real estate math which are:

- 1 acre = 209 feet x 209 feet
- 1 acre = 209 feet square (rounded) = 208.71 feet square
- 1 acre = 43,560 square feet (rounded) or  $208.71 \times 208.71 = 43,559.86$
- 1 mile = 5,280 feet
- 1 mile = 320 rods
- 1 rod = 16.5 feet

Note that;

The key to working most math problems in real estate is to be able to recognize a few basic types of situation and use a simple formula for the situation at hand

Note that;

Many problems are reducible to a situation in which three numbers are involved, two of which are known, and one of which is unknown



Note that;

A big part of learning how to solve these problems is learning how to recognize and name the type of problem you are working with and once you are able to do this, the process of completing the necessary calculations is much simpler

Note that

There are four types of problems:

- Commission
- Investment
- Value
- income

### **COMMISSION PROBLEMS**

Note that;

Problems involving commissions paid on the sale of real estate will be called commission problems

Note that;

In solving commission problems, you will be working with a way of organizing information and this method of organization is referred to as the "T-bar"

Note that;

You will use some basic terms:

- (C) Commission (C) = the amount of a broker commission receives for selling a property
- (P) Sales price (P) = the amount the property sells for
- (R) Rate of commission (R) = the commission expressed as a percentage of the sale price

Note that;

The best way to remember this formula is to remember CPR. This will be the code for commission problems



Note that;

We can express the relationship between these three numbers/letters using the T-bar as follows:

	<u>Commission(C)</u>	
Sale price (P)		rate of commission(R)

Note that;

The position of the numbers in the T-bar is important, and determines whether a number is to be multiplied or divided by another number

Note that;

Whenever using the T-bar method/formula:

- The first letter of the code (CPR) ALWAYS goes on top of the T-bar
- The second letter ALWAYS goes on the bottom left
- The third letter ALWAYS goes on the bottom right

Note that;

The first step in solving a problem using the T-bar method is to block out one of the letters in the T-bar and the letter we block out is ALWAYS the one that is an unknown. It is the number we are trying to find by solving the problem

Note that;

The direction of the line tells us whether to multiply or divide the numbers represented by the letters

Note that;

If we block out the top letter, we are left with the P and R of the code CPR, remember the first letter ALWAYS goes on top of the T-bar and the P and R are side by side each other

Note that;

The vertical line between the letters/numbers means that we multiply the two numbers

Note that;

If we block out the P of the code CPR, we are left with the C and R with a horizontal line between them, the C is above R



Note that;

The horizontal line means that we divide the top number by the bottom number

Note that;

If we block out the R of the code CPR, we are left with the C and P with a horizontal line between them, the C is above the P

Note that;

The horizontal line means that we divide the top number by the bottom number

### **INVESTMENT PROBLEMS**

Note that;

Investment problems may also be worked using the T-bar formula

Note that;

The T-bar is as follows:

	Profit	
Amount Invested	Rate of return	

Note that;

We use the basic code for investment problems is "PAR"

Note that;

PAR =:

- (P)rofit
- (A)mount invested
- (R)ate of return

Note that;

Profit (P) = the profit is the amount of money made on an investment or it may also be called "yield" or "income" or "return"; annually; profit must be converted to an annual amount

Note that;

Profit does not include the original amount of money the investor invested and got back. It is ONLY the additional money earned he/she invested originally



Note that;

To determine profit, you must first subtract amount originally invested

Note that;

Amount invested (A) = this is the amount of money the investor spent initially for a property and is the selling price NOT the down payment

Note that;

Rate of return (R) = this is the percentage (rate) that the investor makes (or wants to make) on an investment

Note that;

In using the T-bar to solve investment problems, the first letter (P) always goes on top the of T-bar formula

Note that;

In using the T-bar to solve investment problems, the second letter (A) always goes on the bottom left

Note that;

In using the T-bar to solve investment problems, the third letter (R) always goes on the bottom right

Note that;

The vertical line between the letters/numbers means that we multiple the two numbers

Note that;

The horizontal line means that we divide the top number by the bottom number

Note that;

When solving investment problems where borrower take out loan that needs to be paid back in 12 months and then the lender immediately sell the note to investor, you will need to do two steps

Note that;

The first step is to solve for what the initial lender will profit; next add profit plus original note amount together; secondly subtract amount what the investor paid from the total that you added together from first step, to get net profit for investor, and then solve for investor's rate of return



**VALUE PROBLEMS**

Note that;  
 Value problems can be solved using the T-bar formula  
 Note that;  
 The formula for value problems uses the code: IRV

Note that;  
 IRV stands for:

- I = (I) ncome
- R = (R) ate of capitalization
- V = (V) alue of property

Note that;  
 The elements in the value T-bar (IRV)

= income refers to the ANNUAL NET INCOME that an income-property produces

Note that;  
 The (I) in income have two important elements:

- Annual net income is used. If the income is expressed as monthly or quarterly income, it must be converted to annual net income before using the T-bar
- Net income is used. If gross income is given, it must be converted to net income before using the T-bar

Note that;  
 Using the T-bar formula:

$$\frac{\text{Income}}{\text{Rate of Capitalization}} = \text{Value of Property}$$

Note that;  
 As an example; if an investor is losing \$150.00 per month net income. A capitalization rate of 10% for the building is appropriate. You will solve this problem as follows:

- Income lost = \$150.00 x 12 = \$1,800.00 and \$1,800.00 divided by .10 = \$18,000.00

Note that;  
 The value T-bar is used to work problems based on the income method for appraising income-producing property





## **INCOME**

Note that;  
The income method uses the process of capitalization

Note that;  
Capitalization is the process of determining the value of a property from how much net income it produces

## **RATE OF CAPITALIZATION**

Note that;  
The capitalization rate or the rate of Capitalization refers to or is the percentage used for the “rate of return” that an investor obtains or desires to obtain by buying and owning the income-producing property

## **VALUE OF PROPERTY**

Note that;  
The Value is the “market value” of the income-producing property

## **LOAN PROBLEMS**

Note that;  
The T-bar formula can be used to solve loan problems

Note that;  
The code to used T-bar formula for loan problems is: IRB

Note that;  
IRB states for:

- I = interest paid to lender
- R = rate of interest
- B = balance on loan



Note that;

	Interest paid to lender
Rate of interest	Balance on loan

Note that;

The (I) interest is the money the borrower pays the lender for the use of the lender's money.

Note that;

In working problems, the interest must be converted to interest earned in a year

Note that;

The (R) rate of interest is the percentage of the loan paid as interest in a year

Note that;

The (B) balance is the loan balance and is the amount owed on the loan at any point in time. It is also referred to as the principal on the loan

### **COST PROBLEMS**

Note that;

The reason these problems are called a "cost" problem is that it asked you to determine the original cost of the property/house

Note that;

First, you are given the price at which the property just sold

Note that;

Second, you are given a percentage by which the recent selling price exceeds the original price

Note that;

Third, you are asked to find the original price

Note that;

To solve cost problems involves only three steps:

- ADD the percent that price has increased to 100%
- Convert this percent to decimal
- Divide the recent sales price by the answer from the last step/convert percent to decimal



## PRICE PROBLEMS

Note that;

The reason this is called a “price” problem is that it asks you to determine the sales price of the house

Note that;

First, you are given a net amount that will be received or has been received

Note that;

Secondly, you are given a percentage by which the selling price exceeds the net amount

Note that;

Third, you are asked to find the selling price

Note that;

To solve price problems involves three steps:

- Subtract the percent to be deducted from 100%
- Convert this percent to a decimal
- Divide the net to be received by the answer from the last step

Note that;

The best way to remember whether to add or subtract a percent to 100% is use the work CAPS:

- C = cost problem
- A = add a percent to 100%
- P = price problem
- S = subtract a percent from 100%

Note that;

If you are working a pricing problem that includes expenses that was deducted from seller check in addition to agent commission, there are four steps:

- Add back deduction/expenses to the net check amount received by seller
- Subtract the broker’s commission from 100%
- Convert the percent to a decimal
- Divide the amount from step 1 by the converted percent decimal



Note that;

If you are working a pricing problem and you wanted to know how much a property price must increase for the seller to break even when you are giving the sale price upfront, there are four steps:

- Subtract the broker's commission from 100%
- Convert the percent to a decimal
- Divide the amount from step 1 by the converted percent decimal
- Subtract the answer in step 3 to the given sale price upfront

### **SELLER'S CLOSING STATEMENTS**

Note that;

A major purpose of completing the seller's closing statement is to determine how much the seller will net at closing to complete the sale

### **PRORATING COSTS**

Note that;

When an item is prorated, this means simply that part of the cost will be paid by the seller and part will be paid by the buyer

Note that;

Prorating is the process of determining how much of the item will be paid by the buyer and how much will be paid by the seller, based on how long each party will own the property

Note that;

Each item is prorated over a different time period. The proration period corresponds to the period over which a particular item is paid

Note that;

The seller is responsible for the cost item from the beginning date through the date of closing. The buyer is responsible for each item from the day "after" closing through the ending date

Note that;

Intangible tax is usually not prorated at closing



Note that;

Four months of the year has 30 days in the month:

- April
- June
- September
- November

Note that;

There are some basic points about the process; the CLOSING DAY is the day on which ownership is transferred from the seller to the buyer for a purchase transaction.

Note that;

The seller owns the property before the day of closing. The buyer owns the property after the day of closing.

Note that;

On the day of closing day the seller actually owns the property for part of the day, before all paperwork is signed; the buyer owns the property for part of the closing day, after paperwork is signed

Note that;

To avoid having to compute costs for part of a day for the seller and part of the day for the buyer, there is a general rule FOR THE PURPOSE OF PRORATING COSTS:

- The SELLER owns the property on the day of closing FOR THE ENTIRE DAY

Note that;

This means that the seller is responsible for all expenses of ownership on the day of closing

Note that;

The second concept related to prorating has to do with the beginning and ending dates for a prorated item to be in effect

### **BEGINNING DATE**

Note that;

The first date that a prorated item is in effect is called the beginning date; for purposes of prorating payments at closing, the period from the beginning date of an item to be prorated until closing is the responsibility of the seller



## **ENDING DATE**

Note that;

The last date that a prorated item is In effect is called the ending date; for purposes of prorating payments at closing, the period from closing through the ending date of an item to be prorated is the responsibility of the buyer

Note that;

The three major cost items that must be prorated on the date of closing are: property taxes, hazard insurance/homeowner insurance and mortgage interest.

- **PROPERTY TAXES**

Note that;

Property taxes are prorated over the “calendar year” for which taxes are due

Note that;

Taxes are paid and prorated over the calendar year, from January 1 (beginning date) through December 31 (ending date)

Note that;

Property taxes are assessed for a 12 month tax year. Each county or city that levels the taxes determines when the tax year begins and ends and when taxes for thee are due and payable

Note that;

Property taxes are handled differently in the seller’s closing statement depending on whether the taxes have been paid by the seller prior to the day of closing

Note that;

The two general rules for prorating taxes:

- If the seller has paid the taxes in advance, prorate the BUYER’S portion of the tax bill to determine the seller’s refund
- If the seller has NOT paid the taxes in advance, prorate the SELLER’S portion of the tax bill to determine the seller’s payment due



### **SELLER TAXES ALREADY PAID FOR YEAR**

Note that;

If the owner is selling the property on September 10 (the closing date), and has paid the property taxes through December 31 for the current year; the seller is entitled to a refund of part of the tax payment which covers the period for September 11 through December 31

Note that;

To determine the seller's refund for this period, we must PRORATE the BUYER'S portion of the taxes for the year (the amount of taxes the buyer is responsible for paying)

Note that;

The process of prorating the taxes in the situation just illustrated involves three steps:

- Determine how many days out of the year the BUYER will own the property
- Determine how much tax is due for each day
- Calculate the buyer's tax payment from these two numbers

Note that;

The buyer's tax payment is the amount to be refunded to the seller

Note that;

There are four specific steps required to determine the amount of seller refund:

- Determine the number of days IN THE MONTH OF CLOSING that the buyer was responsible for the taxes
- Determine the total number of days that the buyer was responsible for the taxes (the day after closing through the ending date for the prorated item)
- Determine the amount of taxes due per day: annual tax bill divided by number of days in the year

Note that;

If the annual tax is 877.00 and the number of days in year is 365:  $877.00/365 = \$2.4027$  per day

Note that;

Always round off your calculation to at least 4 decimal places as listed above



- Multiply the number of days the buyer was responsible for the taxes by the amount of tax per day

Note that;

If the seller had already paid taxes for the year and the loan closed on September 10<sup>th</sup>, then the buyer would be responsible for 112 days x \$2.4027 = \$269.10 which is the same amount of refund to the seller

### **SELLER TAXES HAVE NOT BEEN PAID PRIOR TO CLOSING**

Note that;

In some situation, the property tax bill may not have been paid by the seller prior to closing and the seller is NOT due a refund, since he/she has not already paid the tax bill

Note that;

If the seller has NOT already paid property taxes for the year, the seller must pay his/her prorated share of taxes due on the date of closing

Note that;

To determine the amount of taxes the seller must pay, we first PRORATE the seller's tax payment. We prorate the seller's tax bill using a three step process:

- Determine how many days out of the year the seller will own the property
- Determine how much tax is due for each day
- Calculate the seller's tax payment from these two numbers

Note that;

Since the seller has not paid the taxes previously, we calculate the amount of tax payment that the seller is responsible for.

Note that;

There are four steps required:

- Calculate the number of days the seller was responsible for the tax bill PRIOR TO THE MONTH OF CLOSING
- Add the number of days the seller is responsible for taxes in the month of closing; the number of days the seller is responsible for the taxes is always the same as the date on which closing occurs





- Determine the amount of taxes for each day of the year: annual tax bill/365 days
  - Multiply the number of days the seller was responsible for the taxes by the amount of the tax per day
- **HOMEOWNER'S INSURANCE/HAZARD INSURANCE**

Note that;

Homeowner's insurance is prorated over the actual period for which the policy was in effect (usually one year)

Note that;

If the policy effective date is March 1<sup>st</sup> through February 28 of the next year; then the prorated period of one year would begin March 1<sup>st</sup> and ending on February 28 of the following year (the dates the policy is in effect)

Note that;

You will never have to determine how much the SELLER WILL HAVE TO PAY at closing for homeowner's insurance; in almost all cases, the homeowner's insurance premium has been paid prior to closing

Note that;

When you prorate the payment of homeowner's insurance, it will ALWAYS have been paid in advance, and you will compute a REFUND to the seller for the buyer's period of ownership

Note that;

Homeowner's insurance premium is prorated ONLY when the buyer is assuming the seller's existing homeowner's insurance policy

Note that;

It is not always done when the seller's existing LOAN is assumed, only when the parties AND the insurance company agree that the policy will be assumed

Note that;

Insurance companies will frequently NOT allow the buyer to assume the seller's existing policy; you will NOT have to do a proration for insurance premiums, even if the seller's MORTGAGE is assumed



Note that;

When the buyer purchases a new homeowner's policy, the seller is entitled to a refund for the unused portion of his/her annual premium, but this refund IS NOT INCLUDED IN THE SELLER'S CLOSING STATEMENT and the seller must request a refund for unused premium from the insurance company after closing. Each company determines its own policy on how much premium will be refunded

Note that;

The insurance policy coverage is usually NOT for a calendar year, January-December; the beginning and ending dates for the insurance policy are determined by when the policy was written and vary for each individual case

Note that;

If the buyer will assume the seller's insurance policy and the seller has already paid the annual premium, the seller's will be due a refund and only responsible for paying the part of the annual insurance premium that covers the period from the start of the effective date of the policy to the day of closing

Note that;

The buyer is assuming the seller's policy, is responsible for the part of the annual premium that covers the period from the day after closing to the end of the policy period

Note that;

The amount of the refund is determined by calculating the amount the BUYER is responsible for paying, using the four steps:

- Determine the number of days IN THE MONTH OF CLOSING that the buyer is responsible for the insurance premium on the policy being assumed; this is done by: subtract the date of closing from the number of days in that month
- Determine the total number of days that the buyer is responsible for the insurance ( the day after closing through the ending date of the policy period)
- Determine the amount of insurance premium due for each day of the year (annual premium divided by 365)
- Multiply the number of days the buyer is responsible for the insurance by the amount of premium per day



- **MORTGAGE INTEREST**

Note that;

Interest on mortgage loans is usually paid in arrears. Each payment covers the interest accrued during the PREVIOUS month

Note that;

When a mortgage loan is based on monthly payments, the “month” as defined by the payment schedule “can” begin on “any” day of a calendar month; if a loan initiated on the 20<sup>th</sup> day of March will have a monthly due date on the 20<sup>th</sup> of every month thereafter. The interest portion of such a loan would cover the period from the 20<sup>th</sup> of each month through the 19<sup>th</sup> of the following month

Note that;

**IN STANDARD PRACTICE, THE MONTHLY PAYMENT DUE DATE IS THE FIRST OF THE MONTH**

Note that;

The proration of interest is computed using basically the same method as for prorating taxes and insurance payments, but there are two minor differences:

- The proration period is one month rather than one year
- The daily interest payment is calculated using 360 days per year rather than 365 per year

Note that;

Some lending institutions use a 365 day year for their calculations, and some use a 360 day year

Note that;

Licensee should find out which calculation the lender is using however should use a 360 day year to be more conservative (which means it will give a slightly HIGHER cost than the other method) until they can determine which calculation is being used by the lending institution

Note that;

Mortgage interest is prorated over the month during which the closing occurs



Note that;

Mortgage interest is paid monthly and is prorated for the month of closing only. The beginning date is the first date of the closing month to the ending date of the closing month; example: 09/01/beginning date to 09/30/ending date

Note that;

The prorated interest is calculated using the following three steps:

- Determine the number of days in the month of closing the SELLER is responsible for the interest; since interest is paid in arrears, the seller is responsible for the interest which has accrued since the last payment was due; the last payment before the closing on September 10 for example, was due on September 1<sup>st</sup>. interest starts accruing on that day. This means that the seller is responsible for paying 10 days of interest at closing; assuming that all payments are due on the first of the month, the number of days of accrued interest will always be the same as the date of closing
- Determine the amount of interest due for each day of the year as follows:
  - ✓ Annual interest divided by 360 days (365 days if known)
- Multiply the number of days the seller is responsible for the mortgage interest by the amount of interest per day

Note that;

In some situations, the interest portion of a mortgage payment may be paid in ADVANCE and in that case, the seller would be entitled to a refund, and the computation of the prorated amount would be based on the number of days the buyer was responsible for the interest

Note that;

If the seller HAS NOT made the mortgage payment in the month of closing, the seller must pay the full payment due for the month of closing PLUS the accrued interest for the period from the first of the month through closing



## TRANSFER TAX

Note that;

The transfer tax is a tax “charged” by the state “to the seller” whenever title to a property is transferred

Note that;

Since the transfer tax is charged to the seller, the seller normally pays the transfer tax, however it is a negotiable item and it can be paid by either buyer or seller

Note that;

The transfer **TAX IS PAID TO THE CLERK OF THE SUPERIOR COURT IN THE COUNTY** where the property is located and is “paid when the warranty deed is recorded”

Note that;

The amount on which the tax is paid is different for new loans and loan assumptions

Note that;

When the seller’s loan is paid off and a new loan is obtained by the buyer, the tax is **COMPUTED ON THE ENTIRE SALES PRICE**

Note that;

When the seller’s loan is assumed, the taxable amount is the difference between the sales price and the remaining balance on the seller’s loan

Note that;

If the seller takes a purchase money mortgage when the seller’s loan is assumed, it does not affect the amount on which the tax is computed. It is still computed the same way

Note that;

The transfer tax is paid at a rate of \$.10 (one dime) per one hundred dollars, or portion thereof, of the taxable amount



Note that;  
The transfer tax is computed as follows:

- Divide the taxable amount by \$100

Note that;  
If the result is not a whole number, you round UP to the next larger whole number, regardless of the size of the number after the decimal

- Multiple the results by \$.10

### **BUYERS CLOSING STATEMENT**

Note that;  
A major purpose of completing the buyer's closing statement is to determine how much the buyer will be required to pay at closing to complete the sale

### **INTANGIBLES TAX**

Note that;  
An intangible tax is a state tax which is charged on any new loan which is:

- Secured by a security deed
- Made for a period of longer than three years

Note that;  
The tax must be paid to the county in which the property is located

Note that;  
An intangibles tax must be paid by the lender within 90 days from the date the loan is executed

Note that;  
An intangibles tax is charged to the lender, but the lender usually passes the tax along to the buyer, so the **BUYER NORMALLY PAYS THIS TAX** at closing. However, it is a negotiable item, and the seller may agree to pay it



Note that;

The intangibles tax is entered as a cost to the seller in the seller's closing statement ONLY if the seller agrees to pay it

Note that;

In a typical transaction involving "only a new first mortgage loan", **THE TAX IS BASED ON, AND COMPUTED FROM, THE AMOUNT OF THE LOAN**

Note that;

If more than one new loan is involved in a transaction, the intangibles tax must be computed separately for each loan, such as a new loan taken out by the buyer and a purchase money loan made by the seller to the buyer; when this situation occurs and two loans are obtained, you should NOT add the amount to the two loans together and calculate the intangibles tax on the total amount

Note that;

The correct method is to calculate the tax on each loan and then add the two amounts together (this gives a different result in some cases because of rounding off)

Note that;

If a buyer assumes the seller's loan, and no additional loan is obtained from the seller or anyone else, there is no intangibles tax assessed

Note that;

If a buyer assumes the seller's existing loan and obtains a purchase money second mortgage loan from the seller, the intangibles tax is computed on the purchase money loan only, since it is the ONLY new loan

Note that;

The intangibles tax is paid at a rate of \$1.50 per five hundred dollars (\$500.00) or portion thereof, of the loan amount



Note that;

You compute the intangibles tax using the following method:

- Sale price x loan to value or 100,000.00/sale price x 80%/LTV = \$80,000.00/taxable amount divided by \$500 = 160

Note that;

If the result is not a whole number, you round UP to the next larger whole number, regardless of the size of the number after the decimal

- Multiple the results 160 x \$1.50 = \$240.00

### **MORTGAGE INSURANCE PREMIUM**

(PMI)

Note that;

Private mortgage insurance (PMI) is insurance which protects the LENDER against default by the buyer on a CONVENTIONAL loan

Note that;

Private mortgage insurance is usually required by the lender on any conventional loan with a loan to value ratio of greater than 80%; some lenders may also charge PMI on 80% conventional loans

Note that;

PMI is usually paid by the buyer, but it may be paid by the seller and it is entered in the seller's closing statement ONLY if it is paid by the seller

Note that;

Private mortgage insurance (PMI) is calculated as a percentage of the loan amount and the actual percentage depends on the loan to value ratio

Note that;

The percentage charged by a given lender for PMI may vary

(MIP)





Note that;

Mortgage insurance premium (MIP) is insurance which protect the LENDER against default by the buyer on FHA loans

### **CALCULATION OF LOAN AMOUNT**

Note that;

Since the loan amount and down payment on the property are necessarily related, licensee should use the following steps to compute the loan amount and the down payment:

- Compute the loan amount first
- Subtract the loan amount from the sale price to determine the down payment

Note that;

Different lenders have different policies on how to determine the exact amount of a loan as a percentage of the sale price

Note that;

Some lenders would make the loan for exactly as the amount of the percentage and other lenders would round the amount off to the next lowest \$100 for conventional loans

Note that;

FHA will approve loans in increments of \$50. And many lenders who make FHA loans, however, will make loans only in increments of \$100

Note that;

It is best to adopt a policy of always rounding the loan amount DOWN to the next lowest \$100 to insure that the contract that is written will be acceptable to any lender

Note that;

To compute the loan amount and down payment:

- If a property is being sold for \$87,500.00 with a 95% conventional loan:  $87,500.00 \times .95 = 83,125.00$



Note that;

You don't compute the down payment by multiplying 87,500.00/sale price by 5% because this would give you an incorrect value

- Round down to the next lowest \$100 = 83,125.00 = 83,100.0/loan amount
- Subtract the loan amount from sale price = 83,100.00 – 87,500.00 = 4400.00/down payment

### **INTEREST ADJUSTMENT**

Note that;

A lender usually requires the interest on the buyer's loan for the month of closing be paid in advance at closing

Note that;

The procedure of adjusting the payment date of the loan so that the payment is due on the first of the month is what requires that we make an interest adjustment, which we enter into the buyer's closing statement

Note that;

When a loan closing takes place on the first day of the month, there is no need to make an interest adjustment; when a loan closes on the first day of the month, interest will start accruing on that date. It is only when the closing takes place on some day other than the first that we need to make the adjustment; since the closing occurs on the first day of the month, there is no need for any adjustments to loan payments, and the payment will always be due on the first of the month

Note that;

Since interest is paid in arrears, the first payment will be due on the following month; this will include the interest accrued during the entire previous month and a small payment toward the principal

Note that;

When the closing is in the middle of the month, we need some way of setting up the mortgage that allow the lender to begin regular payments on the first of the month later on and the way this is done is to make a partial payment for the interest from closing through the end of the month and the partial payment is called an interest adjustment



Note that;

At closing, the buyer makes an interest adjustment payment that covers the interest for the period from closing through the end of the month of closing; this is the interest that would normally have been paid in arrears, but is paid in advance on the day of closing instead

Note that;

When interest is paid in advance, is why the entry for interest adjustment in the worksheet is entered in the category "PREPAID ITEMS" and since the interest is paid in advance, interest does not start to accrue until the first of the following month

Note that;

If a loan is closed on June 15 and interest is paid in advance with an interest adjustment to the end of the closing month, then the first payment will not be due until August 1<sup>st</sup> because interest is paid in the arrears; the first regular payment is due on the first of the SECOND month after closing

Note that;

The same situation will apply as above in the case of ANY closing that does not occur on the first day of a month

Note that;

If closing takes place on the last day of any month, such as May 31, there is still an interest adjustment required; the interest adjustment on the day of closing covers that day only

Note that;

The accrued interest is paid by the seller and the interest adjustment is paid by the buyer, both buyer and seller pay interest on the day of closing, but on different loans.

Note that;

Since the buyer pays interest on the day of closing on their loan on the day of closing, through the end of the month, the first step is to determine the number of days in the month of closing for which the buyer must pay interest

Note that;

In general, the number of days for which interest was NOT paid is always equal to one less than the date of closing; if closing is on the 10<sup>th</sup> of a month, interest was NOT paid for 9 days and if closing is on the 25<sup>th</sup> of a month, interest was NOT paid for 24 days

Note that;

Once you know the number of days on which the buyer did NOT pay interest, you can determine the number of days on which the buyer DOES pay interest



Note that;

To do this, you simply subtract the number of days the buyer DID NOT PAY INTEREST/DOES NOT PAY INTEREST from the number of days in the month:

- If the loan closed on the 12<sup>th</sup> of March, which has 31 days in the month, you subtract 11 (the number of days the buyer does not pay interest) from 31 = 20 days the buyer will be responsible for interest in March

Note that;

Once you know how many days of interest a buyer pays at closing, the next step is to determine how much interest is due per day

Note that;

First, multiply the amount of the loan by the interest rate to get the amount of interest paid for one year:

- Loan amount x interest rate = interest per year

Note that;

Secondly, divide the result by 360 to get the amount of interest paid per day:

- Interest per year divided 360 = interest per day

Note that;

The last step is to multiply the amount of interest per day by the number of days of interest the buyer must pay to obtain the interest adjustment:

- Interest per day x number of days buyer is responsible for

Note that;

There are five steps to solve a problem for interest adjustment where the loan amount is 65,000.00 and the interest rate is 10.5% closing on July 15:

- Step 1)  $15 - 1 = 14$  = number of days interest not paid
- Step 2)  $31 - 14 = 17$  = number of days interest to be paid
- Step 3)  $\$65,000.00 \times .105 = \$6825$  interest per year
- Step 4)  $\$6825$  divided by 360 =  $\$18.9583$  interest per day



Step 5)  $17 \text{ days} \times \$18,9583 = \$322.29$  interest adjustment

### **HAZARD INSURANCE PREPAYMENT**

Note that;

The amount of hazard insurance prepayment depends on whether the buyer obtains a new hazard insurance policy or assumes the seller's existing policy

Note that;

When a **"NEW LOAN"** is obtained by the buyer, the lender will require that the buyer prepay the entire first year's premium on the homeowner's policy

Note that;

When the buyer **"ASSUMES THE SELLER'S EXISTING MORTGAGE"** rather than obtaining a new loan, the buyer may have two options in some cases:

- Assume the seller's hazard insurance policy

Note that;

When the buyer assumes the seller's policy, the amount of the buyer's required prepayment for hazard insurance is equal to the prorated amount of the seller's refund

- Obtain a new policy

Note that;

When the buyer obtains a new policy, the lender will require prepayment of the first year's premium

### **ESCROW ITEMS**

Note that;

Some loans require that the borrower establish an escrow account for taxes and hazard insurance and make payments into that escrow account each month along with his/her regular monthly mortgage payment and the resulting payment is called PITI payment since it includes not only principal and interest on the loan, but an amount to be paid into escrow for taxes and insurance



Note that;

Escrow items deals with reserves deposited with the lender:

- **PROPERTY TAX ESCROW**

Note that;

The amount of the tax prepayment which the lender can require a buyer to make to set up an escrow account is regulated by the real estate settlement procedures act (RESPA)

Note that;

Under RESPA, the maximum amount of prepayment that can be required varies with the month of the year that the closing takes place

Note that;

The limit on the number of months of prepayment which may be required for taxes is summarized as follows:

- Jan = 8
- Feb = 9
- Mar = 10
- Apr = 11
- May = 12
- Jun = 13
- Jul = 14
- Aug = 15
- Sep = 4
- Oct = 5
- Nov = 6
- Dec = 7

Note that;

The number on the right in the chart represent the number of months of tax payment that are prepaid at closing to set up the tax escrow account

Note that;

In using the chart above, you first determine the month of the first regular mortgage payment; the months in the chart above represent the first payment



Note that;

Next, look at the number on the right in the chart to find the maximum number of month's payment that may be required by the lender for taxes

Note that;

Next, determine one month's tax payment, and multiply that number by the number on the right to get the amount of the tax prepayment required

Note that;

If closing is on July 10, the first regular mortgage payment is on September 1st

Note that;

One month's payment is equal to the **ANNUAL TAX BILL DIVIDED BY 12**

**EXCEPTION:**

Note that;

If closing is July 1<sup>st</sup>, only three months for tax reserves is required

▪ **HAZARD INSURANCE ESCROW**

Note that;

Hazard insurance is also called homeowner's insurance

Note that;

At closing, the buyer is required to pay an amount to establish the escrow account for insurance, and to cover the first monthly escrow payment

Note that;

When the buyer takes out a new loan, the lender will require the prepayment of one year's hazard insurance premium at closing and the insurance ESCROW payment is in addition to this payment of one year's premium

Note that;

The amount of the insurance escrow payment required at closing will vary from lender to lender, but will usually be equal to either 2 or 3 months insurance payment

Note that;

It is best the use (3) three months to be conservative



- **MORTGAGE INSURANCE ESCROW**

Note that;

There are two categories of loans for which a buyer might have to pay mortgage insurance:

- Conventional loans of above 80%
- FHA loans

**CONVENTIONAL LOANS ABOVE 80%**

**PRIVATE MORTGAGE INSURANCE (PMI)**

Note that;

Private mortgage insurance (PMI) is paid as a percentage of the loan amount and the exact percentage may vary from lender to lender

Note that;

As an example:

90% loans = 2% of the loan amount

95% loans = 2.5% of the loan amount

Note that;

PMI is an expense to the buyer in taking out a new loan above 80% LTV, and it is normally paid by the buyer

Note that;

PMI is a negotiable item, and may be paid by the seller

Note that;

If the buyer is to pay the PMI, the amount is calculated and entered in the buyer's portion of the closing statement

Note that;

If the seller is to pay the PMI, it must all be paid in cash at closing and the amount is entered in the seller's portion of the closing statement





Note that;

If the buyer pays the PMI, it may be paid in any of three ways:

- It may be paid in full in cash at closing

Note that;

If the buyer pays the PMI in full at closing, the full amount is entered in the buyer's closing statement under "items required by lender to be paid in advance". In this situation, there is no entry for PMI in the reserves deposited with lender section because there is no escrow payment

- It may be financed in with the buyer's mortgage payment
- It may be paid partially in cash at closing with the remainder financed in with the monthly mortgage payment

Note that;

When the buyer pays part of the PMI in cash at closing, with the rest financed along with his/her monthly mortgage payment, the buyer must make a payment at closing to establish the escrow account for the mortgage insurance

Note that;

The amount of the escrow payment will vary depending on the lender's requirements, but will usually be equal to 2 or 3 monthly payments; it is best to collect 3 months to be conservative

Note that;

The amount of the monthly PMI payment is calculated using a standard factor

Note that;

The exact factor used will vary from lender to lender, but as an example, we will use a value of ¼% or (.0025)

Note that;

This factor (1/4% or .0025) is used to determine the ANNUAL amount of premium to be paid

Note that;

The amount of the MONTHLY payment is calculated from the ANNUAL amount



Note that;

To determine the monthly payment for a purchase price of \$80,000.00 at 90%:

- $\$80,000.00 \times .90 = \$72,000.00$

Note that;

When you are computing a loan amount in order to determine the PMI payment, you should round off to the next LOWEST \$100

- $\$72,000.00 \times .0025 = \$180.00/\text{year}$
- $\$180.00/12 = \$15.00/\text{month}$

Note that;

Since the lender may require 3 months of PMI to set up the escrow account at closing, the required escrow payment is  $\$15.00 \times 3 = \$45.00$

## **FHA LOANS**

### **MORTGAGE INSURANCE PREMIUM (MIP)**

Note that;

When any FHA loan is used to purchase property, FHA mortgage insurance must be purchased

Note that;

The mortgage insurance payment is usually referred to as the mortgage insurance premium (MIP)

Note that;

Between 1983 and 1990, the FHA charged borrowers an up-front payment at closing for the MIP

Note that;

The up-front payment for the MIP could be paid by the buyer or the seller

Note that;



In 1991, the FHA began charging monthly payments over a period of years in addition to the up-front payment for the MIP

Note that;

Regulations governing the payment of the MIP frequently changes, therefore licensees should contact local lender to keep up to date on the MIP and it payment

Note that;

The up-front and monthly MIP payments depend on the LTV ratio and the term of the loan:

#### **LTV BELOW 90%**

- 30 year loans  
2.25% up front plus .5% for 7 years
- 15 year loans  
2% up front and no monthly premium

#### **LTV 90% TO 95%**

- 30 year loans  
2.25% up front plus .5% for 12 years
- 15 year loans  
2% up front plus .25% for 4 years

#### **LTV OVER 95%**

- 30 year loans  
2.25% up front plus .5% for 30 years
- 15 year loans  
2% up front plus .25% for 8 years

Note that;

To establish an escrow account for the monthly MIP payment, the lender may require the buyer to pay 2 or 3 months payments in advance at closing



Note that;

At closing, the buyer must make a prepayment, for property taxes and insurance, which is used to set up the escrow account; as the monthly mortgage payments are made, the amount of the escrow payment is deposited to the escrow account

### **RESIDENTIAL MORTGAGE FRAUD ACT**

Note that;

Georgia has passed legislation called the Georgia "Residential Mortgage Fraud Act" (RMFA) and became effective on May 5 2005

Note that;

The RMFA includes the following provisions:

- Fraudulent activities that the law considers mortgage fraud

Note that;

The law considers the following activities committed by a person with the intent to defraud as acts of residential mortgage fraud:

- ✓ Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process
- ✓ Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process
- ✓ Receiving any proceeds or any other funds in connection with a residential mortgage closing that such person knew resulted from a violation of the above activities of this code section
- ✓ Conspiring to violate any of the provisions of paragraphs 1, 2 or 3 of this code section
- ✓ Filing or causing to be filed with the official registrar of deeds of any county of the state any document such person knows to contain a deliberate misstatement, misrepresentation or omission, (O.C.G.A 16-8-102).



- Definitions of terms

Note that;

The mortgage lending process, as referred to in O.C.G.A 16-8-101 (1) is defined as:

- ✓ The process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan

Note that;

The law considers the documents involved in the mortgage lending process to include, but are not limited to:

- ✓ Uniform residential loan applications or other loan applications
- ✓ Appraisal reports
- ✓ HUD-1 settlement statements
- ✓ Supporting personal documentation for loan application, including:
  - ❖ W-2 forms
  - ❖ Verification of income and employment
  - ❖ Bank statement
  - ❖ Tax returns
  - ❖ Payroll stubs
  - ❖ Any required disclosures (O.C.G.A. 16-8-101 (1)).

Note that;

According to law, pattern of residential mortgage fraud means:

- ✓ One or more misstatements, misrepresentation, or omissions made during the mortgage lending process that involve two or more residential properties, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics. (O.C.G.A. 16-8-101 (2) )

Note that;

The law defines “person” as:

- ✓ A natural person, corporation, company, limited liability company, partnership, trustee, association, or any other entity (O.C.G.A. 16-8-101 (3))



Note that;

According to O.C.G.A. 16-8-101 (4):

- ✓ Residential mortgage loan means a loan or agreement to extend credit made to a person, which loan is secured by a deed to secure debt, security deed, mortgage, security interest, deed of trust, or other document representing a security interest or lien due on any interest in one-to-four family residential property located in Georgia including the renewal or refinancing of any such loan
- Applicable venues

Note that;

To be considered a violation of the RMFA, the fraudulent activity must have been committed in one of the following locations:

- ✓ In the county in which the residential property for which a mortgage loan is being sought is located
- ✓ In any county in which any act was performed in furtherance of the violation
- ✓ In any county in which any person alleged to have violated this article had control or possession of any proceeds of the violation
- ✓ If a closing occurred, in any county in which the closing occurred
- ✓ In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds (O.C.G.A. 16-8-103)

Note that;

Section 16-8-104 of the O.C.G.A. provides that district attorneys and the Attorney General of the state are authorized to conduct the criminal investigation and prosecution of residential mortgage fraud cases that are applicable to the law

- Penalties imposed on violators of the law

Note that;

Article 5 of RMFA imposes penalties on violators of the law:

- ✓ Any person violating this article shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten years, by a fine not to exceed \$5,000.00 or both



- ✓ If a violation of this article involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, said violation shall be punishable by imprisonment for not less than three years nor more than 20 years, by a fine not to exceed \$100,000.00 or both (O.C.G.A. 16-8-105 (a)(b))

Note that;

Each residential property transaction that violates Article 5 of the RMFA and law is considered a separate offense and is, therefore, individually punishable by law

Note that;

Persons found guilty of violating the Georgia RMFA on multiple occurrences can be penalized by both fines and imprisonment

Note that;

Section 16-8-106 of the law, O.C.G.A, provides that:

- ✓ All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this article shall be subject to forfeiture to the state
- ✓ The District attorney and the Attorney General may commence forfeiture proceedings under this article

Note that;

Violating the Georgia RMFA is a felony

- Georgia racketeer influenced and corrupt organization (RICO)

Note that;

The RMFA amends the state Racketeer Influenced and Corrupt Organization Act (i.e., RICO statute), to include mortgage fraud as a racketeering violation

Note that;

Persons found guilty of racketeering may be subject to:

- ✓ Five to twenty years imprisonment
- ✓ A fine of either \$25,000.00 or triple the amount of any financial value gained from such a violation, whichever is greater



Note that;  
The RMFA law is an amendment to Chapter 8 of Title 16 of the official code of Georgia Annotated (O.C.G.A), relating to offenses involving theft

Note that;  
It is located in Article 5 of Senate Bill 100, Section 16-8-100 through 16-8-106

### **DETECTION AND PREVENTION**

Note that;  
The more licensees can recognize the often subtle warning signs, the greater the likely hood mortgage fraud can be reported and prevented

Note that;  
Detecting and preventing mortgage fraud have to take place on several fronts and by all parties and professional involved in real estate sales and mortgage lending

Note that;  
Education on the schemes and tactics used to carry out fraudulent lending is the best means of detecting and preventing mortgage fraud; licensees must be aware of the many schemes and how they work so that they do not unknowingly or unwillingly become a party to unlawful behaviors

Note that;  
Licensees must become experts in mortgage fraud in order to minimize their risks and hopefully avoid transactions that are a part of such schemes

Note that;  
Education is best when combined with reporting mechanisms that allow consumers, real estate professionals, solicitors, appraisers, lenders and others involved in mortgage financing and refinancing to prevent members of these professions from victimizing borrowers or becoming victims themselves

Note that;  
Licensees should ask themselves several questions to determine if some transaction may be fraudulent:





- ✓ Who gave the earnest money check?

Note that;

It is common practice for buyers to pay their own earnest money and the earnest money deposit shows that the buyer is committed to purchasing the home

Note that;

If the seller or someone else pays the deposit, this may be an indication that the property is being purchased for someone else

Note that;

The lender may require the applicants to have their own funds before the loan is approved

- ✓ Was the property appraised at a value that is extremely high or higher than expected when compared to other homes in the neighborhood?

Note that;

If the appraisal is excessively high, the property value may have been unwarrantedly inflated and the home may possibly be a target for property flipping

- ✓ Did the buyer request that the seller increase the price and take out a second mortgage that will be absolved or released at closing after the buyer and seller have agreed on a purchase price?

Note that;

This may indicate that the buyer does not have money for the down payment or is trying to get a greater loan amount approved to pocket extra cash

- ✓ Did the buyer or broker ask that a portion of the fees paid at closing be paid to a third party for repairs or interior design, or contractor fees

- ✓ Is what the buyer is offering too good to be true

Note that;

Sometimes real estate professionals are lured into fraud scheme because of the promise of a lot of money in a short period of time; if a deal seems too good to be true, it usually is!!



Note that;

Things such as offering more than the listed purchase price or willingness to pay all of the closing costs should be a red flag to the licensee

- ✓ Is the lender willing to pay more for the title insurance than the price of purchase
- ✓ Has the property seen sold several times in a short period of time with increases in the sales price

Note that;

This may be a sign of property flipping

#### **PREVENTION OF MORTGAGE FRAUD**

Note that;

Licensees need to examine their business practices to make sure that they are abiding by all State and National laws when it concerns misrepresentation, falsification of documents, and outright lying to close a deal

Note that;

Licensees should also be reminded to always protect themselves against fraudulent deals, remembering that involvement in such deals could cause them to be convicted of a crime, lose their commissions, licenses and reputations

Note that;

Perhaps one of the greatest deterrents for mortgage fraud is reporting it when it occurs or when there are suspicious activities

Note that;

Below are some tips and practices that may help protect licensees from and prevent mortgage fraud:

- ✓ To avoid problems with lenders and buyers, the savvy real estate agent should put all the details of the deal in the contract
- ✓ If real estate professionals find themselves in situations where loan officers tell them to remove something or add something not contained in the original contract, agents should get guidance from their managing broker; a copy of the original document should be kept
- ✓ If a client or the loan officer used illegal procedures for loan processing and approval, advise your client and your broker of the consequences and document it in writing



- ✓ Do a comparable market analysis to be sure the appraisal estimation has not been inflated. Select 3-10 homes that coincide with the features of the property the buyer is interested in. the values should be fairly close
- ✓ Check the title history. If the property has been sold several times in a short time span, it may be possible that the valuations were inflated excessively
- ✓ Avoid unauthorized practice of law when writing contracts. Licensees need to be certain that their language is clear and that they stated what they intended in the contract. Some deals may require a contract other than the standard form contract some offices use and licensees should get as much advice and assistance as possible in these situations. Should situations arise that deal with contract law, for instance, and licensee is not sure what to do, they should consult an attorney
- ✓ The broker/managing broker need to supervise the licensees closely because lack of experience, coaching and education is what gets licensees in dilemmas, as opposed to lack of skill and ability

#### **REPORTING MORTGAGE FRAUD**

Note that;

The Georgia Association of Realtors (GAR) has added language to form agreements allowing practitioners to report these activities without violating their duties to their clients

Note that;

These provisions allow real estate licensees to obtain permission from their clients early in the business relationship to report any suspicious activities that might occur

Note that;

There are a number of local and national agencies and organizations that are equipped to and have committed to investigate predatory lending practices, such as:

- ✓ The Federal Bureau of Investigation (FBI)

Note that;

The FBI is working with State officials in undercover sting operations and other covert methods to bring these practices to an end



Note that;

The mechanism the FBI uses to take these reports is called SAR or suspicious activity report and real estate licensees or consumers may report any suspect activities to their FBI office

- ✓ The Federal Trade Commission (FTC)

Note that;

The FTC also investigates mortgage fraud and has the power to put businesses that operate using illegal practices out of business

Note that;

The FTC vigorously enforces anti-predatory lending practices and offers education to consumers on how to avoid being a victim of mortgage fraud and has been successful in getting millions of dollars refunded to consumers who have fallen victim to mortgage fraud

- ✓ Attorney General

Note that;

The Attorney General's office is dedicated to protecting the citizens of the State and looking out for the public interests

Note that;

The Georgia Residential Mortgage Act provides that district attorney and the attorney general of the State are authorized to conduct the criminal investigation and prosecution of residential mortgage fraud cases that are applicable to the law

- ✓ National Association of Realtor (NAR)

Note that;

Real estate licensees may also report suspicious activities of other real estate professionals to the National Association of Realtors (NAR)

Note that;

One of the major roles of NAR is to assist real estate practitioners in becoming successful agents



Note that;  
NAR established a code of ethics that members of the organization should operate by and each State also has a similar organization to NAR

Note that;  
Georgia has a Georgia Association of Realtor that functions similarly to NAR

### **TRENDS IN REAL ESTATE**

Not that;  
All agents should be aware of some recent trends in real estate, including the following:

- Buyer brokerage

Note that;  
In a traditional real estate relationship, a salesperson acts as an agent or subagent for the seller

Note that;  
More real estate companies are beginning to permit salespeople to act as buyer agents

Note that;  
Some companies, all agents function solely as buyer agents

- The 100% commission plan

Note that;  
In traditional real estate companies, each salesperson is paid a portion of the gross commission for the transactions he/she completes and the company retains the remainder of the commission to cover expenses

Note that;  
More companies are offering the 100% commission plan

Note that;  
In the 100% plan, each salesperson earns 100% of the commission and he/she pays the broker a monthly fee to cover expenses



## **OFFICE POLICIES**

Note that;

All branch office policies are subject to corporate approval and corporate policy and procedures/notations/guideline manual.

Note that;

All managing brokers/manager can/must set office policies for:

### **-OFFICE HOURS**

Note that;

The corporate office hours are: 10:00am to 6:00pm eastern standard time Monday through Friday.

Note that;

Qualifying broker/managers should be on call for agent/client questions during after regular office hours.

### **-VACATION POLICY**

Note that;

Managers are to approve vacation period for employees and ensure that all clients are professionally represented during vacation of any licensee/employee.

### **-USE OF OFFICE EQUIPMENT AND MATERIALS**

Note that;

Managers are to monitor the use of all office equipment and materials

### **-COMMISSION RATES CHARGED TO CLIENT, SUBJECT TO CORPORATE APPROVAL**

Note that;

All Real Estate Consultants, Inc. commission rate charged to client will be 6%.

Note that;

Any commission rate charged to client of less than 6% must have approval by the corporate office.



Note that;  
It is illegal for a licensee to claim that the real estate industry sets commission rates

Note that;  
Licensee must never claim or imply that they are required by law to charge a set commission rate.

Note that;  
Licensee can state that All Real Estate Consultants, Inc. charges a 6% commission rate for its professional services.

**-CHECKS/COMMISSIONS/DEPOSITS/EARNEST MONEY RECEIVED/PAID**

Note that;  
Managers must monitor all checks, commission received/paid, deposits and earnest money received/paid.

**-RENTALS/EQUIPMENT;** SUBJECT TO CORPORATE POLICY AND PROCEDURES

**-CONTRACTS;** SUBJECT TO CORPORATE POLICY AND PROCEDURES

**-AGENCY;** SUBJECT TO CORPORATE POLICY AND PROCEDURES

**-DISPUTES;** SUBJECT TO CORPORATE POLICY AND PROCEDURES

**-SALES OR PURCHASES MADE BY SALESPERSONS/AGENTS;** SUBJECT TO CORPORATE POLICY AND PROCEDURES.

**-INCOMING CALLS AND WALK-INS BY POTENTIAL CLIENTS AND CUSTOMERS;** SUBJECT TO CORPORATE POLICY AND PROCEDURES

**-DRESS CODE;** SUBJECT TO CORPORATE DRESS CODE POLICY



## **INSURANCE**

Note that;

All branches should have/maintain insurance for:

- Fire
- Theft
- Accident occurring on company property
- Disability
- Interruption of business
- Employee taking company funds
- Errors and omission insurance policy

-Have attorney review/go over insurance policy, looking for:

- Actions not covered.
- Coverage for lawsuits filed during the term of the policy and related transactions occurring before the policy went into effect.
- Coverage for lawsuits filed after the policy expires, but related to transaction occurring while the policy was in effect.
- Coverage for salesperson/associate broker who leaves to go to another company
- Decisions regarding out of court settlements-is the decision made by the insurance agent or policy holder.
- Amount of deductible

## **RECORD RETENTION AND ACCESSIBILITY**

Note that;

All managers are to be sure to check with state/local record retention statutes.

## **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)**

Note that;

OSHA requires that records of any occupational injury be maintained for five years and records of any exposure to toxic or hazardous materials be maintained for 30 years.





Note that;

All branches are to follow the below retention period:

- Accident reports and claims; **7 YEARS**
- Basic corporate document including bylaws, minutes, articles of incorporation, not-for-profit recognition letter from IRS, charter, annual financial operation, and sales reports; **PERMANENTLY**.
- General correspondence; **2 YEARS**
- Legal correspondence; **PERMANENTLY**
- Financial documents such as accounting journals and ledgers; **10 YEARS**
- Account receivable and credit (not cash) receipts; **2 YEARS**
- Audits; Permanently
- Billing and cash receipts record; until federal and state tax clearance
- Canceled general checks; **6 TO 10 YEARS**
- Canceled payroll checks; **3 TO 6 YEARS**
- Chart of accounts; **PERMANENTLY**
- Depreciation schedule; **PERMANENTLY**
- Financial statements (monthly and quarterly); **2 YEARS**
- Paychecks (canceled); **2 YEARS**
- Insurance policies (expired); **PERMANENTLY**
- Other records (claims, and so on); **PERMANENTLY**
- Legal documents and copyrights; **PERMANENTLY**
- Contracts and leases (expired); **6 YEARS AFTER EXPIRATION DATE**
- Deeds; Permanently
- Lawsuits (settled); 6 to 10 years after settlement
- Membership applications; **3 YEARS**
- Payroll and earning records; **4 YEARS**
- Pension information; **PERMANENTLY**
- Personnel files; 3 years from termination

Note that;

All branch managers are to keep strict control over all personnel files and access will be strictly limited to personnel/management as required by law and approved by manager.

Note that;

Managers should work with legal counsel to ensure compliance with state and federal laws regarding personnel matters.



### **SOLD SIGNS**

Note that;

In 1978, a decision by the Georgia court of appeals defined the word “sold” to mean “a consummated contract of sale” and further ruled that a consummated sale required an executed contract, therefore an agent/affiliate licensee of All Real Estate Consultants, Inc. should never place a “sold” sign on a property until the sale has actually closed.

### **DUTIES OF MANAGING BROKERS/MANAGERS/AGENTS**

Note that;

The managing broker/manager/agents duties includes but are not limited to insuring all licensees/employees are to follow all items/notations listed in the corporate policy and procedures manual and all licensees/employees should report any violation to managers or corporate office.

### **DUTIES OF MANAGING BROKERS/MANAGERS**

Note that;

All managing broker/manager to insure all agents meet or exceed terms of engagements with clients.

Note that;

All manager are to review all contracts and contracts must be reviewed within 30 days of the date of the contract and indicate on each contract when it was reviewed.

Note that;

All managing brokers/managers must review advertising of all agents/licensees/employees to make sure it is in compliance with GA license law/rules of commission or any state in which it operates in.

Note that;

All managing brokers/managers must ensure that commissions are paid ONLY to licensees who have valid and current licenses.

Note that;

All managing brokers/managers/agents must ensure only licensed individuals perform those task required of licensure.



Note that;

All managing brokers/managers must provide all licensees with access to a written copy of the corporate policy and procedures manual.

Note that;

All managing brokers/managers must ensure that company and each licensee enter into an agreement which specifies how licensee will be compensated during the term of the affiliation and for work in progress but not completed when the licensee leaves the company.

Note that;

All managing brokers/managers must provide licensees with educational programs covering the GA license law and rules of the commission or any state it operates in.

Note that;

All managing brokers/managers must ensure that an individual with management authority is available to assist licensees and the public in real estate transactions handled by All Real Estate Consultants, Inc.

Note that;

All managing brokers/managers must monitor all trust accounts/procedures.

Note that;

All managing brokers/managers must ensure that disbursement from trust accounts are conducted in proper manner.

Note that;

All managing brokers/managers/agents must maintain a system for keeping records of real estate transactions.

Note that;

All managing brokers/managers to insure all agents/employees of All Real Estate consultants, Inc. are properly licensed.



## **REAL ESTATE COMMISSION**

Note that;

The Georgia **LICENSE LAW PROVIDES FOR THE CREATION OF THE GEORGIA REAL ESTATE COMMISSION**

Note that;

The Georgia real estate commission is made up of six members

Note that;

5 of the 6 must have been:

- State resident for 5 years
- Licensed and active in real estate for 5 years in Georgia

Note that;

The sixth member:

- May NOT be licensed or connected with the real estate business
- Must have a recognized interest in consumer affairs

Note that;

A quorum for conducting official business is four members

Note that;

The members of the commission are:

- Appointed by the Governor
- Confirmed by the Senate

Note that;

The members of the commission are paid \$25.00/day plus expenses

Note that;

The members serve a 5-year term

Note that;

The terms are staggered so there is normally only one vacancy per year



Note that;

Members serve until their successors are appointed and qualified

Note that;

Vacancies due to unexpired terms are filled by the Governor and NO senate confirmation is required

Note that;

The real estate commission is given a number of power and responsibilities under the authority of Georgia license law which include:

- Passing rules and regulations to implement the license law in a fair and impartial manner
- Protecting the public interest by insuring compliance with the license law, its rules and regulations, and fair business practices
- Investigating improper conduct by licensees
- Setting fees
- Issuing licenses

Note that;

License law requires the following people be licensed to engage in activities related to real estate business in Georgia:

- **BROKERS**

Note that;

A real estate broker is someone who **RECEIVES A FEE OR OTHER VALUABLE CONSIDERATION** from a principal for doing one or more of the following:

- Assists in procuring prospects for listing, buying, selling, leasing or exchanging real property
- Negotiates a real estate contract
- Acts as a referral agent for securing prospects for the listing, sale, purchase, exchange, renting, lease or option for any real estate
- Collects (or attempts to collect) rents, assessments or other trust funds
- Sell lots, time-share intervals or other parcels of real estate for a salary, fee, commission or any other valuable consideration
- Engages in the business of charging an advance fee or contracting for collecting of a fee (other than an advertising fee) in connection with any contract to



promote the sale of real estate; this action may either be through the property's listing in a publication issued primarily for the purpose of real estate sales or for referral of information concerning such real estate to brokers, or both

- Auctions or offers to attempt or agree to action real estate
- Buy or sell (or offer to buy or sell), or otherwise deals in options to buy real estate
- Perform property management services or community association management services
- Provide (or attempt to provide) to any party to a real estate transaction consulting services designed to assist the party in the negotiation or procurement of prospects for the listing, sale, purchase, exchange, renting, lease or option for any real estate or the improvement of the same
- Advertise or hold themselves out as engaged in any of the above listed duties

Note that;

A license is always required when consideration is received for services.

Note that;

Technically, one can engage in the services without a license as long as consideration is not received

- **ASSOCIATE BROKERS**

Note that;

An associate broker is someone who has passed the same licensing exam as a broker

Note that;

An associate broker works for and acts on behalf of another broker

Note that;

An associate broker performs generally the same services as a broker however must do so on behalf of a broker

Note that;

An associate broker's license must be issued to and held by the employing broker

Note that;

An associate broker may:

- Manage a branch office



- Sign transfer and release forms with written permission of the employing broker

Note that;

An associate broker MAY NOT:

- Engage in any of the activities that define a broker unless operating under the direct authority and supervision of a broker

Note that;

An associate broker may change their status as an associate broker by simply filing the necessary forms with the commission and paying applicable fees

- **SALESPERSONS**

Note that;

A salesperson is anyone other than an associate broker who acts on behalf of the broker to assist in negotiation contracts or procuring prospects for buying, selling, leasing or exchanging real property

Note that;

A salesperson generally performs the same services, as a broker but MUST do so on behalf of a broker

Note that;

A salesperson MAY NOT engage in any of the activities that define a broker unless operating under the direct authority and supervision of a broker

Note that;

The salesperson's license must be issued to and held by the employing broker

Note that;

A salesperson may manage a branch office

Note that;

A salesperson MAY NOT sign transfer and release forms for other salespersons employed by the broker

- **COMMUNITY ASSOCIATION MANAGERS**

Note that;



A community association manager is someone who acts on behalf of a broker to provide only community association management services, including:

- Collecting, controlling and disbursing funds
- Obtaining insurance
- Arranging for maintenance of the property
- Overseeing daily operation of the association

Note that;

A community association manager must perform these services on behalf of a broker

Note that;

In order to be active in real estate brokerage, each of the people listed above must be affiliated with:

- Sole proprietorship
- A corporation
- A partnership
- Limited liability Company

Note that:

A sole proprietorship, corporation, partnership or limited liability company must be licensed as a broker.

## **LICENSE LAW**

Note that;

License law provides that performing the acts of a licensee without a license is a criminal offense

Note that;

A licensee who utilize unlicensed individuals to perform such acts as a licensee may have their estate licenses revoked by the real estate commission





### **UNLICENSED SUPPORT PERSONNEL**

Note that;

If an affiliated licensee uses an unlicensed person in a support position, there must be three (3) written agreements:

- Broker/managing broker and affiliated licensee authorizing the use of unlicensed person
- Broker/managing broker and unlicensed support personnel with specifying the duties they can/may perform for the affiliated licensee
- Affiliated licensee and unlicensed support personnel specifying the duties and manner of compensation

### **UNLICENSED SUPPORT PERSONNEL CAN:**

- answer the phone and forward calls to a licensee
- submit data to MLS (multiple listing service)
- Check status of loan commitment after contract has been negotiated
- assemble documents for closing
- secure documents from courthouse/other sources available to public
- have keys made/installed or remove lock boxes from company listings
- write ads/promotions for approval of broker/managing broker/manager
- place advertising in magazines, newspapers, and other media as directed by the supervising broker
- receive, record, deposit of earnest money/security deposits/advance rents
- type contract forms as directed by broker/managing broker
- monitor personnel files and license reports from the commission
- compute commission checks
- place signs on property and remove such signs
- order items of routine repair as directed by a licensee/broker/managing broker/manager
- act as courier service for such purposes as delivering documents or picking up keys (note that the licensee remains responsible for assuring delivery of contracts and closing documents as required by the license law)
- schedule appointments with the seller or the seller's agent for a licensee to show listed property
- arrange dates and time for inspections
- arrange dates and times for the mortgage application
- arrange dates and times for pre-closing walk-through and the closing
- schedule an open house



- accompany a licensee to an open house or a showing only for security purposes
- perform physical maintenance on a property

**UNLICENSED SUPPORT PERSONNEL CANNOT:**

- make cold calls by telephone or in person or otherwise contact the public for the purposes of securing prospects for listings, leasing, sales, exchanges or property management
- host open houses, kiosks, home show booths or fairs
- prepare promotional material or ads without the review and approval of the licensee and broker/managing broker
- show property
- answer any question on title, financing or closing (other than their time and place)
- answer any question regarding listing except price and amenities expressly authorized in writing by the licensee/managing broker
- discuss or explain a contract, listing, lease arrangement or other real estate document with anyone outside the firm
- negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee
- Discuss the attributes or amenities of a property. Under any circumstances, with buyer or lessee
- Discuss with the owner of real property, terms and conditions of real property offer for sale/lease
- collect and “hold” security deposit monies, rent, other monies or anything of value received from the owner or buyer or lessee
- provide owners of real property or prospective purchaser or lessees with any advise/recommendations/suggestions as to the sale, purchase, exchange or lease of real property that is listed, to be listed or currently available for sale or lease
- hold themselves out in any manner, orally or in writing as being licensed or affiliated with a particular firm or real estate broker as a licensee



## **LICENSE**

Note that;

There are two general categories of licenses:

- Resident licenses

Note that;

A resident license is held by someone who is a resident of Georgia and allows that person to engage in real estate brokerage activity within the state of Georgia

- Nonresident licenses

Note that;

A nonresident license is held by someone who is a resident of another state and allows that person to engage in real estate brokerage activity within the state of Georgia

-In GA:

Note that;

Licensing exams are given by applied measurement professional (AMP) and are approved by the Georgia Real Estate Commission

Note that;

An applicant must score 75% or better to pass any licensing exam

Note that;

The following candidates for licensure are entitled to 5 points credit on the examination:

- Honorably discharged military veterans of active duty consisting of 1 year or more
- Honorable discharged disabled military veterans with 10% or less disability at the time of the examination
- Honorably discharged disabled veterans with more than 10% disability at the time of the examination are entitled to an additional 5 points (for a total of 10 points) credit on the examination



Note that;

To qualify for the extra veteran's points, the disabled veteran's injury or illness must have incurred in the line of military duty

Note that;

In all cases, the veteran must have served at least 90 days during war time to qualify for extra points

Note that;

To receive the appropriate extra credit, the veteran must submit an official form available from the Veterans Administration as proof of service

### **SALESPERSON**

Note that;

A salesperson must be 18 years of age or older

Note that;

The licensing exam may be taken at 17 years of age

Note that;

A salesperson must be a resident of the state of Georgia at the time of activation of the license unless applying for nonresident license

Note that;

A salesperson must be a high school graduate or have a certificate of equivalency

Note that;

A salesperson must complete 75-hours pre-license course

Note that;

A salesperson must pass a state exam after completing the 75 hours pre-license course  
Educational

Note that;

A salesperson must obtain and bring a Georgia crime information center (GCIC) report of his/her criminal history to the exam testing center



Note that;

A salesperson must comply with Georgia license law regarding criminal convictions

Note that;

A salesperson must pay applicable licensing fees

Note that;

A salesperson must:

- Complete a 25-hours post license course

Note that;

Within 1 year of licensure, either active or inactive, the licensed salesperson must complete a commission approved 25 hour post license course

Note that;

The licensee must pass an examination covering the post license course

Note that;

The post license exam is administered by the approved school, NOT THE STATE

- Continuing educations courses, CE

Note that;

A salesperson license is issued for a period of 4 years, at the end of those 4 years the license must be renewed.

Note that;

To renew a license the salesperson must show proof of having completed continuing education courses totaling 6 hours for each year of the renewal period for a total of at least 24 hours per 4-year renewal period

Note that;

As of July 1 2015, continuing education course hours has increased from 24 to 36 per 4 year renewal period

Note that;

As of July 1 2016, 3 of the 36 hours must cover license law



Note that;

The continuing education requirement must be met for every renewal period, every 4 years, as long as active licensure is maintained

Note that;

If a salesperson places his/her license on inactive status, the continuing education requirement need not be fulfilled while the license is inactive

Note that

If a salesperson license is inactive, to return the license to active status, the continuing education requirement for the entire period that the license was inactive must be met prior to reactivating the license

Note that;

Licenses already actively licensed in Georgia by January 1, 1980 are exempt from this requirement

### **BROKER/ASSOCIATE BROKER**

Note that;

To receive a resident broker/associate broker license, an applicant must:

- Be 21 years of age or older (the licensing exam may be taken at age 20)
- Be a resident of the state of Georgia at the time of activation of the license (or apply for a nonresident license)
- Be a high school graduate (or hold a certificate of equivalency)
- Comply with Georgia license law regarding criminal convictions
- Have 3 years' experience as an active licensee within the 5 years immediately prior to application
- Furnish proof of successful completion of at least 60 hours of instruction or course of study approved by the commission, or meet other education requirements approved by the commission
- If also licensed as a community association manager, furnish proof of successful completion of an additional 75 hours of instruction or course of study approved by the commission
- Pass a state exam after maintaining an active license for 3 of the 5 years immediately prior to examination
- To take the state broker's exam, an applicant must have been an active licensee for 3 of the last 5 years



- Obtain and bring a Georgia Crime information center (GCIC) report of his/her criminal history to the exam testing center
- Pay applicable licensing fee

Note that;

Broker/associate broker must complete 60-hours pre-license course.

Note that;

To renew a license, a broker must show proof of having completed continuing education courses totaling 6 hours for each year of the renewal period

Note that;

To renew a license the broker/associate broker must show proof of having completed continuing education courses totaling 6 hours for each year of the renewal period for a total of at least 24 hours per 4-year renewal period

Note that;

As of July 1 2015, continuing education course hours has increased from 24 to 36 per 4 year renewal period

Note that;

As of July 1 2016, 3 of the 36 hours must cover license law

Note that;

A broker already actively licensed as salespeople or broker by January 1, 1980 are exempted from the continuing education requirement

#### **COMMUNITY ASSOCIATION MANAGER**

Note that;

To receive a Community Association manager's license, an applicant must:

- Be 18 years of age or older (the licensing exam may be taken at 17)
- Be a resident of the state of Georgia at the time of activation of the license (unless applying for nonresident licensure)
- Be a high school graduate or have a certificate of equivalency
- Comply with Georgia license law regarding criminal convictions
- Furnish proof of successful completion of at least 25-hours of instruction or course of study approved by the commission, or meet other education requirements approved by the commission



- Pass a state exam after completing the educational requirements
- Obtain and bring a Georgia crime information center (GCIC) report of his/her criminal history to the exam testing center
- Pay applicable licensing fees

Note that;

To renew a license the community association manager the applicant must show proof of having completed continuing education courses totaling 6 hours for each year of the renewal period for a total of at least 24 hours per 4-year renewal period

Note that;

As of July 1 2015, continuing education course hours has increased from 24 to 36 per 4 year renewal period

Note that;

As of July 1 2016, 3 of the 36 hours must cover license law

### **ACTIVATION OF SALESPERSON OR COMMUNITY ASSOCIATION MANAGER (CAM) LICENSE**

Note that

After a candidate for a salesperson or community association manager license has passed the state examination, he/she must apply for an active or inactive license within 12 months

Note that

The 12 months is counted from the date of passing the exam, the day it was taken and passed

Note that;

If the applicant does not apply for an active or inactive license within 12 months, the applicant must retake the licensing examination to apply for an active or inactive license

Note that;

The amount of the application fee for an active or inactive license is affected by how soon the application is made after passing the exam

Note that;

If an applicant makes an application for a salesperson's or community association manager's license within 3 months after passing the exam, there is a prescribed license fee





Note that;

If an applicant make an application for a salesperson's or community association manager's license after more than 3 months but within 12 month after passing the exam, the amount of the application fee is equal to two time the amount of the normal application fee

### **ACTIVATION OF BROKER'S LICENSE**

Note that;

After a licensee has passed the state broker's examination, he/she must apply to activate the broker's license within 12 months

Note that;

As is the case for the salesperson's license, the 12 months are also counted from the date of passing the exam

Note that;

If a broker's license is not applied for within 12 months, the broker's exam must be retaken to apply for activation of the license

Note that;

There are differences in the activation of a broker's license and a salesperson's license after the exam is passed:

- The applicant for a broker's license may not apply for an inactive broker's license
- The fee for activating a broker's license is the same, regardless of when the application is made within the 12 months after passing the exam

Note that;

Any individual applicant for a real estate license must show proof to the commission that he/she has a reputation for honesty, trustworthiness, integrity, and competence to safeguard the interest of the public

Note that;

When a business is the applicant, anyone who holds more than a 20% interest in the company must meet the same criteria



Note that;

The commission may refuse to grant a license to anyone who has been convicted of:

- Forgery
- Embezzlement
- Obtaining money under false pretenses
- Theft
- Extortion
- Conspiracy to defraud
- Convicted of a felony
- Convicted of a sex offense
- Convicted of a probation violation
- Convicted of any crime involving moral turpitude
- Convicted of any similar offense

Note that;

Before applying for a salesperson's or community association manager's license, any person previously convicted of a crime must first:

- Complete all terms and conditions of his/her sentence
- Wait at least 5 years since the last conviction or release from incarceration; whichever is later (for multiple convictions)
- Wait at least 2 years since the last conviction or release from incarceration; whichever is later (for a single conviction)
- Ensure that there are no pending criminal charges
- Submit proof of good reputation for honesty, integrity and competency to carry out the business of a real estate licensee in a manner to safeguard the interest of the public

Note that;

A broker or associate broker applicant convicted of any of the crimes listed above may receive a license only if:

- At least 10 years have passed since the last conviction or release from incarceration, whichever is later
- There are no pending criminal charges
- The applicant submits proof of good reputation for honesty, integrity and competency to carry out the business of a real estate licensee in a manner to safeguard the interest of the public



Note that;

When a licensee is convicted of any of the crimes listed above they must:

- Notify the commission immediately
- The license will automatically terminate 60 days after the conviction unless the licensee request a hearing

Note that;

The commission may also refuse to issue a license to an applicant who has been sanctioned by another state's commission

Note that;

The commission may also refuse, suspend or revoked a license for submitting a false statement on an application

Note that;

A license may also be refused in any situation that is grounds for suspension or revocation of an existing license

Note that;

If the commission has filed a notice of hearing, alleging that a licensee has violated the license law or rules, and the licensee surrenders his/her license or allows it to lapse in any of the ways listed below, the commission:

- May accept that action as an admission of guilt
- May use that information in denying any new application for a licensee should reapply

Note that;

The methods of surrendering or lapsing of a license are:

- Voluntary surrender of the license
- Failure to pay fees
- Failure to meet educational requirements

Note that;

If an applicant for a license has been convicted of any felony offense listed above or has been subjected to disciplinary action by any licensing board or commission; the applicant must submit a certified copy of the allegations and the conviction or final order to the commission



Note that;

If the requirements listed above are not met, the commission may consider the application incomplete and may refuse to process the application until the requirements are met

Note that;

If the commission refuses to issue a license to an applicant, it must provide for a “hearing” for the applicant under procedures outlined in the Georgia Administrative procedure act

Note that;

If a person exhausts all administrative means of contesting a refusal to issue a license, he/she is entitled to a “judicial/court review”

#### **LICENSEE OF OTHER STATES**

Note that;

It is possible for a licensee of another state to participate in a real estate transaction and receive compensation in Georgia in three ways:

- **THROUGH REFERRALS**

Note that;

A broker licensed in another state may refer clients to a Georgia broker and may or may not receive a referral fee

Note that;

When a referral is made, the out of state broker may NOT perform or participate in any other activities of a broker, such as listing or showing property or negotiating offers

Note that;

A Georgia broker may also refer a client or prospect to a broker in another state and may receive a referral fee

Note that;

A Georgia broker MAY NOT perform any acts as a broker in another state without being licensed in that state or otherwise complying with their license laws



- **THROUGH WRITTEN AGREEMENT WITH A GEORGIA BROKER**

Note that;

A nonresident licensee may participate in and receive compensation for a real estate transaction in Georgia is through a written agreement with a Georgia broker

Note that;

When a written agreement is entered into to participate in and receive compensation for real estate, it must include a number of provisions:

- The procedures to be followed if the nonresident broker is to perform any of the acts of a broker in Georgia
- Information on how the commission will be divided
- A clause stating that any contract such as a listing agreement or management contract will be in the name of the Georgia broker
- A clause stating that the nonresident broker will conduct negotiations with any client of the Georgia broker only with express permission from the Georgia broker
- A clause stating that any advertising will identify the Georgia broker
- Any contracts, agreements or offers will:
  - Identify the Georgia broker and nonresident broker
  - State that the nonresident broker is not licensed in Georgia
  - Specify that the document will be interpreted under Georgia law
  - Specify that the Georgia superior courts will have jurisdiction over both brokers in the transaction
  - Any trust funds received will be held in the trust account of the Georgia broker unless a written agreement among all parties allows otherwise

Note that;

Under the provision to allow nonresident brokers to participate in a transaction in Georgia, a broker means:

The broker  
Any affiliated salesperson



Note that;

When a nonresident broker enters into a written agreement with a Georgia broker, it allows salespersons of the broker to participate in the transaction as well

Note that;

A nonresident salesperson may not enter into an agreement with a Georgia broker or salesperson

Note that;

Only a nonresident broker may enter into a written agreement with a Georgia broker

Note that;

When a Georgia broker enters into a written agreement with a nonresident broker, the Georgia broker is responsible under the Georgia license law for:

- All of the brokerage acts of the nonresident licensee in Georgia covered by the written agreement
- Determining that the nonresident broker is properly licensed in his/her state of residence

Note that;

If in the course of activity covered by the agreement, a nonresident broker or the nonresident broker's affiliated licensee violates the Georgia license law or rules, the Georgia broker is liable for the acts of the nonresident broker/affiliated licensee

Note that;

The penalty for such violation is limited to the suspension or revocation of the right to enter into such agreements unless either of the following occurs:

- The Georgia broker participates in or ratifies the acts of the nonresident broker
- The Georgia broker fails to include a provision in the written agreement that is required by law



- **THROUGH NONRESIDENT LICENSURE**

Note that;

There are two sets of procedures, depending on whether the individual is licensed in his/her state of residence

**NOT LICENSED INDIVIDUAL**

Note that;

An individual who resides in another state and is not licensed in real estate in that state may obtain a nonresident license in the state of Georgia

Note that;

The out of state applicant must meet the same age, education, and examination requirements that a resident of Georgia must meet when applying for a resident license

**LICENSED INDIVIDUAL**

Note that;

Individuals who are licensed in other states may also obtain nonresident licenses in Georgia, and depending on the state of their residence, they may or may not be required to meet additional examination requirements

Note that;

Georgia has what is referred to a “full reciprocity” with all states except Florida

Note that;

Residents of Florida must pass the Georgia state portion of the licensing examination for the relevant Georgia license (salesperson’s or brokers)

Note that;

Reciprocity with other states other than Florida means that Georgia will honor a nonresident licensure status in his/her home state when applying for nonresident licensure in Georgia, and the other states will honor a Georgia resident’s licensure status when he/she applies for a nonresident license in another state

Note that;

A licensed applicant for nonresident license in Georgia must meet the following requirements:



- Must have passed an examination in his/her state of residence to obtain the type of license for which he/she is applying for in Georgia
- Must have met all pre-license and continuing education requirements that are required in the state of residence
- Must show proof of current licensure in his/her state of residence
- Must pay any required fees
- Must provide a certified copy of any disciplinary actions taken against his/her license
- Must supply a certified criminal history report from applicant's residence state of licensure
- Must affiliate with a resident or nonresident broker (if licensed as a salesperson or associate broker)
- Must designate the Georgia Real Estate Commission to act as his/her recipient of judicial and legal notices

Note that;

Once a resident of another state receives a nonresident license in Georgia, he/she must meet the same continuing education requirements that a resident of Georgia licensee must meet

#### **NONRESIDENT LICENSEE WHO ARE ALREADY LICENSED IN ANOTHER STATE AND BECOME RESIDENT OF GEORGIA**

Note that;

When a licensee from a state that does not have reciprocity with Georgia (Florida) applies for a resident license after moving to Georgia, that applicant must pass the Georgia state portion of the licensing examination of the relevant Georgia license (salesperson's or broker's)

Note that;

When a licensee from a state that does not have reciprocity with Georgia applies for a resident license after moving to Georgia, that applicant must meet the same requirements that must be met for a licensee in another state receive a nonresident license in Georgia

Note that;

A licensee in another state must meet these same requirements to:

- Receive a nonresident license to engage in real estate brokerage activity in Georgia while still a resident and licensee in another state





- Receive a resident license to engage in real estate brokerage activity In Georgia as a resident of Georgia

Note that;

Once a licensee has obtained an active license, there are a number of conditions under which that license may be changed

Note that;

There are three primary types of changes in license status:

- An inactive license
- A lapse of the license
- Termination of license

### **INACTIVE LICENSE**

Note that;

Once a licensee has met the requirements for licensure or activated a salesperson's or broker's license, they can elect to place that license on inactive status at any time

Note that;

An inactive status is intended to serve those licensees who do not wish to be actively engaged in the real estate brokerage business but would like to remain licensed

Note that;

A licensee on inactive status may not engage in real estate brokerage activities except in connection with their property owned

Note that;

When a license is placed on inactive status, the person is still licensed and is subject to ALL the same requirements and restrictions imposed on an active licensee

Note that;

If an inactive licensee buys or sells their own property, the licensee must disclosed their license status in a sales contract, lease or in any advertising of their property



Note that;

An inactive licensee is not allowed to engage in the acts of a broker on behalf of an unlicensed individual

Note that;

An inactive licensee MAY NOT work on behalf of an unlicensed individual unless the licensee surrenders their license

Note that;

If an active licensee wants to become inactive, they must do so in WRITING within 30 days of ceasing work for an affiliated broker

Note that;

Written notification must be submitted to the real estate commission in order for a licensee to place license in inactive status

Note that;

While on inactive status, the licensee must pay all renewal fees when due, or the license lapses

Note that;

If the licensee changes addresses while on inactive status, the licensee must notify the commission in writing within 30 days

Note that;

While a license is on inactive status, the licensee is not required to complete the 6 hours/9 hours after 07/01/2015 of continuing education courses for each year of the 4 year renewal period

Note that;

After 7/1/2015 the required hours are 9 hours of continuing education course for each year of the 4 year renewal period

Note that;

When a licensee places a license in inactive status and want to return the license to active status they do so by reactivating the license

Note that;

An inactive licensee may return to active status once all requirements are met and it is said to be **REACTIVATED**, if eligible.



## **REACTIVATION OF LICENSE**

Note that;

To reactivate a license that is on inactive status:

- A broker must apply for reactivation to the commission prior to resuming brokerage activity
- A salesperson must secure the signature of a broker with whom they want to be affiliated
- The licensee must meet the requirements for continuing education courses under some conditions

Note that;

Licensee must pay reactivation fees and educational requirements:

- All current and delinquent renewal fees
- A reactivation fee
- Any late charges
- Must complete all continuing education requirements

Note that;

A licensee may reactivate an inactive license for up to 2 years after it was placed on inactive status **WITHOUT** having to complete the continuing education courses **PRIOR** to reactivation

Note that;

When an inactive licensee wished to return to active status and seeks to reactivate a license which has been on inactive status for 2 years or more, that licensee must take continuing education courses for every year and/or part of a year that the license was on inactive status

Note that;

When any continuing education courses are required to reactive an inactive license, they must be completed no more than 1 year prior to reactivation the license.

## **LAPSE LICENSE**

Note that;

All managing brokers/managers must return licensee's wall certificate and pocket card to the real estate commission immediately upon lapse of the license.

Note that;



When a license lapses for any reason, this means that the license is no longer in effect, and the licensee must cease all licensed activity

Note that

There are two reasons a license can lapse:

- Failure to pay fees when required is cause for license to lapse
- Failure to complete educational requirement is cause for license to lapse

Note that;

The ability to be reinstated distinguishes a lapsed license from one that is terminated, since a terminated license cannot be reinstated

Note that;

When a license is lapsed, it can be reinstated under some conditions

Note that;

A lapsed license is said to be **REINSTATED**, if eligible

Note that;

There are two sets of conditions under which a license can lapse:

- Failure to pay fees when required

Note that;

Once a licensee obtains a license, they must pay a renewal fee at the end of each renewal period of 4 years to maintain the license

Note that;

The renewal fee must be paid to maintain the license regardless if the license is active or inactive in order to maintain a license

Note that;

If a licensee fails to pay the renewal fee by the deadline, their license lapses

Note that;

A license which has lapsed due to a failure to pay fees can be reinstated

Note that;

If a license is reinstated within 2 years of the date of lapsing and the continuing education requirements have been met, it can be reinstated by paying all fees:



- Pay all current and delinquent renewal fees
- Pay a reactivation/reinstated fee
- Pay any late charges
- Must complete all continuing education requirements

Note that;

If the lapse license is reinstated more than 2 years and less than 5 years after the date of lapsing, the licensee must pay all fees stated, plus must complete pre-license course.

Note that;

The pre-license course hours:

- Community association manager = 25 hours
- Salesperson = 75 hours
- Broker = 60 hours

Note that;

These courses must be completed within 1 year period prior to applying for and paying fees for reinstatement

Note that;

If the lapsed license is reinstated “more” than 5 years after non-payment of the required reinstatement fees; the applicant must re-qualify as an original applicant.

Note that;

Licensees who held active licenses on or before Jan 1, 1980 are exempt from the continuing education requirements.

Note that;

If an exempt licensee allows his/her license to lapse for longer than one year and later reinstates the license, he/she is subject to the continuing education requirements and after reinstatement, the licensee is required to meet the CE requirements for each renewal period, regardless of the fact he/she was originally licensed prior to Jan 1, 1980.

- Failure to complete educational requirements

Note that;

There are two types of courses that can result in a lapsed license if they are not complete when required:



- CE/continuing education

Note that;

If a license fails to complete the required hours for continuing education for each year of the renewal period before the renewal date, the license will lapse

Note that;

As in the case of a lapse due to a failure to pay fees, this means that the license is no longer in effect

Note that;

The license must cease all licensed activity and have the license wall certificate and pocket and pocket card returned to the real estate commission until such time as the license is reinstated

Note that;

If a license lapses because a license fails to complete the required continuing education course on time, the license may be reinstated WITHIN 2 years by:

- Completing the required continuing education course
- Paying a late fee

### **CONTINUING EDUCATION**

Note that;

These courses must be completed within the 1 year period prior to applying for and paying the fees for reinstatement.

Note that;

If the CE courses are not completed within 2 years of the license lapsing, the license may not be reinstated.

Note that;

If the continuing education courses are not completed within 2 years of the licenses lapsing, the license may not be reinstated

- Salesperson's 25-hours post license course

Note that;



If a salesperson license fails to complete the required 25-hour post license course within 12 months of being issued the salesperson's license, the license will lapse

Note that;

If a salesperson allow a license to lapse due to a failure to complete the required post license course, it is NOT possible to reinstate the license except under the limited conditions

Note that;

To reinstate the license after a licensed has lapsed due to a failure to complete the required post license course, the licenses must have paid for and enrolled in the required course prior to the time the license lapsed

Note that;

When these conditions are met, the licensee may complete the course and reinstate the license within 6 months of the lapsing of the license

Note that;

Until the license is reinstated upon completion of the course, however, the license must be surrendered to the real estate commission, and the licensee must cease all licensed activity.

Note that;

Of a license lapses for over 5 years because the 25 hours post license was not completed on time, the licensee may re-qualify for reinstatement by:

- Completing the required post license course
- Re-qualifying as an original applicant

## **TERMINATED LICENSE**

Note that;

There are two primary situations in which a license is terminated:

- Voluntary surrender of a license

Note that;

If a salesperson or associate broker voluntarily surrender a license or the license is suspended or revoked, the licensee must return their license at once to the commission



Note that;

If a broker's license is surrendered, suspended, or revoked, the broker must promptly submit to the commission:

- Their broker's license
- The licenses of all affiliated salespersons and associate brokers

Note that;

The salesperson and associate brokers may then affiliate with another broker

Note that;

Any licensee who surrenders a license or has the license revoked and later desires reinstatement of licensure must apply for licensure as an original applicant

Note that;

Licenses surrendered or revoked cannot be reinstated; a new one must be issued

- Revocation of a license by the real estate commission

#### **REVOCATION OF LICENSE BY THE REAL ESTATE COMMISSION**

Note that;

Licensee must apply for licensure as an original applicant; a new license must be issued and cannot be reinstated.

Note that;

The ability to have a license reinstated is distinguished from a lapsed license from one that is terminated is because a terminated license cannot be reinstated except through the normal process of obtaining a license as an original applicant.

Note that;

All managing brokers/managers must return their and all licensee licenses upon:

- Voluntary surrender of a license
- Revocation of a license by Real Estate Commission

Note that;

With revocation of license, the agent must apply for license as an original applicant; a new license must be issued and cannot be reinstated.





Note that;

The licensee must return his/her license at once to the real estate commission

Note that;

The broker/manager broker/agent must return his and all licensees licenses to real estate commission

### **RECOVERY FUND**

Note that;

A payment from the Education, Research and Recovery fund by the real estate commission on behalf of the licensee is a reason a license may be terminated and the license of the person against whom the claim is made is automatically revoked.

### **SELF INSURANCE PROGRAM**

Note that;

The recovery fund is designed primarily as a self-insurance program

Note that;

Licensees pay a premium in the form of a fee paid at initial licensure

Note that;

The fees can be used to cover damages paid to public when they win a judgment against licensee

### **ANYONE NOT LICENSED**

Note that;

Anyone not licensed (except a bonding company not acting as a principal) can potentially recover damages from the recovery fund

Note that;

Licensee, whether active or inactive, may not receive payment out of the fund

Note that;

If a person is adversely affected by the action of a licensee, that person may go to court to obtain a judgment against the licensee and ask for damages



### **WRIT OF EXECUTION**

Note that;

If a judgment is issued and damages awarded, the person must first file a writ of execution to recover damages by liquidation of the assets of the offending licensee

### **PETITION THE COURT**

Note that;

If this does not result in recovery of all damages awarded, the injured person may petition the court to award the remaining damages out of the recovery fund.

Note that;

The limit of damages for any SINGLE TRANSACTION is \$25,000.00 and multiple transactions is \$75,000.00

Note that;

One individual who applies for payment of damages may receive NO MORE than \$25,000.00 regardless of the number of transactions involved.

Note that;

An action for recovery of damages must be brought within 2 years of the cause of the action.

Note that;

When payment is authorized by the court out of the recovery fund, the license of the person against whom the claim is made is automatically revoked.

### **THE FUND**

Note that;

The fund must maintain a balance of \$1,000,000.00 and any amount over that amount can be used for licensee education programs and that benefit the public.

Note that;

If the fund falls below \$1,000,000.00 each license can be assessed an additional fee up to \$30.00 per year at renewal period.



Note that;

The money in the recovery fund may be invested in any investment which is legal for a domestic life insurance company.

### **EXEMPT FROM LICENSING REQUIREMENTS**

Note that;

Georgia license law reflects that there are certain persons who are exempt from the requirements to have a license when engaging in the activities of a real estate broker

Note that;

The intent of these exemptions is not to allow exempted individuals to be actively involved in the real estate brokerage business

Note that;

The exemption is intended to allow some individuals to engage in activities relating to the sale, rent or other transfer of rights of real property on a limited basis for special situations

Note that;

There are two basic sets of conditions under which the exemptions do not apply:

- When dealing with property registered under the Georgia time-share act
- Georgia land sales act

Note that;

The owner or full-time employees of the owner of time shares or land are exempt from licensure requirements

Note that;

Anyone involved in the sale of a time-share property or registered lots must be licensed unless he/she is the owner or a full-time employee of the owner of the time share or registered lots

Note that;

A full-time employee of an owner of a time share or lot that has another job during the week and sells time-shares or registered lots on the weekend must be licensed



Note that;

A unlicensed full time employee must meet the IRS definition of an employee and cannot be an independent contractor

Note that;

The owner/employer of the employee must pay worker's compensation, withhold taxes and pay F.I.C.A benefits for the employee

Note that;

The activities of any exempted unlicensed individuals must be fully segregated from the activities of any licensees acting as agents on the same project

Note that;

If a licensed broker who supervises the activities of licensed salespersons working on the project should not also supervise any unlicensed individuals who qualify to work on the project

Note that;

The persons responsible for the project should fully inform any potential customer as to whether he/she is dealing with a licensed agent or an unlicensed employee of the project

Note that;

To qualify for an exemption, the unlicensed individual must be an employee of the owner/developer, not a third party

Note that;

If the owner of a time-share project establishes a separate company to handle the sales of the project that company may not utilize unlicensed salespersons

Note that;

The exemption applies only to individuals, not to corporation or partnerships

Note that;

If the owner of a time share project employs a corporation or partnership to market the project, the company must have a broker's license

- When the person is already licensed



Note that;

Once an individual is licensed, that individual is subject to all of the requirements imposed on licensees, regardless of whether he/she falls into one of the categories that would otherwise be exempted from the requirements of licensure

Note that;

If the owner of a property/time share/ lot holds a real estate license/ he/she may not claim an exemption from licensure or from the requirements imposed on licensees

Note that;

If a salesperson decides that they want to work full time for an individual who is not licensed, such as a builder, developer, or Management Company the salesperson has two options:

- Work on behalf of a broker who is employed by the builder, developer or Management Company
- Give up his/her license in order to act as an unlicensed individual under the appropriate exemption to licensure for the particular type of employment involved

Note that;

If an individual surrender their license, the person may not reinstate the license except as an original applicant for a salesperson's license and must again meet all education and examination requirements

Note that;

The salesperson must surrender the salesperson's license, not just place it on inactive status

Note that;

When a person places a license on inactive status, he/she is still a real estate licensee and is subject to all the requirements of a licensee when dealing with any property other than his/her own property

Note that;

There are two primary types of exemptions:

- Owner of property and their "FULL TIME" employees

Note that;

A property owner is not required to have a license to do any of the following:



- Buy property for themselves
- Sell property which they own
- Lease property which they own
- Manage property which they own
- Auction property which they own

Note that;

A property owner is NOT limited in how often they can participate in any of these activities listed above

Note that;

A full-time employee or work on behalf of the owner on a full time basis

Note that;

If the individual works part-time on behalf of the owner, he/she must be licensed

Note that;

An individual who works on behalf of more than one owner is by definition not working full time on behalf of an owner and therefore must have a license

Note that;

When an individual does any of the activities just described on behalf of someone else for compensation and is not a full-time employee of the owner, he/she must be a licensed broker

- Those who engage in real estate activities “incidentally” as part of their “regular employment” or “special status”

Note that;

The following individuals are exempt from license requirements:

- A person employed by a broker to manage residential rental property for the broker under a written management agreement between the broker and owner.

Note that;

Critical factors that must be present if an employee of a broker is to be exempt from licensing:



- ✓ There must be a written management agreement under which the broker is engaged by the owner
- ✓ The management agreement must be between the owner and the broker, not unlicensed employees or anyone else
- ✓ The management agreement must have been negotiated by the broker, not unlicensed employees
- ✓ The activities of the employee must be authorized by the broker in a written agreement between the broker and the employee

Note that;

The employee's activities must be limited to the following:

- ✓ Delivering lease applications or lease agreements
- ✓ Receiving lease applications, lease agreements, security deposits, rent, or other payments made payable to the broker or owner
- ✓ Showing a rental unit as instructed by the broker
- ✓ Executing leases or rental agreements
- ✓ Providing information authorized by the broker about a rental unit, a lease application or a lease
- ✓ Providing information to a tenant about the status of the tenant's security deposit or rent payment or to an owner about the owner's financial accounts or payments from the tenants
- ✓ Providing ministerial acts authorized by the broker in the written agreement between the broker and the employee

-Employee of community association

Note that;

A person who is employed full time by a community association for the purpose of providing community association management services is exempt from licensing requirements

-Member of a community association providing community association management services to that association

-Some individuals in property management or community association management

-An Attorney at law.



Note that;

An attorney at law is exempt from licensure when they perform services related to a real estate transaction, and the services are performed as a part of and are incidental to professional legal duties rendered to the client

Note that;

An exemption is not designed to allow lawyers to engage routinely in brokerage activity that would otherwise require a license

Note that;

A lawyer need not have a real estate broker's license to engage in the practice of law, even if it involves activities related to a real estate transaction

-An Attorney-in-Fact (under a power of attorney)

Note that;

When an attorney-in-fact acts in a real estate transaction on behalf of someone else, they are exempt from the requirement of licensure

-Persons acting under court order

Note that;

An executor or administrator of a will is exempt from licensure requirements

Note that;

A receiver or trustee in a bankruptcy is exempt from licensure requirements

Note that;

A guardian for the legally incompetent or for a minor is exempt from licensure requirements

-Official of the government & public utilities

Note that;

An authorized employee of a government agency, utility company, or lending institution is also exempt from licensing requirements while conducting official business for their employer

-A licensed certified public accountant acting solely as such

-Persons performing only physical maintenance on a property





-Individuals who manage property:

- Owner and spouse
- General partner of a Limited partnership which is the owner
- Any lessor who is not the owner/licensed
- A prospective purchase (not already licensed) of the property
- Any regular/full time employee of any of the individuals listed above

-A person, who manages a residential apartment complex for a tax-exempt organization, provided that person was under contract to manage the property prior to 01/01/1989.

Note that;

In the case of property management activities, an employee of the owner need not be a full-time employee to be exempt from licensure

Note that;

A person engaged in the management of property for an owner, even if it is not on a full time basis, is exempt from licensure

Note that;

If a broker employs unlicensed persons to assist in the management of residential property under a written management agreement with an owner, the broker is fully liable for the actions of the employees under license law

Note that;

If a broker employs a licensed individual (with a salesperson's or associate broker's license), the broker can reduce his/her liability under the license law to some extent

Note that;

To reduce the broker liability for the action of affiliated licensees, the broker must have reasonable procedures in place for supervising the affiliate's actions

Note that;

This means that the owner, spouse or general partner of the partnership may hire someone without a license to manage property for him/her/them.



-Some Referral agents (not all)

Note that;

There are some very limited conditions under which a referral agent (someone who makes a referral) is exempted from licensure if they receive a fee for the referral

Note that;

A referral agent may ONLY make a referral!

Note that;

A referral agent may not do anything else on behalf of the referred party or the party to whom the referral is made

Note that;

A referral agent may not receive any compensation from the party who is being referred to someone else

Note that;

A referral agent MAY receive compensation ONLY from the party to whom the referral is made

Note that;

If a tenant refers a rental prospect to the owner of their apartment building, the owner may pay a referral fee to the tenant.

Note that;

The tenant may NOT receive a referral fee from the prospect that was referred to the apartment owner

Note that;

A referral agent is exempt from licensure as long as they:

- Does not actually perform any services of a broker
- Does not receive any compensation from the referred party
- Does not charge an advance fee
- Does not act as a referral agent in more than three transaction per year
- Does not receive any compensation from a licensed broker, associate broker or salesperson



Note that;

A referral agent MAY NEVER receive a referral fee from anyone who has any type of real estate license!

Note that;

A referral agent is exempt from licensing ONLY if they receive a referral fee from an unlicensed person to whom the referral is made

#### **PAYMENT OF REFERRAL FEES**

##### **UNLICENSED**

Note that;

An unlicensed individual may pay another unlicensed individual a referral fee

Note that;

An unlicensed person who is referred to someone else may not pay a referral fee to the person who referred him/her if that person is unlicensed

##### **LICENSEES**

Note that;

A licensed broker may pay a referral fee to another licensee, including another broker, an associate broker or a salesperson

Note that;

A licensed broker **"MAY NOT" PAY A REFERRAL FEE TO AN UNLICENSED INDIVIDUAL UNDER ANY CIRCUMSTANCES**

Note that;

A salesperson or associate broker **"MAY NOT" PAY A REFERRAL FEE TO ANYONE, EITHER LICENSED OR UNLICENSED**

Note that;

**NO LICENSEE "MAY NOT" PAY A REFERRAL FEE TO AN UNLICENSED INDIVIDUAL**

Note that;

A licensee may pay a referral fee only to another licensee



Note that;

Any referral fee paid to another licensee MUST be paid by the licensee's broker

### **RECEIVING REFERRAL FEES**

#### **UNLICENSED INDIVIDUALS**

Note that;

An unlicensed person may receive a referral fee as long as it does not come from:

- The person being referred
- A licensed broker, associated broker or salesperson

#### **LICENSEES**

Note that;

A licensee may receive a referral fee ONLY if it comes from another licensee

Note that;

Under the license law, any fee paid by one licensee to another licensee must be paid by one broker to another broker UNLESS an employing broker gives permission for a salesperson to pay or to receive a fee from another broker or licensee

Note that;

A salesperson may receive a referral fee from his/her broker only

### **CONTRACTS**

Note that;

A contract is an agreement between two or more parties

Note that;

A contract can be an agreement to:

- Do something
- Not to do something



Note that;

A contract not to do something is called:

- Contract for forbearance

Note that;

Contracts can be oral or written

Note that;

An oral contract is called a:

- PAROL contract

Note that;

An oral contract that is not valid and not enforceable:

- Oral exclusive listing
- Oral options
- Oral debt instrument (mortgages)
- Oral deeds

Note that;

Contracts are either:

- Bi-lateral: Both parties promise to give up something
- Unilateral: Only one party promise to give up something

Note that;

Contracts are either:

- Valid
- Voidable
- Void legally

Note that;

Contracts are either:

- Enforceable
- Unenforceable

Note that;

An unenforceable contract is valid until challenged in court, usually not written.



Note that;

An" ORAL/PAROL" CONTACT "IS NOT" ENFORCEABLE IN COURT with two exceptions in GA:

- Open listing
- Leases one year or less

### **EARNEST MONEY**

Note that;

Earnest money paid by the buyer at the time the sales contract at signed is not consideration of a contract

Note that;

Earnest money is not legally necessary

Note that;

Earnest money shows good faith that the buyer will perform their obligation under the terms of the contract

### **TYPES OF CONTRACTS**

Note that;

Agents may be involved in these types of contracts:

- Contract "of" Sale
- Back up contract
- Binder contract
- Installment "for" contract
- Option contract
- Lease purchase contracts
- Right of First Refusal contracts
- Deed
- Deed of trust
- Lease
- Listing contracts
- Mortgage
- Commercial contracts



## **CONTRACT OF SALE**

Note that;

A contract of sale is a written or oral agreement for the sale of real property under the terms of the contract/agreement

Note that;

It has all the essential elements of a valid contract:

- Consideration
- Agreement
- Legal purpose
- Legally competent parties

Note that;

A contract of sale is commonly called a sales contract

Note that;

A sales contract is signed when the buyer offers to buy a home from the seller

Note that;

When both seller and buyer sign the contract, it is considered a binding agreement.

Note that;

The actual transfer of ownership of a property is done at closing or settlement

Note that;

The reason for having an initial contract followed by a closing at a later date is:

- The buyer needs to determine whether the seller has good/marketable title and the legal right to convey title
- The buyer needs to arrange financing
- Duties and obligation of the parties need to be completed per terms of contract before closing

## **BACK UP CONTRACTS**

Note that;

A back up contract is one in which the seller has already accepted a prior offer/contract.



Note that;

Back up contracts are accepted by the seller with the stated understanding that they have already accepted a prior contract.

Note that;

There is no guarantee that a backup contract will close.

Note that seller must cancel the original contract before closing a backup contract

### **BINDER CONTRACTS**

Note that;

A binder contract is a short purchase contract used in some states to secure a real estate transaction until a more formal contract can be prepared by an attorney/agent.

### **INSTALLMENT CONTRACTS**

Note that;

Installment contract are often used in resort typed properties.

Note that;

Installment contract may also be known as:

- Land contract
- Contract FOR deed
- Contract FOR title

Note that;

The seller retains title

Note that;

The buyer holds **EQUITABLE TITLE** until the property is paid for.

Note that;

The buyer/purchaser takes **POSSESSION** while installment payments are being made.

Note that;

**PRACTICALLY**, the buyer is the owner of the property.





Note that;  
**LEGALLY**, the seller is the owner.

Note that;  
The buyer pays:

- Property taxes
- Deducts interest payments for tax purposes
- Claims depreciation, if the property is income producing

Note that;  
Installment contracts are often used when the seller provides financing but is not sure of the buyer's ability to pay.

#### **DEFAULTS**

Note that;  
If the buyer defaults, they **FORFEIT ALL PAYMENTS** made.

Note that;  
The seller **WILL NOT** have to foreclose on the property if the buyer defaults

Note that;  
If the buyer defaults, they can **BE EVICTED LIKE A RENTAL** tenant.

#### **OPTION CONTRACT**

Note that;  
An option contract, it is a unilateral contract, since only one party is obligated under an option contract.

Note that;  
Option contract must contain all the essential elements of a valid contract:

- Consideration
- Agreement
- Legal purpose
- Legally competent parties



Note that;  
Option contract give the buyer the right to purchase during the option period if they so chooses.

Note that;  
Owner = **OPTIONOR**

Note that;  
Buyer = **OPTIONEE**

Note that;  
An option contract gives an exclusive right to buy, if the buyer so chooses.

Note that;  
Option contracts require/must have:

- Specify sale price
- Have time period "start/end"
- Price must be agreed to when contract is signed and when option is "signed"

Note that;  
When the option is signed, the optionee/buyer must pay a valuable consideration (money or equivalent) to the optionor/seller.

Note that;  
**GOOD CONSIDERATION "IS NOT SUFFICIENT"**

Note that;  
The money paid at signing is EARNEST MONEY/DOWN PAYMENT and CREDITED/APPLIED to the purchase price, but this is SUBJECT TO NEGOTIATION "BEFORE" THE OPTION IS SIGNED!

Note that;  
If option is not exercised within time period of the option, the money put down is forfeited!

Note that;  
Option contracts are assignable unless prohibited in the option contract.

Note that;  
Optionor/owner retains title/all rights.



Note that;  
Optionee/buyer has no legal rights in the property only right to buy during option period.

Note that;  
Once buyer exercises the option, the buyer/optionee has equitable title.

Note that;  
No one else can buy during option period without being at risk

Note that;  
The seller may sell property, however the option remains in effect and must be honored by the new owner!

Note that;  
The optionee/buyer can compel the new owner to sell property under the terms agreed to by the previous owner

Note that;  
Until an option is exercised, it is an executory contract.

Note that;  
When the option contract is exercised by the buyer/optionee, the option contract automatically becomes a sale contract.

Note that;  
Option contracts are assignable unless prohibited in the option contract

Note that;  
The listing broker does not get/earn commission until optionee decides to buy or exercised.

### **LEASE-PURCHASE" AGREEMENTS/CONTRACT**

Note that;  
In a lease-purchase agreement, the tenant/offenor signs two contracts

Note that;  
All managing brokers/managers/agents must review "LEASE-PURCHASE" AGREEMENTS/CONTRACTS to ensure that tenant signs two contracts:



- One contract is a lease.
- One contract is an offer to purchase the property for a specified price and on a specified date or when a specified event takes place

Note that;

The seller's agent should inform/advise the seller that such agreements should only be accepted if three conditions are met:

- A substantial deposit is obtained
- There is sufficient reason to believe the sale will be completed
- A provision for damages if the sale does not closed is included in the contract/agreement

Note that;

The "tenant" is obligated to buy the property after the occurrence of date/the specified event.

Note that;

A lease purchase contract is a bi-lateral contract.

### **LEASE WITH OPTION TO BUY CONTRACT**

Note that;

All managing brokers/managers/agents must review "LEASE WITH OPTION TO BUY" contracts.

Note that;

Tenant is given an option to purchase the property within a specified time period and for a specified price.

Note that;

IF THE OPTION IS NOT EXERCISED IN THE SPECIFIED TIME PERIOD, THE OPTION EXPIRES

Note that;

The "TENANT IS NOT OBLIGATED TO BUY" BUT THE SELLER IS OBLIGATED TO SELL DURING OPTION PERIOD

Note that;

Any rent paid by the tenant before the option is exercised is not applied to the purchase price UNLESS this is stated in the option.



Note that;  
Lease with option to buy is a unilateral contract

### **LEASE WITH RIGHT OF FIRST REFUSAL CONTRACT**

Note that;  
All managing brokers/managers/agents must review LEASE WITH RIGHT OF FIRST REFUSAL contracts.

Note that;  
The tenant/buyer is guaranteed that if the seller decides to sell the property, it will be offered to the tenant first therefore the tenant has the first opportunity to buy the property.

Note that;  
There is NO pre-determined price for buying the property

Note that;  
The buyer will have the first opportunity to buy the property

Note that;  
There is NO fixed time to purchase property

Note that;  
The TENANT IS NOT OBLIGATED AND SELLER DOES NOT GUARANTEE THAT PROPERTY WILL BE SOLD

Note that;  
Lease with right of first refusal contracts are more common in commercial real estate than in residential real estate

### **STATUTE OF FRAUDS**

Note that;  
Statute of frauds is a state law

Note that;  
Some real estate contracts must be in writing to be valid and enforceable.



Note that;

An oral lease over one year can be valid but is not enforceable in court

Note that;

An oral contract can be valid but is not enforceable in court except for open listing and leases for one year or less which is both valid and enforceable in GA.

Note that;

IN GEORGIA, there are only two types of oral contract that are valid and enforceable:

- Open listing

Note that;

An open listing agreement allow more than one broker to market a property

And

- Leases for a period of one year or less

### **REVIEWING CONTRACT**

Note that;

If licensee is a new licensee, managers should review the contract BEFORE the signatures are obtained

Note that;

Managers are to check for:

- Legal description
- Consideration; is the purchase price clear and complete; if the purchase price is an appraised value, does the contract state who will conduct the appraisal and when it will be conducted
- Inspections; is the inspector employed by the buyer, the inspector should be employed by the buyer; if there are any time limits sufficient to allow for timely inspection, written notice, and response to the notice; if the buyer has waived the right to an inspection or if an inspection is not provided for in the contract; has the buyer been informed of all defects



Note that;

Any defects found an inspection must be disclosed to future prospective buyers

Note that;

If the sales contract does not provide for an inspection or if the buyer has waived this right, the contract should include a statement verifying that the buyer has been informed of all defects and defects should be itemized in this statement

Note that;

In Georgia, inspectors are not required to be licensed

Note that;

In the case of *Stelts V Epperson*, the court ruled that a licensee can be found negligent if he/she engages a vendor for the buyer and the vendor fails to properly perform his/her job; therefore all licensee should provide buyer with:

- ✓ A vendor list
  - ✓ A form permitting the broker/agent to hire the “buyer selected” vendor from the list
- New home warranty; if the seller is the builder, is the type of warranty provided clearly stated; has the buyer been informed of the coverage provided by the warranty
  - Closing and occupancy dates; are closing and occupancy dates specified; are the closing and occupancy dates reasonable

Note that;

Some sales contracts contain statements allowing either the buyer or the seller to extend the closing date up to seven days, if such an extension is requested, the party requesting the extension must notify the other party in writing

Note that;

If the contract does not provide for an extension or if the length of the extension exceeds the period allowed by the contract, an amendment signed by both parties must be added to the contract.



- Personal property and fixtures; are the procedures for handling personal property and fixtures clearly specified; if the seller wishes to keep an item that may be considered a fixture, is this specified in the contract; if the buyer wants included in the sale an item that may be considered personal property, is this specified in the contract and the value for same
- Disclosure of agency; has the proper disclosure been made
- Disclosure of parties holding licenses; if any party to the contract holds a real estate license or has a relative who holds a real estate license, has this been properly disclosed
- Non-applicable items; are all blanks that are not applicable on the form marked with N/A
- Additions or deletions; if any words are added to or deleted from the form, have all parties initialed the changes; are both the date and time included with the initials; if additional pages are included, has each page been initialed
- Special stipulations; are all special stipulations clearly stated in that contract; if FHA or VA financing is being considered, is the necessary addendum included
- Time frame; if the offer includes a time frame, are all parties aware that the time frame remains in effect if a counteroffer is made

Note that;

The sales contract may include a statement indicating that an offer must be responded to within a specified time frame, this time frame is optional

Note that;

If a time frame is included in a contract and if the seller makes a counteroffer, the time frame is still in effect unless otherwise indicated in the counteroffer

- Time and date; are the exact time and date the contract became binding recorded on the contract

Note that;

After negotiations are complete and an agreement has been reached, the last party to agree in the negotiations must write on the contract the exact time and date that the agreement became a binding contract

Note that;

The party responsible for recording the time and date would be the seller if an offer is accepted

Note that;

The responsible party would be the buyer if a counteroffer is accepted or either party if negotiations go back and forth





Note that;

The time and date indicate the starting point for timing any action included in the agreement that must be completed within a specified time period

Note that;

The contract must be accepted exactly as it is written.

Note that;

Any change in the offer, no matter how minor, automatically terminates the original offer and constitutes a counteroffer.

#### **COUNTEROFFER**

Note that;

A counteroffer automatically “terminates” the original offer and constitutes a totally new offer even if the counteroffer only changes “one” minor item.

#### **OFFER**

Note that;

Once an offer is made, it can be withdrawn until acceptance is communicated.

Note that;

When a contract is offered, it usually includes a specific time period in which a response must be made by the offeree/seller.

Note that;

If the offer is NOT accepted in that time period, the contract terminates!!!!

Note that;

If no time period is noted in the contract, it terminates after a reasonable time

Note that;

The court may ultimately have to determine what a reasonable time is



## REVIEW

Note that;

When a sales contract is secured by a new licensee, manager should be sure to review the contract before the signatures are obtained.

Note that;

It will be up to the managing broker/manager to “require” **A NEW LICENSEE** to have a sales contract or any contract reviewed before/prior to the signatures obtained on the contract.

Note that;

Managing broker/manager must review all contracts and the **CONTRACT MUST BE REVIEWED WITHIN 30 DAYS OF THE DATE OF THE CONTRACT** and indicate on each contract when it was reviewed by managing broker/manager.

## REVIEWING CONTRACT

Note that;

In reviewing contract, check to my sure contract has:

- Consideration
- Agreement
- Legal objective
- Legally competent parties

- Consideration

Note that;

Managers are to make sure that contract has consideration and consideration is a promise that someone makes to give up something of value

Note that;

Earnest money is NOT consideration

Note that;

Consideration can be VALUABLE CONSIDERATION OR GOOD CONSIDERATION



### VALUABLE CONSIDERATION

Note that;

**Valuable consideration** is anything that has a monetary value:

- Money
- Services
- Merchandise
- Etc.

### GOOD CONSIDERATION

Note that;

**Good consideration** is something of worth that does not have a monetary value:

- Love
- Affection
- Good will
- Gift

-Agreement

Note that

Agreement = offer and acceptance/meeting of the minds.

Note that;

Offer and acceptance must be:

- Genuine (freely given)
- No duress (forcing someone to do something against their will)
- No undue influence used to obtain agreement (taking unfair advantage of someone)

Note that;

The agreement must be:

- Mutual agreement

Note that;

In order to have mutual agreement there must be:

- One party (the offeror) must make an offer to the other party (the offeree)
- The offeree must accept the offer



- Must communicate the acceptance to the offeror

Note that;

There is no mutual agreement if contract INCLUDES any:

- FRAUD
- INNOCENT MISREPRESENTATION
- MISTAKES

Note that;

Agents/licensee's/managers are to make sure contract doesn't include any:

- FRAUD
- INNOCENT MISREPRESENTATION
- MISTAKES

Note that;

**FRAUD =**

- Giving false information
- Withholding relevant information
- An act intended to deceive someone in order to get him/her to give up something of value

Note that;

**INNOCENT MISREPRESENTATION =**

- Giving of incorrect information
- Without the intent to deceive

**MISTAKES**

Note that;

An error in the "FACTS" of a transaction that occurs by:

- Mutually by both parties
- Unintentionally
- Without negligence

Note that;

The injured party has option to rescind/cancel contract or leave it in effect (voidable)



### MUTUAL MISTAKES

Note that;  
Mutual mistakes make's the contract void.

Note that;  
There is no mutual agreement if contract includes mutual mistakes

#### -Legal objective

Note that;  
Contract must have a legal purpose.

Note that;  
Contract cannot call for any action that violates the law.

Note that;  
A contract that has as its objective anything that illegal is void

Note that;  
An illegal contract cannot be enforced in court

Note that;  
The injured party has option to rescind/cancel contract or leave it in effect

#### -Legally competent parties

Note that;  
There are three categories of people who are NOT legally competent:

- Intoxicated
- Insane
- Minors, while still minor

Note that;  
A person that has not reached the legal age requirements or age of majority is considered a minor.



Note that;  
In GA, the age of majority is 18

Note that;  
Minors while still a minor or within a reasonable period after reaching the age of majority may elect to void a contract

Note that;  
A reasonable period after age of majority must be determined by the court

Note that;  
A contract by a minor is voidable while still minor

Note that;  
Minors while still minor cannot sale real property

Note that;  
A minor cannot appoint someone to sell their real property, any contract to do so is void.

Note that;  
If a minor buys real property the contract is voidable

Note that;  
An Intoxicated person and/or insane person and/or minors while still minor ARE NOT legally competent.

Note that;  
An intoxicated/insane person that enter into a contract is voidable

Note that;  
An insane person is a person that has been declared incompetent by the court

Note that;  
Contract by an insane person is:

- not valid



Note that;

Contracts are either:

- Express
- Implied
- Valid
- Voidable
- Void
- Bi-lateral
- Unilateral
- Executed
- Executory

### **EXPRESS CONTRACTS**

Note that;

Expressed contracts are ones in which the **INTENT OF THE PARTIES IS STATED**/expressed in the contract itself.

Note that;

Express contracts can be oral or written

Note that;

Ex: A verbal lease on an apartment for 3 months is an expressed contract since the parties verbally state their intent

### **IMPLIED CONTRACTS**

Note that;

The intent:

- Is not stated
- But the intent is indicated by the party's actions

### **VALID CONTRACTS**

Note that;



A list of valid oral contracts:

- Open listings
- Leases of one year or less
- Sale contracts
- Leases over one year

Note that;

A valid contract is one that is legally sufficient to meet all requirements of law

Note that;

Attorney-in-fact and/or Corporations are entities that can enter into a valid contract.

Note that;

Attorney-in-fact, when properly granted, can enter into a valid contract and the power of attorney is limited to the transaction named in the document.

Note that;

For corporations, the signing official must have approval of the board of directors in the form of a resolution to enter into a valid contract

Note that;

In GA, the corporate seal must be affixed or two officers must sign for a valid contract.

Note that;

Contracts "call" for **FOUR REQUIREMENTS** for a valid contract:

- "C"onsideration
- "A"greement
- "L"egal objective
- "L"egally competent parties

Note that;

A valid contract can be:

- Enforceable
- Unenforceable





### **ENFORCEABLE**

Note that;

An enforceable valid contract can be enforced in a court of law

### **UNENFORCEABLE**

Note that;

An unenforceable contract can be valid however they cannot be enforced in a court of law

Note that;

An unenforceable contract is valid until challenged in court, usually not written and therefore cannot be enforced in court.

Note that;

An oral contract is unenforceable in court but can be valid, with two exception in GA: oral listings and leases 1 year or less, both are can be valid and enforceable.

Note that;

An oral contract can be aborted by either party before completion

### **VOIDABLE CONTRACTS**

Note that;

A voidable contract is capable of being voided by one of the parties to the contract.

Note that;

A voidable contract is valid until action is taken by one party to make it void.

Note that;

A voidable contract is binding on one party only!

### **VOID CONTRACTS**

Note that;

A void contract is not recognized legally and has no legal effect.



Note that;  
A void contract is not binding on either party.

Note that;  
A void contract may seem to a valid contract but it is not a contract at all

### **BILATERAL CONTRACTS**

Note that;  
Both parties promise to give up something of value

Note that;  
A bilateral contract is one that includes a promise in exchange for a promise

### **UNILATERAL CONTRACTS**

Note that;  
Only "one" party promise to:

- Give up something of value
- A performance of some act by one of the parties

### **EXECUTED CONTRACTS**

Note that;  
Executed contracts are contracts where all requirements of the contract have been fulfilled and all parties have done what they agreed too.

Note that;  
When the contract is closed or settled, it is executed.

Note that;  
An executed contract is discharged by performance of the contract requirement

### **EXECUTORY CONTRACTS**

Note that;  
Some or all requirements of the contract have not been completed



## **HAZARDOUS MATERIALS IN CONTRACTS**

Note that;

The contracts negotiated by licensees should include disclaimers for any toxic substances currently known or discovered at a later date

Note that;

The broker/manager/agents should be looking for inclusion of disclaimer for any toxic substances currently known or discovered at a later date in contract.

Note that;

All managing brokers/managers/agents must review all contracts for hazardous materials including but not limited to:

- Radon

Note that;

Radon is a toxic gas which enters a building through the ground

Note that;

Currently, it is not uncommon for a buyer to request that a radon test be conducted before making an offer

Note that;

Radon test are easy to obtain, and if a problem is found it is usually relatively easy and inexpensive to correct

- Asbestos

Note that;

In the past, asbestos was used as a fire retardant in many buildings

Note that;

Although asbestos typically is found in older buildings with public occupancy, it also can be found in older homes-in the ceilings, floors and pipes



Note that;

A licensee handling older buildings should recommend these buildings be inspected for asbestos

Note that;

If found, the removal of asbestos is complicated and expensive procedure

- Hazardous waste dumps

Note that;

Agents can get list of the locations from the Atlanta office of the EPA to determine locations of hazardous waste dumps.

Note that;

Per EPA, there are more than 750 hazardous waste dumps locations in Georgia

Note that;

There may be more dumps located in Georgia than those identified by this agency

Note that;

Agent can contact local fire department and asking if there have been any unusual fires on the property or surrounding area.

Note that;

Agents should be determining how the property was used by previous owners and can contact Natural resources department to find out if any previous owners were cited for violating environmental protection laws.

Note that;

Agent should be inspecting the property for patches of oil or areas where nothing will grow and any other signs of dumping.

Note that;

Agent can recommend the buyer hire a company to conduct an environmental assessment

- Lead-based paint



## LEAD-BASED PAINT

Note that;

Exposure to lead typically comes from lead plumbing and lead-based paint, which was used in many homes built before 1978

Note that;

Lead poisoning can cause serious problems, especially for children

Note that;

Many homes built before 1978 contain lead based paint

Note that;

To protect families from exposure to lead, congress passed the residential lead-based paint hazard reduction act of 1992 also known as:

- TITLE X

Note that;

Section 1018 of this law requires the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978

Note that;

Sellers, lessors and real estate agents share the responsibility for ensuring compliance with the act; therefore the agent is responsible for informing seller or lessor of his/her obligations under the law and for ensuring that he/she makes the required disclosures

Note that;

The act does not require the testing or removal of lead base paint

Note that;

If lead-based paint exists on a property, the agent might recommend that the owner/landlord have the paint removed by a company that specializes in lead-based paint removal



Note that;

Seller/Lessors must disclose the presence of known lead-based paint hazard and provide available reports to buyer or renters and must provide federally approved pamphlet, titled: protect your family from lead in your home

Note that;

Sale contract/leases must include certain disclosures about lead base paint

Note that;

The seller/landlord must give buyer/renter a 10-day period to conduct a lead-based paint and lead-based hazard inspection, at the buyer/renter expense and sales contract/leases must include certain disclosures based on federal/state laws.

#### **INSPECTIONS/DATES/TIME FRAMES IN CONTRACT**

Note that;

All managing brokers/managers/agents must review contract for inspections/dates/time frames.

Note that;

The **STATUTE OF LIMITATION OR LACHES PRINCIPAL** = TIME IS OF THE ESSENCE

Note that;

The contract must be performed on or before the date/time specified in the contract.

#### **INSPECTION**

Note that;

If contract does not provide for inspection or buyer waived this right, the contract should include a statement verifying that the buyer has been informed of all defects and defects should be itemized in this statement.

Note that;

In GA, inspectors are not required to be licensed.

Note that;

Any defects found during any inspection must be disclosed to future prospective buyers.



Note that;

A licensee can be found negligent if he/she engages a vendor or any vendor for the buyer and the vendor fail to properly perform.

Note that;

Licensee may provide the buyer with:

- A vendor list

Note that;

There must be a minimum of three, for each vendor

- A form permitting the agent to hire the selected vendor from the list and holding agent harmless if vendor fails to perform

### **TIME FRAME**

Note that;

If a time frame is included in a contract and if the seller makes a counteroffer, the time frame is still in effect unless otherwise indicated in the counteroffer.

Note that;

The last party to agree in the negotiations must write on the contract the exact time and date the agreement became binding.

### **DISCHARGING CONTRACTS**

Note that;

Methods of discharging contracts can be by:

- Performance
- Assignment
- Novation
- Termination

### **PERFORMANCE**

Note that;

Performance of the contract = executed/closed



## ASSIGNMENT

Note that;

Assignment = the transfer of one's interest in a contract to another person is called assignment.

Note that;

The person to who assigns their interest is the **ASSIGNOR**

Note that;

The person to whom the interest is assigned is the **ASSIGNEE**

Note that;

Once assignment is made, the **ASSIGNEE BECOMES "PRIMARILY" LIABLE** for fulfillment of the contract.

Note that;

However unless there is a novation agreement relieving the assignor of liability, the **ASSIGNOR REMAINS "ULTIMATELY" LIABLE** if the assignee fails to perform.

Note that;

Executory contracts/before closed/executed can be assigned **UNLESS** prohibited in the contract

Note that;

Executed/closed/discharged contracts cannot be assigned.

## NOVATION

Note that;

Novation agreement = the substitution of a new contract between the two parties which terminate and replace the old contract and/or the substitution of new parties in an existing contract.

Note that;

With a novation agreement, the withdrawing party (assignor) is released from liability.





## **TERMINATION**

Note that;

Termination; can occur by:

- Mutual agreement of the parties
- Expiration of time
- Rescission of a “voidable” contract
- Operation of law

Note that;

The parties to a contract can mutual agree to terminate a contract

Note that;

When a contract is offered, it usually includes a specific time period in which a response must be made by the offeree/seller and if the offer is not accepted in that time, it terminates.

Note that;

If no time period is noted in the contract, it terminates after a reasonable time; (the court may ultimately have to determine what a reasonable time is).

Note that;

Rescission of a “voidable” contract occurs when a “voidable” contract is terminated by one of the parties to a contract

Note that;

Operation of law:

- Destruction of the property
- Bankruptcy of either party
- Death of one of the parties can terminate a contract, if included in the contract

## **DESTRUCTION OF THE PROPERTY**

Note that;

**THE UNIFORM VENDOR AND PURCHASE RISK ACT** covers cases where real property involved in a sale is destroyed.



Note that;

The buyer is not obligated to go through with the sale if the property is destroyed while the contract is executory and is entitled to their money back.

Note that;

While the contract is executory, the seller is at risk;  
If the property is destroyed BEFORE either:

- Possession of the property
- Title to the property has passed to the buyer

#### **BANKRUPTCY OF EITHER PARTY**

Note that;

If either party to a contract becomes bankrupt WHILE the contract is still executory/not closed, the contract is terminated

#### **DEATH OF ONE OF THE PARTIES CAN TERMINATE A CONTRACT**

Note that;

If one of the parties dies, the contract is terminated ONLY if it requires an act that only the deceased person could perform.

Note that;

REAL ESTATE SALES CONTRACTS "ARE NOT" TERMINATED BY THE DEATH OF ONE OF THE PARTIES; they are BINDING ON THE ESTATE OF THE DECEASED PERSON, BOTH BUYER OR SELLER; unless there is a provision in the contract to the contrary.

#### **BREACH OF CONTRACT**

Note that;

BREACH OF CONTRACT occurs when one party fails to live up to contractual obligations.

Note that;

When this occurs; the "other" party (either buyer or seller) is referred to as the "innocent party".



### **INNOCENT PARTY**

Note that;

The Innocent party may:

- Accept partial performance
- Rescind/cancel/terminate the contract
- Sue for specific performance to carry out the requirements of the contract
- Sue for damages

### **BUYER**

Note that;

The buyer usually wins a suit for specific performance under a valid contract

### **SELLER**

Note that;

The seller will usually have difficulty in winning for specific performance since they can normally be adequately compensated by monetary damages.

### **-SUE FOR DAMAGES**

Note that;

The innocent party may have to go to court to sue for monetary damages

### **-LIQUIDATED DAMAGES**

Note that;

If the buyer breaches the contract, the seller may demand forfeiture of the earnest money as liquidated damages.

Note that;

A statement can be added to contract or may already include a statement for breach of contract.



Note that;  
The parties may determine in advance a sum to be paid in the event of a breach of contract.

Note that;  
If a statement or an advance determined amount in the event of a breach is in the contract, this may prevent for suing for additional damages

#### **STATUTE OF LIMITATION/THE PRINCIPAL OF LACHES**

Note that;  
The innocent party must take action to remedy the breach with a specific time period set by the "STATUTE OF LIMITATION/THE PRINCIPAL OF LACHES"

Note that;  
The phrase time is of the essence means:  
The contract must be performed on or before the date specified in the contract

Note that;  
The party who fails to meet the deadline/timeline is guilty of a breach of contract

#### **LISTINGS CONTRACTS**

Note that;  
An agency relationship between seller and broker is created or established through a contract called a listing agreement

Note that;  
When a listing contract is established, the contract is between the broker and the owner, not between the listing agent and the owner

Note that;  
Listing agreement must specify a starting and ending date



Note that;

Broker should make sure there is a safety clause allowing the broker to collect a commission if the property is sold after the listing term to a buyer who was shown the property during the listing term

Note that;

The broker should determine if the price is realistic; neither overpriced or underpriced

Note that;

Before listing the property, the licensee should:

- Obtained a warranty deed or security deed
- Use the warranty deed or security deed to verify the names of all parties on the title
- Use the warranty deed or security deed to verify the legal property description
- Obtain the owner's signature on a "consent to release information" related to existing loans
- Obtain the owner's consent to inform the mortgagee that the property is for sale
- Verify the loan balance
- Determine if the loan is assumable
- Determine if there are prepayment penalties
- Make sure the property is inspected
- Note all property defects
- Obtain seller's disclosure forms
- Make sure if the listing will be entered in a multiple listing system, have all blanks on the multiple listing forms been completed
- Make sure that all parties named on the title signed the listing contract

Note that;

A broker is permitted to delegate to a salesperson the responsibility of signing the listing contract

Note that;

If the broker decides to grant permission to a salesperson, it must be in writing

Note that;

This written permission can be contained in the original affiliation agreement between the broker and the salesperson



Note that;

If the salesperson is a new licensee, the broker may decide to withhold permission until the salesperson has proven them selves

Note that;

Most listing contracts involve four parties:

- The seller
- The buyer
- The broker
- The salesperson

Note that;

Most listing contracts, the broker represents the seller and is paid by the seller

Note that;

That the seller in a listing contract is called the principal or client of the broker

Note that;

Under a listing contract, the broker is the agent; not the salesperson

Note that;

Under a listing contract, the salesperson is an agent for the broker; not agent for the seller

Note that;

In GA, only a broker can enter into a listing contract with the seller

Note that;

Under common law of agency, the broker has a fiduciary/legal or ethical responsibility to the principal to act in the best interest of the client, under a listing contract

Note that;

The broker and therefore that agent of the broker primary loyalty must be to the principal

Note that;

Under a listing contract, the buyer is called a:

- customer



Note that;

There are three types of listing agreements which are recognized in GA. and one which is not:

- 1) Exclusive right to sell listing
- 2) Exclusive agency agreement/listing
- 3) Open listing
- 4) Net listing

Note that;

One important feature is whether they are required to be in writing.

Note that;

GA law of BRRETA requires all listings to be in writing except open listings, UNDER THE STATUTE OF FRAUDS to be valid and enforceable

### **EXCLUSIVE "RIGHT TO SELL" LISTING**

Note that;

Exclusive right to sell listing must have a specified time period.

Note that;

The principal gives the agent/broker the exclusive right to sell the property for a specified time.

Note that;

The agent/broker is entitled to a commission if the property is sold within the listing period, by ANYONE, including the owner.

Note that;

Any other broker who sells the property must go through the listing broker and receive his/her commission from the listing broker

Note that;

The seller must pay the listing broker and the listing broker must pay the seller broker.

Note that;

The listing broker may also receive/earn a commission even if the property does not sell; as long as the broker procures a buyer who is ready, willing and able to purchase the property at the seller's terms in the listing agreement, if seller decides not to sell/seller backs out after terms are met.



Note that;  
Exclusive right to sell listings is the most common.

Note that;  
Exclusive right to sell listing must be in writing in GA to be valid and enforceable.

Note that;  
Exclusive right to sell listing must have ending date.

Note that;  
Exclusive right to sell listing is expressed/bilateral contracts.

#### **EXCLUSIVE AGENCY LISTING**

Note that;  
Exclusive agency listing must be in writing in GA to be valid or enforceable

Note that;  
Exclusive agency listing must have specific ending date

Note that;  
Exclusive agency listing is bilateral and expressed contract

Note that;  
All agents/branches understand and agree that All Real Estate Consultants, Inc. will not enter into any Exclusive Agency agreements/listing with any seller.

Note that;  
With exclusive agency listings, the owner may sell property "without" paying a commission.

Note that;  
Exclusive agency listings are the LEAST common type of listing.

Note that;  
All Real Estate Consultants, Inc. WILL NOT enter into any exclusive agency listing agreement.





## **OPEN LISTING**

Note that;

All agents/branches can/may have open listing with All Real Estate Consultants, Inc. and other firms however MUST GET PRIOR APPROVAL FROM SELLER TO ADVERTISE ANY PROPERTY.

Note that;

With open listings, the principal gives the agent/broker the right to sell, but it is not an exclusive right.

Note that;

With open listings, any number of agents may have an open listing at the same time on a given property.

Note that;

The first broker/agent to find a buyer is entitled to a commission.

Note that;

If owner sells, no commission is paid.

Note that;

An open listing DOES NOT have to be in writing in GA, it may be oral; however if the open listing is oral, the broker/agent MUST still obtain written permission to advertise the property from the seller/seller agent prior to advertising the property.

Note that;

An open listing is an expressed/unilateral contract.

Note that;

Open listing are unilateral contract because the broker has not promised to do anything.

## **NET LISTINGS**

Note that;

Net listings are not recognized in GA.

Note that;

A net listing is a listing where the broker gets any excess funds over and above what the seller and broker has agreed to.



Note that;

All agents/branches understand and agree that net listing are prohibited in GA and may be prohibited in the state in which they operate, therefore All Real Estate Consultants, Inc. will not participate in net listing in any State it operates in.

Note that;

A net listing is a listing that does not include a specific sales price

Note that;

Agents are to look for a fixed selling price in the listing agreement, IF JOINTLY AGREED/SELL PRICE, THEN THIS IS NOT A NET LISTING, IF THERE IS A FIXED SELLING PRICE.

Note that;

All agents are to convert any net listing into gross listing by backing out desired commission percentage from 100%.

Note that;

Dividing the amount, the owner wants to net percentage/commission

Example if seller wants \$100,000.00:  $\$100,000.00 - 6\%/commission = 94\%/commission$  or .94 therefore  $100,000.00/.94 = 106,382.98$ ; the agent must sell property for this amount, converting to gross listing.

### **TERMINATION OF LISTING AGREEMENT**

Note that;

A listing agreement is automatically terminated when the sale is completed.

Note that;

Listing agreements can be terminated by: revocation or renunciation, expiration of the listing period, agreement of the parties, death of either party, incapacity of either party and extinction of the property.

Note that;

Revocation/renunciation, expiration period and agreement are ACTS OF THE PARTIES.

Note that;

“Incapacity”, “extinction of the property” are an ACTS OF LAW.



Note that;

The methods by which a listing agreement may be terminated is to use the word: READIE

#### **“R”EVOCATION/RENUNCIATION**

Note that;

The principal/client may decide to renounce or revoke the listing agreement thereby terminating it; recall under exclusive right to sell, if broker presence buyer that is willing and able at the terms in the listing agreement before termination, the broker has earned a commission.

Note that;

The owner may “Take the property of the market and terminate the agency BUT must pay a commission if the property is sold during the ORIGINAL listing period under exclusive right to sell!

#### **“E”XPIRATION OF LISTING PERIOD**

Note that;

A listing agreement will automatically terminate/expire at the end of the listing period.

#### **“A”GREEMENT OF THE PARTIES**

Note that;

The parties may agree to terminate the listing agreement

#### **“D”EATH OF EITHER PARTY**

Note that;

The death of either party, seller or broker will terminate a listing agreement

#### **“I”NCAPACITY OF EITHER PARTY**

Note that;

If either party is declared legally incompetent, file bankruptcy or broker loses license, the listing agreement terminates.

#### **“E”XTINCTION OF THE PROPERTY**



Note that;  
Is the property is destroyed, the listing agreement terminates.

### **COMMON LAW OF AGENCY**

Note that;  
According to COMMON LAW OF AGENCY, the agent takes on a FIDUCIARY responsibility to the principal both seller and buyer

Note that;  
An agent is often called a:

- fiduciary

Note that;  
With fiduciary, the agent must act in the principal's best interest

Note that;  
Fiduciary = faithfulness to a person/principal/client, demonstrated by continuing loyalty and support to the principal/client

### **BREACH OF FIDUCIARY RESPONSIBILITY**

Note that;  
According to common law of agency, when a broker/agent creates an agency relationship with a principal, the broker/agent incurs certain obligations to the principal

Note that;  
The obligations to the principal are called:

- Fiduciary duties

Note that;  
When a broker/agent fails to uphold "**ONE**" of these fiduciary duties, it constitutes a breach of the agency agreement



Note that;

To win a suit for breach of agency, it is NOT necessary to prove that any other wrongdoing occurred such as:

- Misrepresentation
- Unfair treatment
- Fraud
- Undisclosed dual agency

Note that;

Undisclosed dual agency can be created by:

- Actions
- Implication

Note that;

To win a suit for breach of agency, a principal must ONLY prove that an **UNDISCLOSED DUAL AGENCY EXISTED**

Note that;

To win a suit for breach of agency, a principal needs ONLY show that an **UNDISCLOSED DUAL AGENCY OCCURRED**

#### **AVOIDING UNDISCLOSED DUAL AGENCY**

Note that;

- In GA, the license law requires that a real estate broker/agent disclose to all parties in any transaction whom they represent

Note that;

- In GA, the license law requires disclosure of who will pay the broker/agent commission

Note that;

- In GA, the license law requires disclosure be in writing

Note that;

- Disclosure must be no later than when a written offer to purchase is made



### **UNINTENTIONAL DUAL AGENCY**

Note that;

Disclosure alone is NOT sufficient to protect an agent against the possibility of a lawsuit for breach of agency because of an unintentional dual agency

Note that;

An agent action can lead to an unintentional dual agency prior to the disclosure

Note that;

All licensees are to include a written and signed dual agency disclosure that is signed by both parties in every file

Note that;

Dual agency with the buyer is always unintentional and therefore agent actions must be limited as to not to create a relationship with a buyer without getting a written dual agent disclosure.

Note that;

If an agent already has an agreement/relationship with a seller, the agent must have a written disclosure signed when the licensee begins to work with a potential buyer and must be signed by both seller and potential buyer

Note that;

All licensees are to never provide advice to a potential buyer without have a written agreement with the buyer while having a written agreement with the seller without having a dual agency agreement signed by both parties.

Note that;

Advice includes:

- Encouraging the buyer to submit an offer that is less than the seller's asking price
- Suggesting an amount for an offer other than the asking price
- Advising the buyer on what to do in response to a counteroffer by the seller



Note that;

Agents are not to become an advocate for the buyer rather than the seller by:

- Divulging information that would weaken the seller's negotiating position
- Divulging the dollar amount of the offer to which the seller made a counteroffer or amount of the counteroffer
- Giving the appearance of taking the buyer side in the process of offer and counteroffer

#### **PENALTIES FOR UNDISCLOSED DUAL AGENCY OR BREACH OF AGENCY**

Note that;

There are severe penalties for undisclosed dual agency or breach of agency:

- The principal may sue for the return of the agent's commission
- The principal may sue for monetary damages over and above the return of the agent's commission
- The principal may sue to rescind the contract in which a breach was involved

Note that;

If the principal sues for rescission/cancel of the contract and wins, the principal then cancel the contract and the broker/agent is responsible for making the principal whole; which mean the broker/agent must restore the principal to their financial condition prior to the transaction

Note that;

The broker/agent that is found guilty of a breach of agency might be required to:

- Return the commission earned on the sale
- Pay off the principal's loan
- Pay any delinquency charges on the principal's loan
- Pay the principal the difference in any loan payments made and the fair rental value of the property while it was occupied
- The principal can sue for revocation of the agent's real estate license
- The agent will be subject to disciplinary action by the real estate commission for breach of agency, up to and including revocation of the agent's license

Note that;

Licenseses should remember the words or acronym: LOW PAIN



Note that;  
Low pain =:

- L = loyalty to the principal

Note that;

The interest to the principal must come before the interest of the agent and all others

Note that;

Information that would damage the seller's bargaining position may be disclosed to the buyer only with the seller's permission

Note that;

A broker only may receive compensation for selling a listed property from someone other than the seller, with the permission from the seller only!

Note that;

A salesperson may receive compensation from a source other than the employing broker only with written permission from the employing broker

### **PROHIBITED**

Note that;

An agent is prohibited from making a secret profit

Note that;

A broker/agent is prohibited from accepting a bonus

Note that;

An agent is prohibited from violating the seller confidence under a listing agreement

Note that;

An agent is prohibited from violating the buyer confidence under a buyer engagement/agreement





Note that;

An agent is prohibited from taking advantage of knowledge gained because of a confidential relationship with the seller

Note that;

An agent is prohibited from failing to disclose the purchaser's identity

Note that;

An agent is prohibited from concealing the identity of the true buyer when a "straw buyer/dummy buyer" makes an offer to purchase a property; if the agent knows that the person making an offer is not the person making the offer, they must disclose this to the seller. Also, if the agent does not know who the real buyer is, they must disclose this to the seller

Note that;

An agent is prohibited from negotiating the sale of property UNLESS the agent discloses to the seller their relationship in advance about:

- Relative
- Friend
- Associate

Note that;

An agent/licensee is prohibited from acting as an undisclosed dual agent

Note that;

An agent is prohibited from acting in an undisclosed dual capacity

Note that;

An agent is prohibited from holding or refusing to present any "written" offer to purchase within a reasonable time after it is received; also, all written offers must be submitted immediately when they are received

- O = obedience to the principal

Note that;

The agent must follow all instruction of the principal unless they are illegal or unethical



Note that;

The agent must not substitute their judgment or opinion for that of the principal

Note that;

An agent may not:

- Sign any documents for the seller, unless given the authority to do so in a power of attorney
  - Obligate the principal/client to perform any act unless given written authority to do so
  - Change the terms or conditions of contract under which a property is offered for sale without written authority from the seller
- W = written offers must be submitted

Note that;

All written offers must be submitted promptly

Note that;

When more than one written offer is received, all offers must be submitted in one sitting

Note that;

The agent may present the offers in any order they deem fit for the principal, but all written offer must be submitted

Note that;

The agent is not allowed to hold one offer with the expectation of receiving another offer later, even if it would be a better one

- P = personally act for the principal

Note that;

Most real estate listing contain a clause that allow the broker/agent to use the efforts of another to sell a property

- A = account for all money



Note that;

The agent must account for all funds or property belonging to the principal that come into the agent's possession or under the agent's control

- I = inform the principal of all material facts

Note that;

Any material fact concerning the principal property that comes to the agent's attention must be communicated to the principal

- N = not be negligent

Note that;

All agents of All Real Estate Consultants Inc. are required to be knowledgeable as a licensed professional in real estate

Note that;

If a licensee of All Real Estate Consultants, Inc. is incompetent or negligent in representing the principal/client, the agent may be liable to principal for damages

Note that;

Any licensee of All Real Estate Consultants Inc. are expected to exercise due diligence in performing on the principal/client behalf

Note that;

Failure to exercise due diligence in the performance of the agent duties will be considered negligence and is subject to damages to client and/or immediate termination

Note that;

In addition to the above requirements, the broker/agent is responsible for:

- Ensuring that commission are paid only to licensees who have valid and current licenses and that only licensed individuals perform those tasks requiring licensure
- Ensuring that disbursements from trust accounts are conducted in a proper manner



- Maintaining a system for keeping records of real estate transactions which are required by the Georgia License Law and the rules and regulations of the Georgia Real Estate Commission
- Providing all licensees with a written copy of the policies and procedures
- Ensuring that the company and each licensee enter into an agreement which specifies how the licensee will be compensated during the term of the affiliation and for work in process but not completed when the licensee leaves the company
- Ensuring that an individual with management authority is available to assist licensees and the public in real estate transactions handled by the company
- Provide Professional services.

Note that;

All material facts about the subject property must be communicated to any prospective buyer

Note that;

Full disclosure must be disclosed even if they are detrimental to the seller

Note that;

Full disclosure applies to all material facts known or which should have been known by the broker/agent

- Honesty
- Integrity
- Fairness

### **AGENCY RELATIONSHIP CREATED**

Note that;

An agency relationship is created by consensual agreement or consent by both parties

Note that;

An agency can be created without the payment of any consideration; consideration is not required to create an agency relationship.



### **GRATUITOUS AGENCY**

Note that;

When an agency relationship is created without consideration, it is called:

- Gratuitous agency

Note that;

When a salesperson assists a buyer in the negotiating a contract for free/gratuitously, the agent may be liable to the buyer for the actions of the agent.

Note that;

All licensee of All Real Estate Consultants, Inc. may not assist a buyer in the negotiation of a contract without a writing buyer engagement agreement between the broker and buyer

Note that;

Gratuitous agency or “free” agency is not allowed for any licensee of All Real Estate Consultants, Inc.

Note that;

All licensees may not provide assistance to a buyer in closing a sale without written agreement between broker and buyer

Note that;

All licensees may provide ministerial act should as:

- Helping buyer complete pre-printed forms
- Helping buyer locate lender

Note that;

An agent may be:

- Appointed
- Hired



Note that;

The “establishment of agency” can take several forms:

- Express agreement
- Implied contract
- Ratification
- Estoppel

#### **EXPRESS AGREEMENT**

Note that;

With an express agreement, either writing (most common) or oral (parol), THE “INTENT” OF THE PARTIES IS EXPRESSED.

Note that;

The principal, seller or buyer delegates certain authority to the broker and the broker consent to accept this authority

Note that;

All licensees of All Real Estate Consultants, Inc. will only engage a client with a writing agreement

Examples:

- Seller listing agreement, between broker and seller
- Broker buyer agreement, between broker and buyer

Note that;

Oral agreements is difficult to enforce in court except for oral listings and leases one year or less

#### **IMPLIED CONTRACT**

Note that;

Implied contract/agency is CREATED BY ACTION OF THE PARTIES.

Note that;

One of the most important implications of this is that an agency can be created without the payment of consideration and is called:



- gratuitous agency

Note that;

All licensees of All Real Estate Consultants, Inc. will not employ in any actions without a writing agreement with client

Note that;

Most implied contracts are unintentional, and all licensee actions must be well thought-out as to not to create an agency relationship without a writing agreement

#### **RATIFICATION**

Note that;

Ratification occurs when an agent acts on behalf of a principal without prior authorization and the principal later accepts the actions.

Note that;

All licensees of All Real Estate Consultants, Inc. will only engage client with a writing agreement

#### **ESTOPPEL**

Note that;

Estoppels agency is a situation in which an agent operates under what is called:

- Ostensible authority

Note that;

Ostensible authority is given to an agent when “no written agency agreement exists”, but the principal allows the agent to act as though he/she has an agency.

Note that;

If a buyer present an offer through a broker/agent and seller accepts then the seller is prevented under the principle of estoppels from denying the broker commission.

#### **COMMISSION PAID**

Note that;

Commission paid to a broker under a listing agreement may be paid by either buyer or seller



Note that;

Any commission paid to broker under a buyer broker agreement may be paid by either buyer or seller

Note that;

Commission paid to broker under a listing agreement is usually paid by seller

### **TYPES OF AGENCY RELATIONSHIPS**

Note that;

When a broker works for one principal, this is called a single agent relationship or a single agency.

Note that;

Under single agency, broker/agent can/may work for either the seller or the buyer, but not both.

Note that;

There are four basic types of agency relationships; 3 involve single agency and 1 involves dual agency.

“Single Agency”: single agency for seller.

“Single Agency”: single agency for buyer.

Note that;

The broker/agent must represent the buyer in any transaction

Note that;

The broker/agent is hired by the buyer to find a property for the buyer

Note that;

Buyer’s agency is just a legal as seller’s agency

Note that;

Under buyer agency, the buyer is the principal/client

Note that;

Under buyer agency, the broker/agent owes loyalty to the buyer, not the seller





Note that;  
Under buyer agency, the broker/agent must disclose all relevant information to the buyer that might affect the buyer's decision

Note that;  
Under buyer agency, there may be a co-op broker working representing another party, the listing broker

“Single Agency”: single agency for seller with sub-agent

Note that;  
Sub-agent may also be known as:

- cooperating broker or co-coping the sale

Note that;  
With a sub-agent, there are two brokers evolved:

- The listing broker
- The selling broker

Note that;  
The selling broker is an agent for the listing broker  
The selling broker is also a sub-agent for the seller

Note that;  
The selling broker has the same responsibility to the seller that the listing broker has to the seller under a sub-agency

Note that;  
A sub-agent is appointed by a listing broker and only exists to help the listing broker

Note that;  
A sub-agent has no authority to represent the seller except under the authority and direction of the listing broker

Note that;  
A sub-agent may not take over the listing broker's duties

Note that;



A sub-agent may not make decisions that directly affect the welfare of the seller

Note that;

Under sub-agency a selling broker/agent works for the seller and must immediately disclosed any relevant information that may affect the seller's decisions, such as information about the buyer.

Note that;

The listing broker is responsible for the compensation paid to the selling broker

Note that;

The selling broker commission is normally a percentage of the commission which the listing broker receives from the seller, usually 50%

Note that;

If a broker makes an offer of sub-agency to another broker, the broker can either accept or reject the offer.

Note that;

The salesperson involved in sub-agency work only for their respective brokers only!

Note that;

Sub-agency is not required to have a selling broker/agent

“Dual Agency”: agency for both seller and buyer.

Note that;

With “Dual Agency”, the agent is both agents for the seller and buyer in the same transaction

Note that;

In GA, dual agency is LEGAL however dual agency must be disclosed in writing to both parties and both parties must consent to the dual agency

Note that;

For dual agency to be LEGAL:

- Disclosure of dual agency must in writing
- Must have consent from both parties



Note that;  
Only experienced agents are to act as a dual agent

Note that;  
In dual agency, the buyer and seller in a sales transaction has adverse interest

Note that;  
It is extremely difficult for an agent to represent both of these interest, therefore all manager are to monitor any transaction that involves dual agency

Note that;  
Dual agency should be avoided if possible

Note that;  
Undisclosed dual agency is a serious matter and can be unintentional

Note that;  
Dual agency can be created by implication or actions of the agent, therefore all agent may not engage in any actions that can create dual agency without disclosure and consent by all parties

Note that;  
All licensees of All Real Estate Consultant, Inc. **MAY NOT** engage in dual agency without proper disclosure.

Note that;  
It will up to each individual office manager to allow dual agency and if allowed, the manager must monitor this type of agency closely

Note that;  
Dual agency is **ILLEGAL** without proper disclosure!!!  
**DUAL CAPACITY**

Note that;  
Another form of dual agency is dual capacity

Note that;  
Dual capacity is a situation in which an individual agent has two roles in a transaction, acting both as one of the principals and as an agent on behalf of another principal



Note that;

Dual capacity can occur when an agent want to purchase property for themselves, therefore the agent is the principal/client that is listed with our company or with another company when the agent is acting as a sub-agent:

- Acting as principal/client
- Acting as agent
- Acting as sub-agent

#### **DISCLOSURE OF AGENCY RELATIONSHIP**

Note that;

A licensee, who is an agent for the seller or sub-agent for the listing broker, must disclose their relationship to potential buyer in writing with whom they are working with

Note that;

It is best to disclose this relationship immediately orally and followed up by a written disclosure at an appropriate time

Note that;

The best time to make this disclosure is when the buyer first expresses serious interest in a property

Note that;

All licensees must disclosure relationship no later than when a written offer is submitted by the buyer

Note that;

A licensee who is an agent for the buyer must disclose their relationship to any seller or seller's agent whom they contact on the buyer's behalf

Note that;

The best time to disclose relationship to seller on buyer behalf is when a licensee first calls the seller or seller's agent about showing the property

Note that;

Buyer's agent must disclose relationship in writing no later than when a written offer is submitted to the seller or seller's agent

Note that;



If an agent that is working with seller under a listing agreement and a buyer that does not have an agent ask that the seller's agent to represent them as well, the seller's agent must first notify the seller and obtain permission in writing to represent the buyer as well; recall it would be considered dual agency and must be disclosed and both parties must consent

Note that;

If a buyer wants the seller's agent to represent them as well, the seller must first consent to this dual agency.

Note that;

If the seller does not consent to dual agency, the manager may assign another agent to represent the buyer

## **AGENCY**

Note that;

Agency does not refer to a business.

Note that;

An "AGENCY" is the **NAME FOR THE RELATIONSHIP BETWEEN THE AGENT AND THE PRINCIPAL/CLIENT.**

Note that;

An agency agreement DOES NOT require all elements of a contract to create the relationship.

Note that;

It is not necessary that an agent be licensed to create a valid agency relationship **HOWEVER A REAL ESTATE AGENT MUST BE LICENSED.**

Note that;

There are three types of agency:

- Universal
- General
- Special



Note that;

All three are created by consent:

- The principal delegate certain authority to the agent
- The agent consents to act as the principal agent

### **UNIVERSAL**

Note that;

Universal agency = given legal AUTHORITY TO TRANSACT MATTERS OF ALL TYPES for the principal/client:

- Negotiate salary with team owner for professional sports person
- Select and manage ALL investments for the professional sports person
- Determine if the client will rent or own house/home
- Determine the kind of car the professional sports person will drive
- Determine spending money for the professional sports person
- Etc.

Note that;

Universal agency is extremely rare in real estate and frowned on by the courts because the agent's powers are so broad

### **GENERAL**

Note that;

General agency is authorized to act in a SPECIFIC BUSINESS OR TRADE:

- Real estate sale person for the broker in real estate business
- Property manager who manages property for the owner
- Sales representative in any field who sells products for a company



### **SPECIAL**

Note that;

Special agency is authorized to PERFORM A SPECIFIC ACT OR TRANSACTION:

- Real estate broker who is authorized to sell a home
- A person who has power of attorney to sign a deed for someone

### **BROKER RELOCATION AGENCY**

Note that;

The mission of All Real Estate Consultants, Inc. is to become a full service national and global relocation professional real estate firm.

Note that;

All licensees of All Real Estate Consultants, Inc. are to keep this in the forefront of their minds

Note that;

Licensee should be primarily working with single buyer agency

### **BROKER COMMERCIAL AGENCY**

Note that;

All Real Estate Consultants, Inc. licensees may engage in commercial real estate

Note that;

Agents should engage with buyer under single agency, representing the buyer

Note that;

Compensation often comes from the buyer rather than the seller

### **BROKER SELLER AGENCY**

Note that;

The seller signs a listing agreement with All Real Estate Consultants, Inc. making the broker the seller's agent



Note that;

The agent is to:

- Promote the interest of the seller
- Keep confidential all information that the seller request be kept confidential except any information required by law
- Seek a buyer at the price/term of the engagement
- Present all offer in a timely manner even if there is already a contract of sale
- Disclose to the seller all adverse material facts that the broker has actual knowledge of concerning the transactions.
- Advise the seller to obtain expert advice about matter's beyond the broker's expertise.
- Account for all monies and property received

Note that;

A salesperson can only work for broker, not for a principal/client.

Note that;

A salesperson is a licensee who works on behalf of a broker or agent for the broker.

Note that;

A salesperson owes the same duties and responsibilities to the seller as does the broker.

Note that;

A salesperson may receive compensation ONLY from the broker for whom he/his works.

Note that;

Under a listing agreement, the buyer is called a "customer" of the listing broker, the seller's agent.

Note that;

Under seller agency, the broker/agent has responsibilities to the buyer:

- Must not knowingly give the buyer false information to the potential buyer
- Must disclose adverse material facts about the property, including material defects, environmental contamination and any other facts required by law to be disclosed, which are known by the broker/agent and which could not be discovered by the buyer upon reasonably diligent inspection





- Must disclose adverse material fact about the physical conditions in the neighborhood, within 1 mile of the property, which are known by the broker/agent and which could not be discovered by the buyer upon a reasonably diligent inspection of the neighborhood or by a review of available government documents, including records, maps, and government regulations

Note that;

BRRETA does not obligate the broker/agent to discover adverse material facts about the property or the surrounding neighborhood!

Note that;

BRRETA does not limit the seller's obligation to disclose adverse material facts about the property nor does it limit the buyer obligation to inspect the property and the surrounding neighborhood

Note that;

The broker/agent is not liable to the buyer for providing false information if the broker/agent did not know it was false and discloses to the buyer the source of the information

Note that;

Showing a potential buyer alternative properties does not violate a brokerage agreement with the seller under BRRETA

Note that;

Under a seller engagement, the broker/agent may assist a buyer by performing ministerial acts and does not create a brokerage agreement with the buyer under BRRETA nor does it violate the engagement with the seller

Note that;

Ministerial acts as defined by BRRETA = acts that do not require the exercise of the broker/agent professional judgment or skill

Note that;

Ministerial acts include:

- Providing pre-printed real estate from contract and related exhibits and addenda
- Acting as a scribe in preparing such documents
- Locating lender, inspectors, attorneys, insurance agents, surveyor and other professionals
- Locating schools, shopping facilities, places of worship and similar facilities



## **BROKER BUYER AGENCY**

Note that;

The broker/agent enters into a brokerage engagement with the buyer, making the broker their agent

Note that;

The brokerage engagement with the buyer may be called:

- Buyer agency agreement

Note that;

The broker/agent owes the same responsibilities to the buyer that they owes to any other client/principal

Note that;

The responsibilities to the buyer include:

- Promote the interest of the buyer
- Perform the terms of the brokerage engagement made with the buyer.
- Exercise ordinary skill and care in performing the agents duties to the client/buyer
- Comply with ALL requirements of BRRETA and all other applicable statutes and regulations including but not limited to fair housing and civil rights laws
- Seek a property that buyer at the price/terms that are agreeable to buyer
- Present all offer in a timely manner, even when a buyer is a party to a contract to purchase a property
- Disclose to the buyer all adverse material facts that the broker has actual knowledge of concerning the transactions.
- Must not knowingly give potential buyer false information
- Advise the buyer to obtain expert advice about matter's beyond the broker's expertise
- Account for all monies and property received
- Keep confidential all information that the buyer request be kept confidential except any information required by law

Note that;

Keeping confidential all information that the buyer request be kept confidential does not apply to the broker and affiliate agent working the buyer and does not constitute a breach of duty of confidentiality



Note that;

The broker/agent is not required to seek other properties for the buyer while the buyer is a party to a contract to purchase a property

### **RESPONSIBILITIES TO SELLER UNDER A BUYER'S AGREEMENT/AGENCY**

Note that;

With broker buyer agency the broker has responsibilities to seller:

- If the purchase will be financed by a loan assumption or seller will be providing all/part of the financing, the broker must **REPORT TO THE SELLER-CUSTOMER ALL MATERIAL FACTS KNOWN BY THE BROKER ABOUT THE BUYER'S FINANCIAL ABILITY TO MEET THE TERMS OF THE SALE.**
- A broker/agent engage by a buyer must not knowingly give potential seller false information
- If the purchase will be a "RESIDENTIAL TRANSACTION", **THE BROKER/AGENT MUST REPORT TO THE SELLER-CUSTOMER THE BUYER'S INTENT TO OCCUPY THE PROPERTY.**

Note that;

The broker/agent is not liable to the seller for providing false information if the broker did not know the information was false and they disclose to the seller the source of the information

Note that;

If the broker unknowingly provides a seller with false information and identifies the source of that information, the broker/agent is not liable unless they have engaged in fraud

Note that;

The buyer's obligation to disclose accurate information about his/her financial ability to complete the sale is in no way limited by BRRETA.

Note that;

Under a buyer engagement, the broker/agent may provide ministerial acts to the sellers which are acts that do not require professional judgment or skill

Note that;

Showing properties, the buyer is interested into other prospective buyers does not violate the brokerage engagement with the buyer



### **BROKER-LANDLORD AGENCY**

Note that;

The broker enters into a brokerage engagement with the landlord

Note that;

The broker/agent is not required to seek additional offers to lease a property while the property is subject to a lease or a letter of intent to lease.

Note that;

Landlord agency requires the same obligation covered by any client:

- Promote the interest of the landlord
- Seek a tenant at the price/term of the engagement
- Present all offer in a timely manner, even when the property is subject to a lease or letter of intent to lease
- Disclose to the landlord all adverse material facts that the broker has actual knowledge of concerning the transactions.
- Advise the landlord to obtain expert advice about matters beyond the broker's expertise.
- Account for all monies and property received

Note that;

The responsibility to tenants:

- Must not knowingly give potential tenants false information
- Must disclose adverse material facts about property including material defects, environmental contamination, and any other facts required by law to be disclosed, which are known by the broker/agent and which could not be disclosed, which could not be discovered by the tenant upon a reasonably diligent inspection
- Must disclose adverse material facts about neighborhood within 1 mile
- May assist tenant by performing ministerial acts for tenant.

Note that;

The law of BRRETA does not obligate the broker/agent to discover adverse material facts about the property or the surrounding neighborhood



Note that;

The law of BRRETA does not limit the landlord's obligation to disclose adverse material facts about the property nor does it limit the tenant's obligation to inspect the property and the surrounding neighborhood

Note that;

The broker/agent is not liable to the tenant for providing false information if the broker did not know it was false and they disclosed to the tenant the source of the false information

Note that;

If the broker/agent unknowingly provides a tenant with false information and identifies the source of that information, the broker/agent is not liable unless they have engaged in fraud.

Note that;

The broker/agent engaged by the landlord may assist a tenant by performing ministerial acts

Note that;

Ministerial acts are acts that do not require exercise of the broker/agent professional judgment or skill

Note that;

Performing ministerial acts do not create a brokerage agreement with the tenant and do not violate the landlord engagement

Note that;

The broker/agent may show alternative properties to prospective tenants without violating a brokerage engagement with the landlord

### **BROKER TENANT AGENCY**

Note that;

The broker/agent enters into a brokerage engagement with the tenant

Note that;

The broker/agent has the same general obligations covered with any client/principal



Note that;  
The broker/agent must promote the interest of the tenant

Note that;  
The broker/agent must seek a property to lease at the price and terms acceptable to the tenant

Note that;  
The broker/agent is not required to seek other properties for the tenant while the tenant is party to a lease or letter of intent to lease

Note that;  
The broker/agent must present all offers to and from the tenant in a timely manner, even when the tenant is subject to a lease or letter of intent to lease

Note that;  
The broker/agent must disclose to the tenant all adverse material facts that the broker/agent has actual knowledge of concerning the transaction

Note that;  
The broker/agent must advise the tenant to obtain expert advice about material matters beyond the broker/agent's expertise

Note that;  
The broker/agent must account for all money and property received in the transaction in a timely manner

#### **RESPONSIBILITIES TO THE LANDLORDS UNDER A TENANT ENGAGEMENT**

Note that;  
A broker/agent engaged by a tenant must not knowingly give potential landlords false information about the tenant

Note that;  
The broker/agent is not liable to the landlord for providing false information if the broker/agent did not know it was false and they disclose to the landlord the source of the information

Note that;  
If a broker/agent unknowingly give a landlord false information and identifies the source of the information, the broker/agent is not liable unless they have engaged in fraud



Note that;

The broker/agent must report to the landlord/customer all adverse material facts actually known by the broker/agent about the tenant's financial ability to meet the terms of the lease and about the tenant's intent to occupy the property

Note that;

The tenant's obligation to disclose accurate information about their financial ability to meet the terms of the lease is in no way limited by BRRETA

Note that;

The broker/agent may assist the landlord by performing ministerial acts for the landlord

Note that;

Ministerial acts include:

- Providing pre-printed real estate form leases and related exhibits and addenda
- Acting as a scribe in preparing such documents
- Locating architects, attorney, surveyors, engineers and other professionals

Note that;

Performing ministerial act for the landlord does not create a brokerage agreement with the landlord and does not violate the broker's brokerage engagement with the tenant.

Note that;

Showing properties the tenant is interested in to other prospective tenants does not violate the brokerage engagement with the tenant

### **BROKER DUAL AGENCY**

Note that;

A dual agency is when a broker/agent has an agency relationship with both the seller and the buyer or landlord and tenant in the same transaction.

Note that;

Broker/agent must receive written permission from all parties to create a dual agency.

Note that;

BRRETA allows for dual agency but must have the informed consent of all involved parties to do so.



Note that;  
The consent to dual agency must be in writing.

Note that;  
Consent must contain six specific components:

- Description of the transaction or transactions in which the broker/agent will serve as a dual agent
- A statement acknowledging that the Broker/agent, as a dual agent, is serving two clients whose interest is or could be different or adversarial
- A statement that the Broker/agent as a dual agent must disclose to all parties adverse material facts related to the transaction that are known by the dual agent and a statement that the agent may not disclose to any client information made confidential by another client unless the disclosure is required by law.
- A statement that the broker/agent will disclose to each client in a timely manner any material relationship the broker/agent may have with either client, personal, familial or business that might impair their fair and independent judgment relative to the other client
- A statement that the client does not have to consent to the dual agency and that the broker may terminate representation of a client who has not consented to a dual agency at any time before the dual agency is created and may receive referral fee for referring that party to a broker at a different firm.
- A statement that the client's consent is given voluntarily and that the dual agency agreement has been read and understood.

Note that;  
Dual agency can be created by actions

Note that;  
All agents must not engage in any actions that create dual agency without disclosure to all parties' involved and getting written approval from all parties prior to any actions that create a dual agency relationship.





Note that;  
Dual agency is “almost never” an intentional act.

Note that;  
When the broker/agent has two roles in a transaction, acting both as agent for the seller/landlord and agent for the buyer/tenant, this is called dual agency.

Note that;  
Dual agency can occur when agent wants to purchase property for yourself that is listed with their company or with another company when the agent is acting as a subagent.

Note that;  
Unintentional dual agency is a dangerous thing and should be avoided at all cost.

Note that;  
The broker/agent in a dual agency situation can disclose confidential information REQUIRED BY LAW without violating the brokerage engagement

Note that;  
In any transaction, the broker/agent may terminate representation of a client who has not consented to a dual agency at any time before the dual agency is created

Note that;  
If the broker/agent terminates representation for that transaction, the broker/agent may continue to represent the other client and can represent the first client in any other transaction not involving dual agency

Note that;  
If termination does occur, the broker may receive a referral fee for referring that party to a broker at a different brokerage firm

### **DESIGNATED AGENTS**

Note that;  
A broker/office manager may assign different licensees affiliated with All Real Estate Consultants, Inc. as designated agents to exclusively represent different clients in the same transaction



Note that;

The designated agent of the seller, landlord, buyer or tenant owes their client the same duties as any client:

- Perform the terms of the brokerage engagement
- Exercise ordinary skill and care in the performance of their duties
- Comply with all requirements of BRRETA and ALL other applicable laws and regulations
- Promote the interest of the client
- Keep confidential all information received during the engagement that the client requests be kept confidential, unless the client permits disclosure or such disclosure is required by law

Note that;

When a broker/managing broker/manager assigns licensees as designated agents to exclusively represent different clients in the same transaction, neither the broker, licensees nor the real estate firm will be considered dual agents

Note that;

The designated agent may not disclose confidential information to anyone other than to broker or managing broker

Note that;

The broker/managing broker/manager is not permitted to disclose any confidential information received from the designated agent or from the client with whom the designated agent is working unless such disclosure is required by law

Note that;

Confidential information includes any information that the client does not agree to being disclosed and that could harm the negotiating position of the client

Note that;

If a licensee receives confidential information from one party, and that licensee is later assigned as a designated agent for another party, the licensee is not permitted to divulge the confidential information unless the party gives their consent or the disclosure is required by law



## **TRANSACTION BROKER**

Note that;

A transaction broker/agent does NOT have a client relationship with any of the parties to a particular real estate transaction

Note that;

Under the law of BRRETA, a broker/agent acting as a transaction broker/agent has the following responsibilities:

- Present all offers to and from the parties in a timely manner
- Account for all money and property received in the transaction in a timely manner

Note that;

A transaction broker/agent must disclose the following information in a timely manner to all buyers and tenants with whom the agent is working:

- Adverse material facts about the property, including material defects, environmental contamination, and any other facts required by law to be disclosed, which are known by the broker/agent and which could not be discovered by the buyer/tenant upon a reasonably diligent inspection
- Adverse material facts about physical conditions in the neighborhood, within 1 mile of the property, which are known by the broker and which could not be discovered by the buyer/tenant upon a reasonably diligent inspection of the neighborhood or by a review of available government documents, including records, maps and government regulations

Note that;

A transaction broker/agent must not knowingly give false information to any party to a transaction

Note that;

The broker/agent is not liable to the party for providing false information if the broker did not know it was false and they disclose to the party the source of the information

Note that;

If a broker/agent unknowingly provides a party with false information and identifies the source of that information, the broker/agent is not liable unless they have engaged in fraud



Note that;

The law of BRRETA does not limit the seller's or landlord's obligation to disclose adverse material facts about the property nor does it limit the buyer's or tenant's obligation to inspect the property and the surrounding neighborhood

Note that;

A transaction broker/agent performs ONLY ministerial acts for one or more of the parties

Note that;

A transaction broker/agent may receive compensation from one or more of the parties according to a verbal or written agreement however any transaction agent affiliated with All Real Estate Consultants, Inc. must have written agreement

Note that;

As a transaction agent, you are performing only ministerial acts such as:

- Identifying property for sale, lease or exchange
- Providing real estate statistics and information on property
- Providing pre-printed real estate form contracts, leases and related exhibits and addenda
- Acting as a scribe in preparing such documents
- Locating lenders, inspectors, insurance agents, attorneys, surveyors, engineers, architects, and other professionals
- Locating schools, shopping facilities, places of worship, and other similar facilities

### **ENDING AGENCY RELATIONSHIP**

Note that;

The agency relationship begins when the client hires the broker and continues until the task the broker was hired to complete is completed.

Note that;

The date of expiration agreed on by the broker and client in the brokerage engagement.

Note that

Any authorized termination of the brokerage engagement.



Note that;

If no expiration date and/or no authorized termination have been made, the brokerage engagement ends 1 year after the engagement was made.

Note that;

After the brokerage engagement terminates:

- The broker must account for all monies and property related to the engagement.
- Must keep confidential all information received during the engagement that the client request is kept confidential

Note that;

There are three exceptions to the confidentiality responsibility:

- When the client gives permission for previously confidential information to be disclosed
- When the disclosure of confidential information is required by law
- When the information becomes public by some source other than the broker/agent

Note that;

If a conflict arises between a broker/agent's duty of confidentiality and their duty not to give false information to a customer, the duty not to give false information prevails

### **COMMON SOURCE INFORMATION COMPANIES**

Note that;

Under BRRETA, a broker does not have an agency relationship with common source Information Company (multiple listing services) unless there is a written agreement with the company.

Note that;

A broker/agent is not a sub-agent of another broker's client simply because they are members of or are affiliated with common source companies.



## AGENT

Note that;  
An agent is employed by another person/client.

Note that;  
An agent may be appointed or hired by:

- Express agreement
- Implication
- Ratification
- Estoppel

## PRINCIPAL OR CLIENT

Note that;  
The person who hires an agent is called the Principal or client

## AGENCY

Note that;  
An "AGENCY" is the name for **THE RELATIONSHIP BETWEEN THE AGENT AND THE PRINCIPAL/CLIENT.**

Note that;  
The client/principal must have contractual capacity:

- Must be legally competent
- Must be of legal age (18 in GA)

Note that;  
The agent is NOT required to have contractual capacity however:

- Must be legally competent
- Is not required to be of legal age

Note that;  
An agent has legal authority to act for the principal/client.



Note that;

An agent has authority to exercise some degree of discretion while acting for the principal/client.

Note that;

An agent may be:

- A real estate broker acting for a home owner to sell their property
- A real estate licensee representing a real estate broker
- A lawyer representing a client/principal
- An investment manager, investing someone else's money

#### **AGENT DUTIES**

Note that;

All agents should "actively and systematically" focus on "lead generation" through direct prospecting and marketing activities.

Note that;

All agents should make sure that they are always in the business of "lead generating" first

Note that;

Agent system for generating leads should always stays on, even when the volume might appear overwhelming.

Note that;

All agents should be making "seller listing" their "primary" focus however agents should be aware that the goal of All Real Estate Consultants, Inc. is to become a National full service relocation firm.

Note that;

All agents should be making, obtaining, and marketing seller listings their primary "lead generation" focus.

Note that;

Agents should have their/your primary lead generation activity built around obtaining a certain number of sellers listing each month, and year.



Note that;

All agents should set up and maintain tracking system for lead generation.

Note that;

All agents should set up and maintain a system for tracking numbers for:

- Goal Numbers
- Actual Numbers
- Lead generated (buyers or sellers)
- Seller listings
- Contracts written (number of units written, total volume written and gross income written)
- Contracts closed (number of units closed, total volume closed and gross income closed)
- People used
- Systems/tools
- Personal education
- Tracking expenses and the results you net from their/your efforts/expenses (net income-how much money did you earn as profit)

Note that;

All agents are required to submit monthly report to manager which must include: lead generation and seller listings!

Note that;

By tracking these numbers, this will help agent make better decisions about how to invest your lead-generation dollars and eventually track their conversion rates.

Note that;

Included with the manual is a sample spread sheet for tracking numbers.

Note that;

All agents should provide advice and consultations to clients.

Note that;

All agents are to follow all corporate policy and procedures.

Note that;

All agents are to follow all rules of the Real Estate Commission in the State in which they operate.





Note that;

All agents are to follow all laws both Federal and State/County/City/Local.

Note that;

All agents should set up and maintain a budget.

Note that;

All agents are to perform contractual engagement.

#### **RESPONSIBILITIES TO PRINCIPAL/CLIENT**

Note that;

An agent is often referred to as: a fiduciary.

Note that;

According to COMMON LAW OF AGENCY, the agent/broker has 'FIDUCIARTY DUTY' and when the agent fails to uphold one of these duties, it constitutes breach of the agency agreement and is a violation of loyalty to the principal.

Note that;

Undisclosed dual agency is a violation of loyalty and constitutes a breach of agency agreement of loyalty.

Note that;

It is sufficient to show only that the undisclosed dual agency occurred to constitute breach of agency.

Note that;

An agent owes fidelity to the principal.

Note that;

An agent must act in the principal's best interest.



Note that;

All agents/branches must agree to the responsibilities to the principal of:

- Loyalty
- Obedience
- Written offers must be submitted and must not hold an offer to purchase.
- Must act in the principal best interest
- Personally act for the principal
- Account for all monies
- Inform the principal of all material facts know or should have been know and will/must use check list for initial review/inspection of property for buyer or seller.
- Disclose all material facts known to the broker/agent or which should have been known to the broker/agent even if they are detrimental to the principal.
- Not be negligent.
- Must be honest to all parties
- Must have integrity and fairness to all parties
- Must not make a secret profit
- Must not violate the principal confidence
- Must disclose the purchaser's identity or must not conceal the identity of the true buyer when a straw person (a dummy purchaser) makes an offer to purchase.
- Must not act as undisclosed dual agency/agent
- Negotiate the sale of property to a: relative, friend, associate without prior disclosure to the seller of relationship to the buyer in advance.



## **SELLER SERVICES**

Note that;

The goal for agents/licenseses is to net the seller the most amount of money, in the shortest amount of time, with the least amount of problems in the transaction.

Note that;

Agents are to:

- Evaluate seller reason to sell.
- Determining seller's timetable to sale property.
- Completing net income worksheet to give to seller.
- help shape the best "selling price", given CURRENT market conditions

Note that;

By combining two or more adjacent properties into one tract of land is called:

- ASSEMBLAGE

Note that;

Any increase in value for a tract of land formed by combining two or more parcels is called:

- PLOTTAGE

Note that;

The value of a higher valued property is decreased if it is located among properties of lower value:

- REGRESSION

Note that;

The value of a lower valued property is increased if it is located among properties of higher value:

- PROGRESSION



## PRICING OF A PROPERTY

Note that;

Pricing of a property refers to the procedure used for real estate licensee to assist a seller in determining a suitable price for a property or to assist a buyer in evaluating a price offered by a seller

Note that;

Pricing of a property = **A RECOMMENDED PRICE** for a property, buying or selling

Note that;

Pricing by an agent result in **A SUITABLE PRICE**, not an estimate of value

Note that;

Pricing is NOT an appraisal

Note that;

Pricing is NOT an opinion of the value

Note that;

Under GA law; a licensee may give an **OPINION TO THE RECOMMENDED PRICE** to potential:

- Seller
- Purchaser
- Landlord
- Tenant
- Third party

Note that;

Licensee may NOT refer to the recommended price as an opinion of an appraisal/value

Note that;

Licensee may NOT offer their opinion as an estimate of the value of the property

Note that;

A licensee will be in violation of unfair practice if they claim their opinion of value is suitable as an appraisal of value, under the real estate license law.



## VALUATION

Note that;

Valuation is an impartial estimate or opinion of the current value of a parcel of property

Note that;

Valuation is based on data which support the estimate/opinion of value

Note that;

Valuation is usually required when property is:

- Sold or exchanged
- Financed
- Condemned
- Taxed
- Insured
- partitioned

## VALUE

Note that;

Value of a parcel of property is the **PRESENT WORTH OF ALL RIGHTS TO CURRENT AND FUTURE BENEFITS OF OWNERSHIP**

Note that;

There are many types of estimates of value:

- Market value
- Book value
- Insurance value

Note that;

The different types of value need not be the same

Note that;

Values will most likely differ with the purpose



Note that;

There are elements of value that must be present to have value: D.U.S.T

- **DEMAND**

Note that;

Demand = someone has a desire to own or use the property

Note that;

There is no effective demand if the buyer does not have the financial ability to purchase a property

Note that;

The financial ability to purchase a property contributes to its demand

- **UTILITY**

Note that;

Utility = usefulness

Note that;

Usefulness = utility

Note that;

Utility may include:

- Providing shelter
- Providing opportunity for income
- Agriculture

Note that;

Utility is affected by:

- Zoning ordinances
- Building restriction



- **SCARCITY**

Note that;

If the supply of land is unlimited, the value of the land would be less than if the supply of land was limited

Note that;

In order for scarcity to have effect on value, there must be demand

- **TRANSFERABILITY**

Note that;

If a property could not be conveyed or transferred, than it would not have much value

Note that;

The degree of transferability may be effected by:

- Liens
- Judgments
- Clouds on the title

Note that;

Legal problem can affect the value of property

Note that;

The ability to buy and sell property affects its value



## VALUE IN LAND

Note that;

Land has physical properties that affect its value:

- Immovable

Note that;

Because land cannot be moved, it can never be transported and must remain where it is

Note that;

The market for land is local one

Note that;

Local economic factors affect the value of land

- Indestructible

Note that;

For the most part, land is indestructible

Note that;

Because land will most likely remain where it is, it may add value

- Non-homogeneous

Note that;

Land is not alike

Note that;

All land differs in some way

Note that;

The differences in land contribute to preferences

Note that;

If the seller defaults on the sale of a property there may be issues for the buyer for loss of the unique property





Note that;

If the government takes property under eminent domain, there may be issues for the seller for loss of a unique property

Note that;

Because of the non-homogeneous nature of land, it may add value to land

Note that;

The market value is most often used in real estate transactions

### **MARKET VALUE**

Note that;

Market value = the price which an informed and willing seller would accept and an informed, willing buyer would pay if:

- Neither of them was under any pressure to buy or sell
- Reasonable amount of time is allowed for market exposure

Note that;

Market value is a theoretical value which can only be estimated

Note that;

The market price = the actual amount for which a property sold

Note that;

The market price and market value may NOT always match

Note that;

The same elements are used in the pricing of a property by an agent that are used by an appraiser in determining the estimated value



## **PRINCIPLES OF VALUE**

Note that;

There are seven (7) basic principles of value/price:

- Anticipation
- Substitution
- Highest & best use
- Competition
- Supply and demand
- Diminishing marginal returns
- Conformity

## **ANTICIPATION**

Note that;

Anticipation = a buyer will buy property in anticipation of future benefits.

## **SUBSTITUTION**

Note that;

Substitution = is determined by what it would cost to buy a similar property.

Note that;

The maximum value is determined by what it would cost to buy a similar or substitutable property in the same area

Note that;

With all things being equal about a property, the lower priced property is most likely to sell first

Note that;

The principal of substitution is the most important in the pricing process



### **HIGHEST AND BEST USE**

#### **GREATEST VALUE**

Note that;

The greatest value is determined by the highest and best use of a parcel of property

#### **MAXIMUM VALUE**

Note that;

The maximum/greatest value of a property is attained when the property “conforms to usage and style” of a neighboring property.

Note that;

Agents should always be mindful of this principal of value and the fact that the “current” use of property may not be its highest and best use.

### **COMPETITION**

Note that;

Competition = reflects the fact that when substantial profit is being made, completion will be encouraged.

### **SUPPLY AND DEMAND**

Note that;

Supply and demand forces have a major role on price, assuming that no other forces are operating to interfere with supply and demand.

Note that;

The principal of supply and demand is affected by:

- As supply increases (more sellers than buyers); price tends to decrease
- As supply decreases, price tends to increase



### **SUPPLY**

Note that;  
Supply = the availability of property to be purchased

### **DEMAND**

Note that;  
Demand = the desire and ability to acquire property

### **BUYERS/SELLERS MARKETS**

#### **BUYER'S MARKET**

Note that;  
A "buyer's market" is one in which: there are NOT enough buyers to buy, all the properties offered by sellers (more sellers than buyers), therefore supply and demand forces favor the buyer.

#### **SELLER'S MARKET**

Note that;  
A "seller's market" is one which: there are NOT enough sellers/properties to meet the demand for properties by buyer (more buyers than sellers); therefore supply and demand forces favor the seller.

### **PRINCIPAL OF DIMINISHING MARGINAL RETURNS**

Note that;  
At some point, the additional cost to upgrade a property DOES NOT produce a corresponding increase in value/price.

### **PRINCIPAL OF COMFORMITY**

Note that;  
The maximum value of a property is attained when the property conforms to usage and style of a neighboring property



Note that;  
The principal of conformity is the basis for zoning regulations

Note that;  
Zoning regulations require that ALL property in a given zone:

- confirm to that zone

- Complete market analysis:

### **FAIR MARKET VALUE**

Note that;  
In completing market analysis; you will be seeking to determine the “FAIR MARKET VALUE/PRICE” which is defined as:

- The price a seller is willing to sell and the price the buyer is willing to buy with neither under abnormal pressure to act

Note that;  
The fair market value is determined by the actions of people

Note that;  
Home sold at a foreclosure sale should not be used in market analysis

Note that;  
An auction sale should not be used in market analysis

Note that;  
An estate sale after the death of a spouse should not be used in market analysis

### **MARKET ANALYSIS**

Note that;  
A market analysis is simply a “structured” method for determining what people have been willing to “pay” for homes that are “similar to and substitutable” for the property you are pricing.



Note that;

Market analysis is a reasonable estimate of a price at which a home will sell or a reasonable estimate a buyer should offer to purchase

Note that;

Completing the market analysis is one of the most important jobs you will perform as an agent.

Note that;

You may complete a market analysis for:

- Seller

Or

- buyer

Note that;

You may use market analysis to:

- List a property for sale
- Work with seller in making a listing price
- Work with buyer in making offer price

Note that;

The most basic element in the market analysis is to determine what “similar properties” in the SAME general neighborhood have SOLD for.

Note that;

The properties are called comps/comparables.

Note that;

It is best to adhere to the following rule to the maximum extent possible:

- Always use the properties/comps for a market analysis that have the FEWEST DIFFERENCES you can find from the subject property.

Note that;

You must make sure that the client understands why your “opinion” as to price and the actual official appraisal may differ.



### **APPRAISAL**

Note that;

An appraisal is a formal determination of the value of real property

Note that;

Under GA licensing law, only a licensed appraiser can make an appraisal of property

Note that;

Only an appraiser can give an estimate of value

Note that;

An appraisal is usually made for a lender to determine the value of the property for a loan

Note that;

An appraisal for loan purposes is based on the unencumbered value of the property

Note that;

An appraisal for loan purposes **DOES NOT** take into consideration financing or existing loans and has no impact on the estimated value

### **PRICING A PROPERTY**

Note that;

An agent pricing a property **SHOULD** take into consideration financing as financing can affect the ability to sell a home as well as its price

### **MULTIPLE LISTING SERVICES**

Note that;

Multiple listing services may provide information to member about properties:

- Currently for sale
- Recently sold properties
- Listing that have expired without a sale
- Method of financing
- Length of time the property was on the market before sold



- Initial list price
- The actual sale price

Note that;

The listing broker is the most accurate source of information about actual sale price

### **PROFESSIONAL REPORTING SERVICES**

Note that;

Professional reporting services are usually both national and local firms that compile data on real estate properties

Note that;

Broker/agent may be able to purchase data from the professional reporting services to complete market analysis

Note that;

Professional reporting services information usually comes from public records

Note that;

Professional reporting services may obtain their information from appraisers and appraisal firm who subscribe to their service

Note that;

Professional reporting services information may differ from other professional reporting services

### **COMPANY RECORDS**

Note that;

Company records from past sales from our or other brokerage firms may be a possible source of information to complete your market analysis





### **COURTHOUSE RECORDS**

Note that;  
Courthouse records that will help you will be found in the warranty deed books

Note that;  
The warranty deed book will show the transfer tax paid when the current owner purchase the property

Note that;  
With the warranty deed book, if there was new financing to purchase the property, you can calculate the amount of the sale price by multiplying the amount of tax by \$1000.00

Note that;  
The warranty deed book would not be useful if the sale involved a loan assumption because there is no direct way to calculate the sale price

### **OBSERVATION OF THE NEIGHBORHOOD**

Note that;  
In spite of where you get your primary information for the market analysis, Observation of the neighborhood by a ride through of the neighborhood to get first hand looks at the neighborhood and should be your last step you employ in the market analysis.

Note that;  
Taking a look at the neighborhood will help you decide which comparable is most similar to your property you are pricing.

### **HOMES CURRENTLY ON THE MARKET**

Note that;  
Homes currently on the market is useful to assess the asking price for similar homes currently on the market

Note that;  
Homes currently on the market is only used to indicate the upper price limit



## COMPLETING MARKET ANALYSIS

Note that;  
In completing the market analysis:

- Obtain information on the subject property
- Obtain information on comps
- Make adjustments for differences of comps
- Attach weights to the adjusted prices of comps
- Note;  
Listing price of comps
- Note;  
The actual selling price comps
- Note;  
Terms of comps
- Note;  
The days on market before sold for comps
- Note;  
Date of sale for each comps
- Note;  
Location of comps
- Note;  
Physical characteristics of comps
- Note;  
Amenities of comps



Note that;

The most accurate source of information about the actual sales price will come from the listing broker firm

Note that;

In completing market analysis, consider current and expired listing.

Note that;

Properties with prices significantly above or below other comps should not be used in market analysis.

### **FINANCING**

Note that;

The effect of financing can considerably affect the price at which a property will sell or sold for.

Note that;

Financing which makes it easier to buy a property or else benefits the buyer will usually increase the price of the property.

### **GENERAL RULE**

Note that;

The general rule that may help you, which will help in adjusting the price of a property based on the type of financing:

### **ALL CASH**

Note that;

An ALL CASH sale usually result in the lowest price



### LOAN ASSUMPTION

Note that;  
The next lowest price will be on a loan assumption

Note that;  
The down payment is usually larger for assumptions than a down payment on a new loan.

### CONVENTIONAL LOANS

Note that;  
The next lowest price is on CONVENTIONAL LOANS on which the buyer must pay ALL points and closing cost.

Note that;  
The price usually increase if the seller pays some or all of the buyer cost

### FHA/VA LOANS

Note that;  
The next to highest price will be on FHA/VA loans on which the seller pays the discount points and especially if the seller pays the closing cost also.

Note that;  
Interest rate charged on FHA/VA loans **WERE** regulated

Note that;  
Interest rate charged on FHA/VA loans are **CURRENTLY NOT** regulated



### **BEST POSSIBLE TERMS**

Note that;

The highest price will occur when the financing is available on the best possible terms.

Note that;

All licensees should check with lender for current regulation(s).

### **FORMAL APPROACHES TO PRICING**

Note that;

Market data, replacement cost and income approach are all “formal approaches to pricing.

Note that;

In completing the market analysis, you may use either:

- MARKET DATA APPROACH TO PRICING
- REPLACEMENT COST APPROACH TO PRICING
- INCOME APPROACH TO PRICING

### **MARKET DATA APPROACH**

Note that;

The market data approach is most widely used approached to pricing

Note that;

Market data approach is based on a comparison of the subject property to similar properties which have recently sold

Note that;

Market data approach uses the principal of value of:

- Substitution



Note that;

The market data approach may be called:

- Sales comparison approach

Note that;

There are steps in the market data approach:

- Obtain information on the subject property
- Obtain information on the comps, based on past sells within 6 months

Note that;

You will need at least three to five (3-5) comps for a valid assessment.

Note that;

The more similar the comps are to the subject property the better.

Note that;

The more recent the sale/comp the better

Note that;

If the comparable is **INFERIOR** to the subject property, you **ADD** to the price of the comp.

Note that;

If the comparable is **SUPERIOR** to the subject property, you **SUBTRACT** from the price of the comparable

Note that;

To help you remember the appropriate adjustment, you can use the word: CIA

- C = comparable
- I = Inferior
- A = add

Note that;

The purpose in making adjustment is to adjust the price of each comp is so that the price of the comps more accurately reflects the features of the subject property.



Note that;

In order to make actual adjustments you will need to know an approximate value of each feature that differs from the subject; examples: number of bedrooms, number baths, etc.

Note that;

You NEVER adjust the price of the subject.

Note that;

You ALWAYS adjust to price of the comps to bring it in line with the subject property you are pricing.

### **ATTACH WEIGHTS**

Attach weights to the adjusted price of comps

Note that;

The purpose of attaching weights to the adjusted price reflects your assessment of the similarity of each comp to the subject.

Note that;

A comp more similar to the subject should be given a higher weight.

Note that;

The weight will be assigned using percentages to the subject list/sale price of 60,000.0.

Note that;

After you attach weights with percentages, you multiply the adjusted price of each comparable by the its weights

Note that;

After you multiple the adjusted prices of each comp, you total the results of all comps



Note that;

The last step is to round the answer to the nearest \$100.00

Example:      Comp 1 adjusted price =  $45,700.0 \times 10\% / \text{weight} = \$4,570.0$   
                   Comp 2 adjusted price =  $50,000.0 \times 15\% / \text{weight} = \$7,500.0$   
                   Comp 3 adjusted price =  $55,000.0 \times 25\% / \text{weight} = \$13,750.0$   
                   Comp 4 adjusted price =  $63,000.0 \times 50\% / \text{weight} = \$31,500.0$   
  
= \$57,320.00

Round to nearest \$100.00

Note that;

The last step is to round to nearest \$100.00 = 57,300.00 = the price for the subject property.

### **REPLACEMENT COST APPROACH**

Note that;

Replacement cost approach is used primarily:

- Rural areas
- In market that have been inactive
- Lack of comparables that have sold recently
- Specialty/unique homes/properties: school, fire station, etc.
- Aged homes

Note that;

The replacement cost approach to pricing may be used to determine the upper limit on the price, since the cost to replace a building is usually higher than a property already built

### **REPRODUCTION**

Note that;

Reproduction cost = the cost to precisely duplicate the original structure, using the same material and construction techniques as the original





## REPLACEMENT

Note that;

Replacement cost = the cost of replacing the improvements with another building that performs the same function but is not an exact replica of the subject property

Note that;

There are basic steps in the replacement cost approach:

- Price the land as if it were vacant
- Estimate current price of improvements
- Add price for land and price of improvements
- Subtract for depreciation on building only

## ESTIMATE REPLACEMENT COST OF PROPERTY

Note that;

Estimate replacement cost is based on the “current” cost of replacing or reproducing the improvements/building.

Note that;

There are three (3) ways to estimate the cost to replace the building:

- Square foot
- Unit in place
- Quantity survey

## SQUARE FOOT

Note that;

You should use **CUBIC FOOT** for building like warehouses that don't have standard ceiling heights

Note that;

The square foot method is the easiest to complete

Note that;

The square foot method is the least accurate



Note that;  
You should obtain the construction cost of a similar building recently constructed.

Note that;  
You should convert the cost of construction to cost per square foot

Note that;  
You should multiply the cost per square foot times the number of square feet in the building whose price is being determined

Note that;  
There are sub-steps in the square foot method

#### **SUB-STEPS**

- **DETERMINE "COST FACTORS":**

▪ **COST OF CONSTRUCTION PER SQUARE FOOT = COST FACTOR**

Note that;  
The "cost factors" are the most important step in the entire pricing process since it has the biggest impact on the final price estimate.

Note that;  
It is important to obtain the best estimate possible for the cost of construction per square foot/cost factors!

#### **BEST METHOD**

Note that;  
The best method for determining the cost per square foot is to ask one or more reputable builder who has **EXPERIENCE BUILDING PROPERTIES OF SIMILAR STYLE AND QUALITY IN THE AREA** of the subject property

Note that;  
You may also look at a "**COST ESTIMATE HANDBOOK**" which provides replacement cost factors.



Note that;

You should obtain the “cost of construction, per square foot for each major element” of the house being priced

### **MAJOR ELEMENTS**

Note that;

The “major elements” =: 1<sup>st</sup> floor = foundation and roof, 2<sup>nd</sup> floor and garage, etc.

### **FIRST FLOOR**

Note that;

The first floor is the most expensive because the cost includes: foundation and roof.

- **DETERMINE THE ACTUAL SQUARE FOOTAGE** in each “major elements” of the house being priced/subject property: 1<sup>st</sup> floor = foundation and roof, 2<sup>nd</sup> floor and garage, etc.

Note that;

Determining the actual square feet of the subject is measuring the actual square footage of the major elements of the house/subject property.

Note that;

In measuring the house/subject property should be calculated by measuring the OUTSIDE dimensions of the house/subject property.

Note that;

You should have a 100ft tape measure for doing this, metal.

Note that;

You should make a sketch of the floor plan of the house to use in recording your measurement and calculating the square footage

Note that;

You start with the left end/side of the house/property being priced.

Note that;

You use your sketch of the outside dimensions to create rectangles of the inside of the sketch.



Note that;

Once you have the rectangles you can calculate/determine the total square foot of each rectangles.

Note that;

By adding together the total square foot of each rectangle you can determine the total square footage of the house/property.

- Convert the total square footage using cost factors to cost per square foot.
- Multiply the cost per square foot of the major elements time the number of square feet in the building whose price is being determined.
- Subtract depreciation

Example; four rectangles from sketch:

24ft x 20ft = 480sqft: First rectangle  
 8ft x 16ft = 128sqft: Second rectangle  
 36ft x 24ft = 864sqft: Third rectangle  
 36ft x 40ft = 1440sqft: Fourth rectangle

Total square foot for first flood (foundation and roof) = 2,912 square foot/major element.

Add square footage of 2,912, second floor/major element.

2,912 square foot X 2 for 1<sup>st</sup> and 2<sup>nd</sup> floor = 5,824.00 sqft for total house.

15ft x 17ft = 255/sqft: Garage/major element.

= Total of 6,079 Square feet for house and garage.

Cost factors; recall that you get the cost factors from builder in area of subject property or from estimate handbook:

- 1<sup>st</sup> floor = \$50.00/sqft
- 2<sup>nd</sup> floor = \$25.00/sqft
- Garage = \$30/sqft



- Multiple the “cost factors” by the number of square feet in each major element in the subject property:

$\$50.00 \times 2912/\text{sqft} = \$145,600.00/1^{\text{st}} \text{ floor (foundation and roof)}$   
 $\$25.00 \times 2912/\text{sqft} = \$72,800.00/2^{\text{nd}} \text{ floor}$   
 $\$30.00 \times 255/\text{sqft} = \$7,650.00/\text{Garage}$

Total estimated cost of improvements/building/replacement cost = \$226,050.00

Estimated land cost = \$50,000.00

Add replacement cost plus land = \$276,050.00/estimated cost before depreciation is deducted

Deduct depreciation on building only = \$10,000.00.

= \$266,050.00 estimated price

Note that;

The value of almost any existing house/property will be less than the cost to replace it because of depreciation.

### **DEPRECIATION**

Note that;

There are three types of depreciation:

- Physical deterioration
- Functional obsolescence
- Economic obsolescence

### **PHYSICAL DETERIORATION**

Note that;

Physical deterioration = normal wear and tear from use and age inside the property

Note that;

A home that needs a new coat of paint would be considered to have physical deterioration



Note that;  
Broken windows would be considered physical deterioration

### **FUNCTIONAL OBSOLESCENCE**

Note that;  
Functional obsolescence = outdated features “inside” the property

Note that;  
Outdated features may include:

- Closets which are too small
- Ceilings which are too high or low
- Too few bathrooms
- Inadequate wiring
- Outdated design or architecture
- Narrow staircase

### **ECONOMIC OBSOLESCENCE**

Note that;  
Economic obsolescence = external conditions “outside” the property.

Note that;  
External economic obsolescence = loss of value due to external conditions such as:

- Changes in makeup of surrounding area
- Environmental impacts
- Changes in highways that serve the property
- Noise pollution from airport
- Noise pollution from highway/freeway
- The closing of a major business nearby

Note that;  
DEPRECIATION is estimated by using a method called:

- “Cost to repair/cure”



Note that;

Both physical deterioration and functional obsolescence can be:

- Curable

Or

- Incurable

1) Curable

Note that;

Curable defects = defects that can be curable **IF IT IS ECONOMICALLY FEASIBLE** to correct the problem.

2) Incurable

Note that;

Repairs are considered incurable if it is **NOT ECONOMICALLY FEASIBLE** to correct the problem.

Note that;

The first step is to make a careful inspection of the property, making notes of any items that need repair or replacement.

-Next contact local contractors and/or the appropriate building supply companies for an estimate on repairs/replacement.

-Next total all estimates for all repairs that need to be done, this is the total estimated for depreciation.

Example:	1-Price of the land as if it were vacant	\$50,000.00
+	2-Current price of improvements	\$226,050.00
=	3-land and price of replacement of building	\$276,050.00
-	4-Depreciation on building only	10,000.00
	=	\$266,050.00 estimated price



### **UNIT IN PLACE**

Note that;  
Unit in place method can be used to determine the replacement cost.

Note that;  
Unit in place method is more accurate than the square foot method

Note that;  
Unit in place method is more difficult than the square foot method

Note that;  
You estimate the land plus the INSTALLED COST of each major unit of the building which is being priced such as the:

- Foundation
- Roof
- Walls
- Windows
- Doors
- Etc.

Next you add the cost of all the units that make up the building = the total estimated cost to replace the property.

### **QUANTITY SURVEY**

Note that;  
Quantity survey can be used to determine the replacement cost.

Note that;  
The quantity survey method is the most accurate

Note that;  
The quantity survey method is the most difficult

Note that;  
The quantity survey method is used the least because of its difficulty





Note that;  
You estimate the cost of ALL materials by "individual item price"

Note that;  
You estimate the cost of all labor

Next you add the cost of all material and labor = the total estimated cost for the property.

Note that;  
The square foot method is used most often.

Note that;  
The square foot method is least accurate.

Note that;  
The unit in place method is more accurate than square foot method.

Note that;  
The unit in place method is more difficult than square foot method.

Note that;  
The quantity survey method is the most accurate.

Note that;  
The quantity survey method is the most difficult of the three methods.

Note that;  
The quantity survey method is used the least because of its difficulty.

## **INCOME APPROACH**

Note that;  
The income approach is used primarily for income producing properties/commercial properties:

- **OFFICE BUILDING OR APARTMENT BUILDING**

Note that;  
The income approach is NOT normally suited to single family dwelling, even those that are otherwise rental properties.



Note that;

The income approach determines the “ANNUAL INCOME” a property can be expected to produce and converts that into price for the property.

Note that;

The income approach is based on a “process” known as:

- “CAPITALIZATION”!

Note that;

Capitalization is the process for CONVERTING FUTURE INCOME INTO CURRENT VALUE, which is used to determine a price for the property

### **PROCESS**

Note that;

You obtain accurate figures on “gross income” for the property

Note that;

# of units X monthly income/unit X 12 months = “annual gross income”

### **ANNUAL NET INCOME**

Deduct the amount of ALL expected expenses to get “net income”

Note that;

Net income is used in the capitalization process.

### **CAPITALIZATION RATE**

Note that;

Determine the desired capitalization rate.

### **RATE OF RETURN**

Note that;

The capitalization rate is the rate of return on investment DESIRED by the investor, expressed as a percentage.



Example: if the investor want 10% rate of return on investment than the capitalization rate = .10 or 10%.

Note that;

As the capitalization rate increase, the price of the property decreases.

Note that;

As the capitalization rate decreases, the price of the property increases.

### **CAPITALIZE**

Note that;

Capitalize the net income by dividing it by the capitalization rate to get a price for the property:

- $\text{Net income}/\text{rate} = \text{price}.$

### **INFORMAL APPROACH TO PRICING**

#### **GROSS RENT MULTIPLIER/GRM**

Note that;

Gross rent multiplier “is not” a formal approach to pricing.

Note that;

Gross rent multiplier is used informally

Note that;

Gross rent multiplier is used in selected applications involving income producing property.

Note that;

Gross rent multiplier is primary used for investors who are evaluating several properties and wants a simple and quick way to ELIMINATE some properties from consideration before doing a formal price determination.



Note that;

The gross rent multiplier DO NOT takes into consideration any:

- Rent losses
- Operation expenses

### **PROCESS**

Note that;

The process used to determine price using gross rent multiplier:

Identify comps that have been sold recently

### **GROSS ANNUAL INCOME**

Determine the “gross annual income” for each comp:

- # of units X monthly rent/unit X 12.

Divide the “price” of each comp/property by its gross annual income = gross rent multiplier/GRM.

Average the GRM from all the comps

Multiple the **GROSS ANNUAL RENT** for the subject property by the average GRM = estimated price for the subject property

### **RECONCILIATION**

Note that;

The process of obtaining a final estimate of value when more than one approach to pricing is called reconciliation

- Advise/recommend improvements or repairs.
- Developing Marketing plan with marketing timetable.
- Evaluate offers with seller.
- Negotiating counteroffers with seller and recommend final terms and conditions.



- Help create post-contract repair and vendors list (must be from list of vendors, three each/vendor).
- Help coordinate and supervise pre-closing preparation and provide pre-closing consulting.
- Review closing documents and help resolve any last minute issues/items.
- Assist with post-closing issues and help coordinate move.
- Advice and consultation.

#### **BUYER SERVICES**

Note that;

The goal is to find the right home, at the best price, in the right time with the least amount of problems in the transaction for the buyer.

- Provide buyer with list of loan officers if the buyer does not already have loan officer (must be minimum list of three).

Note that;

Agents are to obtain pre-qualification/pre-approval from financial institution before actively working with buyer/client.

- Complete buyers wants and needs list and help get clear picture of buyers ideal home.
- Develop neighborhood home search base on buyer's wants/needs list.
- Develop schedule for home search.
- Advise on terms and conditions of offer and complete purchase contract offer
- Present offer to seller/seller's agent and negotiate on buyer's behalf.
- Provide buyer with vendors list (must be minimum of three/vendor) and monitor/coordinate vendor services
- Provide pre-closing consulting.



-Review pre-closing documentation with buyer and help resolve any last minute issues.

-Help coordinate move-in and assist with post-closing issues.

- Complete market analysis:

### **FAIR MARKET VALUE**

Note that;

In completing market analysis; you will be seeking to determine the "FAIR MARKET VALUE/PRICE" which is defined as:

- "The price a seller is willing to sell and the price the buyer is willing to buy with neither under abnormal pressure to act"

Note that;

You must make sure that the client understands why you're "OPINION" as to price/value and the "ACTUAL APPRAISAL" may differ.

### **MARKET ANALYSIS**

Note that;

A market analysis is simply a "structured" method for determining what people have been willing to "pay" for homes that are "SIMILAR TO AND SUBSTITUTABLE" for the property you are pricing.

Note that;

The most basic element is to determine what "similar properties" in the SAME general neighborhood have SOLD for.

Note that;

The properties are called comps/comparables.

Note that;

It is best to adhere to the following rule to the maximum extent possible:

- Always use the properties/comps for a market analysis that have the FEWEST DIFFERENCES you can find from the subject property



Note that;  
In completing market analysis:

- Consider current and expired listing

Note that;  
Properties with prices significantly above or below other comps should not be used in market analysis.

Note that;  
The effect of financing can significantly affect the price at which a property will sell or sold for.

Note that;  
Financing which makes it easier to buy a property or otherwise benefits the buyer will usually increase the price of the property.

Note that;  
The general rule of thumb to help you, which will help in adjusting the price of a property based on the type of financing:

- ✓ An ALL CASH sale will result in the lowest price
- ✓ The next lowest price will be on a loan assumption; note that the down payment is usually larger than a down payment on a new loan.
- ✓ The next lowest price is on CONVENTIONAL LOANS on which the buyer must pay ALL points and closing cost. Note that the price will likely increase if the seller pays some or all of the cost.
- ✓ The next to highest price will be on FHA/VA loans on which the seller pays the discount points and especially if the seller pays the closing cost also.
- ✓ Interest rate charged on FHA/VA loans **WERE** regulated
- ✓ Interest rate charged on FHA/VA loans are **CURRENTLY NOT** regulated
- ✓ The highest price will occur when the financing is available on the best possible terms



Note that;  
All licensees should check with lender for current regulation

### **GROSS RENT MULTIPLIER**

Note that;  
GROSS RENT MULTIPLIER “is not” a formal approach to pricing.

Note that;  
GROSS RENT MULTIPLIER IS USED INFORMALLY in selected applications involving income producing property.

Note that;  
Gross rent multiplier is primary used for investors who are evaluating several properties and wants a simple and quick way to ELIMINATE some properties from consideration before doing a formal price determination.

Note that;  
Gross rent multiplier doesn't take into consideration any rent losses or operation expenses.

Note the;  
Steps used to determine price using gross rent multiplier:

- Identify comps that have been sold recently and determine their “gross annual income”:  
# of units X monthly rent/unit X 12.
- Divide the price of each comp/property by its gross annual income = gross rent multiplier/GRM.
- Average the GRM from all the comps
- Multiple the gross annual rent for the subject property by the average GRM = estimated price for the subject property





## **MARKET ANALYSIS**

Note that;

In completing the market analysis you can use:

- MARKET DATA APPROACH TO VALUE
- REPLACEMENT COST APPROACH TO VALUE
- INCOME APPROACH TO VALUE

### **MARKET DATA APPROACH**

Note that;

There are 6 steps in the market data approach:

Obtain information on the subject property

Obtain information on the comps, based on past sells within 6 months.

Note that;

You will need at least three to five (3-5) comps for a valid assessment.

Note that;

The more similar the comps are to the subject property the better.

Note that;

The more recent the sale the better

Note listing price and terms of comps

Note the actual selling price and terms of comps

Note dates on market before sold



### **ADJUSTMENTS**

Note that;  
Make adjustments for differences to subject property

Note that;  
If the comparable is INFERIOR to the subject property, you ADD to the price of the comp.

Note that;  
If the comparable is SUPERIOR to the subject property, you SUBTRACT from the price of the comparable

Note that;  
The objective in making adjustment is to adjust the price of each comp so that the price of the comps more accurately reflects the features of the subject property.

Note that;  
In order to make actual adjustments you will need to know an approximate value of each feature that differs from the subject; examples: number of bedrooms, number baths.

Note that;  
You NEVER adjust the price of the subject.

### **ATTACH WEIGHTS TO THE ADJUSTED PRICE OF THE COMPS**

Note that;  
The purpose for attaching weights to the adjusted price reflects your assessment of the similarity of each comp to the subject.

Note that;  
A comp more similar to the subject should be given a higher weight.

Note that;  
The weight will be assigned using percentages to the subject list/sale price of 60,000.0.



Example:

comp 1 adjusted price = 45,700.0 x 10%/weight = 4,570.0
Comp 2 adjusted price = 50,000.0 x 15%/weight = 7,500.0
Comp 3 adjusted price = 55,000.0 x 25%/weight = 13,750.0
Comp 4 adjusted price = 63,000.0 x 50%/weight = 31,500.0
= 57,320.00

**ROUND TO NEAREST \$100.00**

Note that;  
The last step is to round to nearest \$100.00 = 57,300.00 = the estimated price for the subject property.

**REPLACEMENT COST APPROACH**

Note that;  
Replacement cost approach is used primarily:

- Rural areas
- In market that have been inactive
- Specialty/unique homes
- Aged homes

Note that;  
There are 4 basic steps in the replacement cost approach:

Estimate land cost as if it was vacant.

Note that;  
You may use market data for comps on vacant lots or if not available, asked reputable builder in subject area/market.

Note that;  
Estimate replacement cost based on the “current” cost of replacing or reproducing the improvements/building.

Add Land and Improvements/cost to build

Adjust/subtract for depreciation



Example:	1-Price of the land as if it were vacant	25,000.00
+	2-Current price of improvements	50,000.00
=	3-land and price of replacement of building	75,000.00
-	4-Depreciation on building only	10,000.00
	Estimated value	
	=	\$65,000.00

**ESTIMATE THE COST TO REPLACE**

Note that;

There are three (3) ways to estimate the cost to replace the building:

- 1) Square foot; cubic foot for building like warehouses that doesn't have standard ceiling heights
- 2) Unit in place
- 3) Quantity survey

**SQUARE FOOT**

Note that;

There are sub-steps in the square foot method

SUB-STEPS:

- determine "cost factors" which are: the "cost of construction, per square foot for each major element" of the house being priced; "major elements" =: 1<sup>st</sup> floor = foundation and roof, 2<sup>nd</sup> floor and garage, etc.

Note that;

The "cost factors" are the most important step in the entire pricing process since it has the biggest impact on the final price estimate.

Note that;

It is important to obtain the best estimate possible for the cost of construction per square foot!



Note that;

The best method for determining the cost per square foot is to ask one or more reputable builder who has EXPERIENCE BUILDING PROPERTIES OF SIMILAR STYLE AND QUALITY in the area of the subject property

Note that;

You can look at a "COST ESTIMATE HANDBOOK" which provides replacement cost factors.

Note that;

The first floor is the most expensive because the cost includes: foundation and roof.

Note sub-steps:

- determine the actual square footage in each "major elements" of the house being priced/subject property: 1<sup>st</sup> floor = foundation and roof, 2<sup>nd</sup> floor and garage, etc.

Note that;

Determining the actual square feet of the subject is measuring the actual square footage of the major elements of the house/subject property.

Note that;

In measuring the house/subject property should be calculated by measuring the OUTSIDE dimensions of the house/subject property.

Note that;

It is a good idea to have a 100ft tape measure for doing this, metal.

Note that;

It is a good idea to make a sketch of the floor plan of the house to use in recording your measurement and calculating the square footage:

Note that;

You start with the left end/side of the house/property being priced.

Note that;

You use your sketch of the outside dimensions to create rectangles of the inside.

Note that;

Once you have the rectangles you can calculate/determine the length of each rectangles.



Note that;

By adding together the square foot of each rectangle you can determine the total square footage of the house/property.

Convert the cost of construction of a similar recently constructed building to cost per square foot.

Multiply the cost per square foot of major elements time the number of square feet in the building whose price is being determined

Subtract depreciation

Example; four rectangles from sketch:

24ft x 20ft = 480sqft: First rectangle  
8ft x 16ft = 128sqft: Second rectangle  
36ft x 24ft = 864sqft: Third rectangle  
36ft x 40ft = 1440sqft: Fourth rectangle

Total square foot (foundation and roof) = 2,912 square foot; first floor/major element.

Add square footage of 2,912, second floor/major element.

2,912 square foot X 2 for 1<sup>st</sup> and 2<sup>nd</sup> floor = 5,824.00 sqft for total house.

15ft x 17ft = 255/sqft: Garage/major element.

= Total of 6,079 Square feet for house and garage.

Cost factors; recall that you get the cost factors from builder in area of subject property or from estimate handbook:

- 1<sup>st</sup> floor = \$50.00/sqft
- 2<sup>nd</sup> floor = \$25.00/sqft
- Garage = \$30/sqft



- Multiple the “cost factors” by the number of square feet in each major element in the subject property:

$\$50.00 \times 2912/\text{sqft} = \$145,600.00/1^{\text{st}}$  floor (foundation and roof)

$\$25.00 \times 2912/\text{sqft} = \$72,800.00/2^{\text{nd}}$  floor

$\$30.00 \times 255/\text{sqft} = \$7,650.00/\text{Garage}$

Total estimated cost of improvements/building/replacement cost = \$226,050.00

Estimated land cost = \$50,000.00

Add replacement cost plus land = \$276,050.00/estimated cost before depreciation is deducted

Deduct depreciation on building only = \$10,000.00.

= \$266,050.00 estimated price for property

Note that;

The value of almost any existing house/property will be less than the cost to replace it because of depreciation.

Note that;

There are three types of depreciation: physical deterioration, functional obsolescence and economic obsolescence:

- **PHYSICAL DETERIORATION** = normal wear and tear inside the property
- **FUNCTIONAL OBSOLESCENCE** = outdated features inside the property
- **ECONOMIC OBSOLESCENCE** = external conditions outside the property

Note that;

External economic obsolescence = loss of value due to external conditions such as:

- Changes in makeup of surrounding area
- Noise pollution from airport
- Noise pollution from highway/freeway
- The closing of a major business nearby



Note that;

We estimate each: “depreciation” by using a method called:

- “Cost to repair/cure”

Note that;

Both physical deterioration and functional obsolescence can be: curable or incurable.

- Curable

Note that;

Curable defects = defects that can be curable IF IT IS ECONOMICALLY FEASIBLE to correct the problem.

- Incurable

Note that;

Repairs are considered incurable if it is NOT ECONOMICALLY FEASIBLE to correct the problem.

Note that;

The first step is to make a careful inspection of the property, making notes of any items that need repair or replacement.

-Next contact local contractors and/or the appropriate building supply companies for an estimate on repairs/replacement cost noted from the inspection.

-Next total all estimates for all repairs that need to be done, this is the total estimated for depreciation.

Example:	1-Price of the land as if it were vacant	\$50,000.00
+	2-Current price of improvements	\$226,050.00
=	3-land and price of replacement of building	\$276,050.00
-	4-Depreciation on building only	10,000.00
	=	\$266,050.00 estimated value





### UNIT IN PLACE

Note that;  
Unit in place method can be used to determine the replacement cost.

Note that;  
You estimate the INSTALLED COST of each major unit of the building which is being priced such as the:

- Foundation
- Roof
- Windows
- Doors
- Etc.

Next you add the cost of all the units that make up the building = the total estimated cost and the estimated price for the property.

### QUANTITY SURVEY

Note that;  
You estimate the cost of ALL materials by individual item price and the cost of all labor.

Next you add the cost of all material and labor and land = the total estimated cost for property.

Note that;  
The square foot method is used most often.

Note that;  
The square foot method is least accurate.

Note that;  
The unit in place method is more accurate than square foot method.

Note that;  
The unit in place method is more difficult than square foot method.

Note that;  
The quantity survey method is the most accurate.



Note that'  
The quantity survey method is the most difficult of the three methods.

Note that;  
The quantity survey method is used the least because of its difficulty.

### **INCOME APPROACH**

Note that;  
The income approach is used primarily for income producing properties/commercial properties: office building or apartment building.

Note that;  
The income approach is NOT normally suited to single family dwelling, even those that are strictly rental properties.

Note that;  
The income approach determines the "ANNUAL INCOME" a property can be expected to produce and converts that into price for the property.

Note that;  
The income approach is based on a "process" known as: "CAPITALIZATION"!

Note that;  
Capitalization is the process for converting future income into current value, which is used to determine a price for the property:

Obtain accurate figures on "gross income" for the property = # of units X monthly income/unit X 12 months = "annual gross income".

Deduct the amount of ALL expected expenses to get "net income"

Note that;  
Net income is used in the capitalization process.

Note that;  
Determine the desired capitalization rate.



Note that;

The capitalization rate is the rate of return on investment DESIRED by the investor, expressed as a percentage.

Example: if the investor want 10% rate of return on investment than the capitalization rate = .10 or 10%.

Note that;

As the capitalization rate increase, the price of the property decreases.

Note that;

As the capitalization rate decreases, the price of the property increases.

Capitalize the net income by dividing it by the capitalization rate to get a price for the property:

- $\text{Net income}/\text{rate} = \text{price}$

### **SOURCES OF INFORMATION**

Note that;

There are six sources of information you should be familiar with:

- 1) Multiple listing services
- 2) Professional reporting services
- 3) Company records; company past records or other companies
- 4) Court house records:

Note that;

The information which would help is in the "warranty deed books" which show:

Transfer tax paid; if new financing was used to purchase the property, you can calculate the amount of the sale price by multiplying the amount of the tax by \$1,000.00.



Note that;

If the sale involved a loan assumption, these records are not as useful since there is no direct way to calculate the sales price.

Note homes currently on the market

5) Note the asking price for homes currently on the market.

Note that;

The primary use for asking price of homes currently on the market is to assess the competition from other available homes.

Note that;

The information is used ONLY to indicate the UPPER PRICE LIMIT.

Note that;

“Foreclosure sales” would not meet the requirements for a fair market value.

Note that;

Fair market value is determined by the action of people.

6) Observation of neighborhood

Note that;

Regardless of where you obtain your primary information for a market analysis, one last step you should always employ is to ride through the neighborhood to get a “FIRST HAND” look at the neighboring properties:

- Architectural styles
- Condition of the houses
- Landscaping
- General Lot size

Note that;

This information will help with comps for the property you are pricing.



Note that;

“REGRESSION” = a principal of appraisal/value that states that the value of a higher valued property is “DECREASED” if it is located among properties of lower value.

Note the;

“PROGRESSION” = a principal of appraisal/value that state that the value of a lower valued property is “INCREASED” if it is located among properties of higher value.

Note that;

By combining two or more adjacent properties into one tract of land is called: ASSEMBLAGE.

Note that any increase in value for a tract of land formed by combining two or more parcels is called: PLOTTAGE.

Note that;

There are seven (7) basic principles of value/price:

- Anticipation
- Substitution
- Highest & best use
- Competition
- Supply and demand
- Diminishing marginal returns
- Conformity

**ANTICIPATION** = a buyer will buy property in anticipation of future benefits.

**SUBSTITUTION** = is determined by what it would cost to buy a similar property.

**HIGHEST AND BEST USE** = is determined by the highest and best use of a parcel of property and is determined the greatest value.

Note that;

The maximum value of a property is attained when the property “conforms to usage and style” of a neighboring property.

Note that;

Agents should always be mindful of this principal of value and the fact that the “current” use of property may not be its highest and best use.



**COMPETITION** = reflects the fact that when substantial profit is being made, completion will be encouraged.

#### SUPPLY AND DEMAND

Note that;

Supply and demand forces have a major role on price assuming that no other forces are operating to interfere with supply and demand.

Note that;

The principal of supply and demand is affected by:

Note that;

As supply increases (more sellers than buyers), price tends to decrease

Note that;

As supply decreases (more buyers than seller), price tends to increase

Buyers/Sellers markets

Note that;

A **"BUYER'S MARKET"** is one in which:

There are NOT enough buyers to buy for all the properties offered by sellers (more sellers than buyers); therefore supply and demand forces favor the buyer.

Note that;

A **"SELLER'S MARKET"** is one which: there are NOT enough sellers/properties to meet the demand for properties by buyer (more buyers than sellers); therefore supply and demand forces favor the seller.

#### **PRINCIPAL OF DIMINISHING MARGINAL RETURNS**

Note that;

At some point, the additional cost to upgrade a property DOES NOT produce a corresponding increase in value/price.



### **PRINCIPAL OF COMFORMITY**

Note that;

The maximum value of a property is attained when the property conforms to usage and style of a neighboring property

Note that;

The principal of conformity is the basis for zoning regulations which require that ALL property in a given zone:

- Confirm to that zone

### **CONVENTIONAL LOANS**

Note that;

Conventional loans are NOT insured or guaranteed by the government.

Note that;

Conventional loans are made by:

- Private sector financial institutions
- Individuals
- Private party

### **SPECIFIC LENDING PRACTICES**

Note that;

With conventional loan, specific lending practices are developed by the lenders that make the loans.

Note that;

All agents/licensees should check with individual lenders for different lender requirements as it relates to conventional loans for buyer clients

Note that;

If a convention loan is sold on the secondary mortgage market to or acquired by a government agency or federally chartered entity, the conventional loan remains a conventional loan



Note that;  
Government agency may include:

- Fannie-Mae
- Freddie Mac
- HUD
- VA

Note that;  
The price for a property will likely increase, if the seller pays some or all of the cost on a conventional loan

#### **CATEGORIES OF CONVENTIONAL LOANS**

Note that;  
Most conventional loans are categorized as:

- 80% LTV
- 90% LTV
- 95% LTV

Note that;  
These categories will have certain characteristics

Note that;  
Conventional loans may be different than the most common categories

Note that;  
A conventional loan below 80% LTV is still an 80% loan

Note that;  
A conventional loan 80.01% to 90% is a 90% loan

Note that;  
A conventional loan 90.01% to 95% is a 95% loan

#### **DOWN PAYMENT REQUIREMENTS**

Note that;  
All conventional loans require a down payment





Note that;

There are exceptions to down payments requirements; but in general all conventional loans will have a down payment required.

Note that;

From the buyer point of view in most cases, the HIGHTER the LTV the better

Note that;

The HIGHTER LTV the lower the down payment for the buyer

Note that;

The lender determines the down payment requirement for any giving borrower

Note that;

There is a process in calculating down payment

Note that;

There are two steps:

Determine the dollar amount of the loan

Note that;

The loan amount is a percentage of the sale price

Note that;

Some lenders will set the loan amount to the precise percentage of the sale price

Note that;

Some lenders will round the loan amount to the lowest \$100; agents are to check with lender

Note that;

FHA financed loans are rounded in inclement of \$50.00 however conventional lender that use FHA financing may round inclement of \$100.00

Note that;

Agents should round their calculations down to nearest \$100.00 in determining loan amount



### **CALCULATE DOWN PAYMENT**

Note that;

Subtract the loan amount from the sale price to get down payment requirements

Categories of conventional loans

Note that;

There are different types of conventional loans based on their loan to value or LTV ratio

Note that;

LTV = the amount of the loan divided by the sale price or appraisal value, whichever is less

Note that;

Buyer may obtain a loan at different LTV ratios and differ by:

- Whether or not private mortgage insurance (PMI) is required

### **PRIVATE MORTGAGE INSURANCE /LENDER**

Note that;

Private mortgage insurance protects the LENDER against losses if the borrower/buyer defaults on the loan.

Note that;

A conventional loan with LTV of 80% or less will not require private mortgage insurance (PMI)

Note that;

A conventional loan with LTV of 80.01% or more will require private mortgage insurance

### **PMI**

Note that;

PMI is provided by private insurance companies

Note that;

The borrower usually makes monthly premium payments which are included with monthly mortgage payment.



Note that;

The payment of the premium is negotiable between the buyer and seller

Note that;

The premium may be paid by either:

#### **BUYER**

Note that;

The buyer has three options to pay:

- Paid in cash at closing
- Financed along with mortgage payments
- Partially financed and paid in cash at closing

#### **SELLER**

Note that;

If the seller pays the premium, it must be paid in cash at closing

Note that;

The premium may be paid in full upfront however this is not typical in today's market

Note that;

PMI payments/premiums on conventional loans may be dropped when loan goes 80% and below

Method to calculate the amount of payment

Note that;

The method to calculate the amount of payment depends on whether it is paid in:

Cash

#### **PERCENTAGE**

Note that;

If paid in cash, the amount of payment is determined by **MULTIPLYING A PERCENTAGE BY THE LOAN AMOUNT**



Note that;  
The full amount is paid at or before closing

### **FINANCED**

Note that;  
If the buyer/seller pays part of the premium and finances the rest, the payment is calculated using a lower percentage by the loan amount

Note that  
The percentage varies from lender to lender

Note that;  
Example:

- $\frac{1}{4}\%$  by loan amount or .0025 by loan amount

Note that;  
The percentage is an annual amount of premium to be paid

Note that;  
Divide the annual amount by 12 to get monthly payment to be financed/include with overall monthly payment

Note that;  
The calculation/percentage is the same if buyer or seller makes the payment

Note that;  
The calculation/percentage varies from lender to lender

### **MAXIMUM LOAN AMOUNT**

Note that;  
Maximum loan amount is **DETERMINED BY THE LENDER** for most conventional loans

Note that;  
Loan amounts over Fannie Mae/Freddie Mac will be considered:

- Jumbo loans
- Non-conforming loans



## SECONDARY MORTGAGE MARKET

Note that;

Fannie Mae/Freddie Mac may set maximum loan limits bought on the secondary mortgage market

Note that;

All licensee /buyers should check with lender for current limits as maximum loan amount

Note that;

Maximum loan amounts may be changed at lender and or Fannie Mae/Freddie Mac discretion

The interest rate charged by lender

Note that;

Interest rates on conventional loan use to be higher than FHA/VA loans however this is no lower the case in today market; buyer is to check with lender for current rates

## INTEREST RATE

Note that;

Interest rate on a conventional loan may be **SET BY THE NEGOTIATION** between:

- Lender
- Borrower
- Market conditions
- Borrower credit history/score
- LTV
- Fixed interest rate
- Adjustable interest rate
- The discount points charged by lender

## DISCOUNT POINTS

Note that;

Discount points are charged to borrower by lender

Note that;

Discount points charged to borrower will increase lender yield



Note that;  
Discount points charged to borrower/buyer to be able to sell the loan in the secondary mortgage market

Note that;  
Previously, discount points was associated with FHA/VA loans, recently this is common for conventional loans

Note that;  
Discount points may be used to obtain a lower interest rate for buyer

Note that;  
Lender may charge discount point for higher risk loans, buyer is to check with lender base on their individual circumstance

Note that;  
Discount points may be paid by the buyer/borrower or seller

Note that;  
Buyer/seller may split the charge for discount points

### **LOAN TERMS**

Note that;  
Loan terms are negotiable between the borrower and the lender

Note that;  
The most common term for SFR/residential property is 30 years

Note that;  
Lender may offer different loan terms, buyer is to check with local lender

### **CLOSING COSTS**

Note that;  
Closing costs include:

- Lender's title insurance
- Origination fee



Note that;

Lender's title insurance and origination fee are calculated as a percentage of the loan amount.

- Appraisal fee
- Credit report fee
- Attorney's fees
- Survey fees

Note that;

Some lenders do not include the cost of the survey in the closing costs

Note that;

Licensee should check with lender to determine which items are included in the closing costs charged by the lender

- Recording fees
- Pictures
- Payment

Note that;

The above fees are usually charged at a flat fee

Note that;

Closing cost listed above may be paid by either:

- Buyer
- seller

Note that;

Lender determines whether or not an escrow payment is required for taxes and insurance/PMI

### **ESCROW ACCOUNT**

Note that;

Escrow account may be required when a loan exceeds 80% LTV

### **LOANS**

Note that;

Loans which required escrow accounts may be called:



- Budget mortgages

Note that;

The lender may waive escrow requirements for loans 80% or less

Note that;

The payment =  $1/12$  of the annual payment for each item required to be escrowed x the number of months due/required

Note that;

The payments are established on the day of closing

Note that;

The lender determines whether secondary financing is allowed

### **SECONDARY FINANCING**

Note that;

Secondary financing may be allow for some conventional loans

Note that;

Secondary financing is subordinate to the first mortgage loan

Note that;

There are different sources for secondary financing:

- Banks
- Finance companies
- Individuals
- Seller

Note that;

If the secondary financing is from the seller it is called:

- A purchase mortgage money mortgage

Note that

All licensee are the have buyer check with lender for current requirements





Note that;  
Most conventional loan allow secondary financing but policies differ from lender to lender

Note that;  
The second mortgage must not exceed the amount of cash invested by the borrower/buyer

### **CONVENTIONAL LOAN PROCESSING**

Note that;  
Processing a conventional loan varies from lender to lender and market conditions

Note that;  
4 to 6 weeks is a good estimate for conventional loan processing

Conventional loan may sometime be process faster than FHA/VA loans

### **CONVENTIONAL APPRAISALS**

Note that;  
Conventional loans require an appraisal to determine the current market value

Note that;  
The lender may:

- Hire an appraiser
- Appoint someone from lender staff

Note that;  
An appraisal is not normally ordered until after:

- Submitted application for loan
- Signed sales contract

Note that;  
For conventional loans, a contract IS NOT automatically contingent upon the property appraising for the purchase price.

Note that;  
If there is a contingency in the contract about the appraised value; there is a possibility that property will not appraise for the sale price



Note that;

The agent/buyer may include in the contract options for the buyer at time of initial contract if there are contingencies in the contract

Note that;

**BUYER OPTIONS ARE NOT AUTOMATIC** if a contract may include a contingency on the appraised value.

Note that;

The options for buyer, if there is a contingency about appraised value include:

- Return earnest money
- Pay the difference in the appraised value and the sale price as additional down payment.
- Obtain a larger/different loan
- Paying larger MI premium
- Renegotiate the sales price with the seller
- Terminate the contract
- Have the appraisal reconsidered

Note that;

The seller or seller agent can provide additional comps to lender and lender may provide this additional comps to appraiser for reconsideration.

Note that;

Contingent contracts are voidable contracts

Note that;

Most completed appraisal do not require repairs, unless there is structural damage

Note that;

If mortgage insurance will be a part of the loan, cosmetic repairs may be required before the loan is made.

Note that;

For conventional loans, most lenders may require termite certification



### **CONVENTIONAL LOANS/ELIGIBLE PROPERTIES**

Note that;

Lender may limit the loan amount if a property is located near or in:

- Unpaved streets
- Inappropriate zoning
- Factories
- Commercial areas

Note that;

Lender may limit loan amount base on:

- Condition of property
- Age or size

Note that;

Lender may have minimum and/or maximum loan amounts

Note that;

A copy of the completed appraisal is available to borrower upon written request.

The next to highest price will be on FHA/VA loans on which the seller pays the discount points and especially if the seller pays the closing cost also.

### **FHA LOANS**

#### **HUD**

Note that;

Since 1965, FHA has been an agency of:

U.S. Department of Housing and Urban Development (HUD)

FHA loans

Note that;

FHA loan programs are administered through the:

- Federal Housing Administration



Note that;

FHA has three main purposes:

- Promote improved housing standards
- Assist in the stabilization of the mortgage market
- Provide mortgage loan insurance

Note that;

FHA does not make loans

Note that;

FHA insured loans must meet certain guideline and standards

### **LENDER**

Note that;

FHA mortgage insurance protects the LENDER against losses if the borrower defaults

Note that;

If the borrower defaults on a FHA insured loan, the lender:

- Forecloses on borrower
- The property is sold on the open market
- Get paid the difference from the sale and balance on previous loan from insurance program/FHA/HUD

Note that;

FHA does not provide housing

Note that;

FHA loans have major features:

- Loan insurance

Note that;

The money which provides the FHA insurance protection to lenders comes from the premiums paid by the buyer on each FHA insured loan



Note that;  
The premium is called:

- MIP/mortgage insurance premium

Note that;  
In 1991, FHA began charging the borrower an upfront payment at closing and a monthly payment over a period of years to cover the MIP

Note that;  
Both upfront payment and monthly MIP payment depend on the LTV ratio and term of the loan

Note that;  
FHA has right to change requirements at any time, agents are to check with FHA lender for current requirement/amounts

Note that;  
FHA has several insurance programs: section 203 (b) and section 245 are examples

### **SECTION 203(B) STANDARD LOAN PROGRAM**

Note that;  
FHA program 203 (b) is the basic insurance program for residential property of 1 to 4 families

Note that;  
Most 203 (b) programs are limited to owner occupied properties currently

### **DOWN PAYMENT**

Note that;  
All FHA loans require that a cash investment/down payment be made by borrower

Section 203 (b) restrictions

Note that;  
The buyer usually are required to have cash for the entire down payment



Note that;

One advantage of a FHA loans is that the down payment is usually lower than a conventional loan

Note that;

FHA sets the minimum down payment requirements and as of 01/01/2008, the minimum down payment = 3.5%

Note that;

FHA sets the maximum loan amount on FHA insured programs loans

Note that;

The maximum loan amount varies from county to county

Note that;

The maximum loan amount varies from high cost areas and low cost areas

Note that;

The base loan amount = 96.5% of sale price or appraised value, whichever is less

Note that;

The final loan amount = base loan plus upfront MIP if financed

### **DOWN PAYMENT ASSISTANCE PROGRAMS**

Note that;

FHA allows for some forms of down payments assistance

### **GIFT FUNDS**

Note that;

Some lenders permit the buyer to use gift funds for the down payment

Note that;

The gift funds may come from:

- Charitable organization
- State government
- Local government assistance program



Note that;  
The seller funded down payment assistant programs are not allowed as of 10/01/2008

### **INTEREST RATE**

Note that;  
Department of Urban Development (HUD) use to set the maximum allowable rate on FHA loans,  
before 12/1983

Note that;  
After 12/1983 HUD no longer set the maximum interest rate on FHA insured loans

Note that;  
The interest rate in negotiated between buyer/borrower and lender

Note that;  
Interest rate are affected by market conditions

### **DISCOUNT POINTS**

Note that;  
Discount points may be charged on FHA loans

Note that;  
Discount points may be paid/split; by/between either:

- Buyer
- Seller

Note that;  
Traditionally, lenders charged a discount point on FHA insured loans because the rate was lower  
than that of a conventional loan to increase their yield

Note that;  
Discount points may be used to buy down the rate



Note that;  
Loan discount = discount point being charged

Note that;  
One discount point = 1% of loan amount

Maximum term for section 203 (b)

Note that;  
FHA term may be:

- 15 year
- 30 year
- 40 year

Note that;  
For LTV of 90% or less, there is no monthly premium

#### **FHA SECTION 203 (B) CLOSING COSTS**

Note that;  
FHA closing costs are similar to that of conventional loans

Note that;  
The seller usually pays closing cost

Note that;  
The buyer may pay closing cost as well

#### **ESCROW ACCOUNTS ON SECTION 203 (B) LOANS**

Note that;  
All FHA insured loan require an account be set up at closing for:

- Taxes
- Insurance
- Principal
- interest





Note that;  
The above are called:

- Escrow items

### **PROCESSING SECTION 203 (B) INSURED LOANS**

Note that;  
FHA insured loan usually take longer than conventional loans to process

### **FHA SECTION 203 (B) APPRAISAL**

Note that;  
All FHA insured loans must meet certain appraisal standards

Note that;  
FHA minimum property standard are specified as:

- MPRs/minimum property requirements

Note that;  
All FHA insured loans require an appraisal be completed to determine if the minimum standards have been met

Note that;  
FHA approves who may complete FHA appraisal

Note that;  
The lender orders the FHA appraisal from an approved list of FHA approved appraisers

Note that;  
Before an appraisal is ordered, the fee must be paid in cash only upfront

Note that;  
When an appraisal is made for a FHA insured loan, it serves two purposes:

- It establishes the value
- It serves as a conditional commitment to the borrower



Note that;

Once the value is established, this sets the maximum amount that can be insured by the FHA on the property

Note that;

The conditional commitment is not a commitment to lend by a commitment to insure as long as the borrower qualifies for a loan

Note that;

The conditional commitment specifies any repair requirements before a loan can be insured by FHA

Note that;

All repairs must meet minimum property standard/requirement

Note that;

The completed FHA appraisal is given to the lender only

Note that;

FHA appraisals are good for a specific period of time:

- Existing property = valid for 6 months
- Proposed construction = valid for 12 months

Note that;

If the value of a FHA appraisal is less than the sale price that the buyer has for options:

- Void the contract and get earnest money back
- Pay the difference in the appraised value and the sale price in cash
- Renegotiate the sale price
- Request a reconsideration of the FHA appraisal

Note that;

The buyer must have a basis for requesting reconsideration in the form of information on additional comparable properties in the same area

Note that;

Second mortgage loans are rarely approved by FHA insured loans



Note that;

Second mortgage are usually allowed only after the loan is made, however second mortgage may be allowed upon approval by FHA at time of origination

Note that;

Second mortgage may be added by:

- Owner
- Later buyer that assumes the loan

Note that;

Prepayment penalties are prohibited by law

Note that;

Due on sale clauses are prohibited

Note that;

FHA loan are assumable

Note that;

There are limits place on the assumability of FHA loans

Note that;

The buyer must qualify for the loan if the loan to be assumed was originated after 12/15/1989

Note that;

FHA may allow different programs at any given time and is subject to change

Note that;

All agents are to check with locate FHA lender for current limits for the subject property area

### **SECTION 245 GRADUATED PAYMENT MORTGAGE**

Note that;

FHA Section 245 insurance program is designed to assist first time buyers

Note that;

The monthly payment for the first year is lower than a regular FHA 203 (b) and increases over a period of years up to the final payment level



Note that;  
Section 245 is limited to owner occupied homes

Note that;  
The maximum term for section 245 insured programs is 30 years

Note that;  
Section 245 insured programs come with maximum loan amounts and changes frequently,  
agents/buyers are to check with local FHA lender

Note that;  
Section 245 insured programs with different plans:

- Plan I = yearly increase of 2.5%
- Plan II = 5%
- Plan III = 7.5%

Note that;  
Plan III is the most common

Note that;  
Plans I through III come with 5 year maximum yearly increase

Plan IV = 2% yearly increase  
Plan V = 3%

Note that;  
Plans IV and V come with 10 year maximum yearly increase

## **VA LOANS**

Note that;  
The department of veteran's affairs (VA) previously was named veterans administration

## **GOVERNMENT AGENCY**

Note that;  
VA is a government agency that provides assistance in the financing of housing



## **FEDERAL GOVERNMENT**

Note that;

The VA was established by the federal government as an independent agency by the serviceman's readjustment act of 1944

### **SERVICEMAN'S READJUSTMENT ACT OF 1944**

Note that;

The serviceman's readjustment act of 1944 is also called:

- GI Bill of rights
- GI Bill

Note that;

The GI bill was established to provide assistance to veterans who served in World War II and their spouses

Note that;

The VA also promotes home ownership of eligible veterans of military service

## **LOAN GUARANTEES**

Note that;

The VA provides loan guarantees to lender

Note that;

VA guarantees are not the same as FHA insured programs

Note that;

No premium is paid by anyone, buyer/seller/lender.

## **FEDERAL TAX FUNDS**

Note that;

The federal tax funds covers losses by the lender

Note that;

Federal tax funds come from general tax revenues



## **PROCEDURE**

Note that;

The borrower defaults on the VA loan:

- The lender forecloses
- The property is sold
- Recover any losses from the federal tax funds

## **APPRAISALS FOR VA LOANS**

Procedure

Note that;

To get a VA appraisal/CRV (certificate of reasonable value):

- The veteran request that the lender to obtain a CRV
- The lender then request the CRV from the VA in writing
- An appraisal fee must be paid in cash at time the CRV is ordered; can be paid by either buyer or seller

Note that;

The VA set standards for properties being financed with a VA loan

Note that;

The standards are determined by a fee appraisal of the property

Note that;

The fee appraiser must be approved by the VA to completed an appraisal for a VA guaranteed loan

## **CERTIFICATE OF REASONABLE VALUE**

Note that;

A VA appraisal report is called:

- Certificate of reasonable value
- CRV



Note that;

The CRV is used to:

- Determines the acceptability of the property for a VA loan
- Establishes the value of the property for a VA loan
- Identifies any repairs that might be needed for a VA loan

Note that;

The value reflected in the CRV = the maximum loan amount on a 100% LTV VA guaranteed loan

Note that;

An appraisal/CRV is good for a specific period set by the VA:

- 6 months for existing property
- 12 months for proposed construction

Note that;

If the value from the CRV is less than the sale price, then buyer can:

- Void the contract
- Request a return of earnest money
- Pay the difference in the appraised value and sale price in cash

Note that;

Second mortgages are not allowed if the sale price is more than the CRV

Note that;

Second mortgages are allowed if total amount financed including second mortgage is less than CRV

Renegotiate the sale price with the seller so that it does not exceed the appraised value  
Request a reconsideration of the VA appraisal

Note that;

The borrower must provide a minimum of three (3) comparables properties in the same area to lender who submit to the VA for reconsideration



### **MAXIMUM LOAN AMOUNT**

Note that;  
There is no maximum VA loan amount set by law

Note that;  
The loan amount can never be more than the CRV value

Note that;  
Lenders usually lend only 4 times the maximum guarantee:

- $\$104,250.00 \times 4 = \$417,000.00$

Note that;  
Veterans may purchase home for more than \$417,000.00 with a VA loan however the lender will may require a down payment, usually 25% above \$417,000.00

### **DOWN PAYMENT ON VA LOANS**

Note that;  
No down payment is required on a VA loan

Note that;  
A veteran may put down a down payment if they wish

Note that;  
A veteran must qualify for a VA loan

### **TERMS AND INTEREST RATES ON VA LOANS**

Note that;  
The maximum term for a VA loan is 30 years

Note that;  
The VA no longer set the maximum allowable interest rate for a VA loan

Note that;  
The interest rate is now negotiated between buyer and lender





### **DISCOUNT POINTS ON VA LOANS**

Note that;

The interest rate on VA loans historically were below the market rate for conventional rates

Note that;

Because the rate was lower historically the lender charged a discount point to increase their yield on the loan

Note that;

Discount points is actually prepaid interest

Note that;

Another name for discount points = points

Note that;

One discount point = 1% of the loan amount

Note that;

Discount point may be paid by anyone, including the veteran

### **CLOSING COSTS**

Note that;

Closing costs may be paid by either buyer or seller

Note that;

Closing costs are usually paid by seller, in practice

Note that;

Closing costs are similar to that of FHA/conventional loans

### **FUNDING FEE**

Note that;

When a VA loan is originated, it requires payment of a funding fee

Note that;

The funding fee is paid into a guarantee and indemnity fund



Note that;  
The indemnity fund is used to offset lender losses on defaulted VA loans

Note that;  
The amount of the funding fee charged to borrower depends on the down payment

Note that;  
No down payment = 2% funding fee of loan amount

Note that;  
5% down payment = 1.5% funding fee of loan amount

Note that;  
10% down payment = 1.25% funding fee of loan amount

Note that;  
The above funding fee is for:

- First time users
- Regular veterans

Note that;  
If the veteran uses another VA entitlement the funding may be higher

Note that;  
The funding fee for individuals who served in the military reserves may be higher

Note that;  
Funding fee may be paid by either buyer or seller

Note that;  
The funding fee may be included in the loan amount

Note that;  
The funding fee may be paid out of the loan proceeds

Note that;  
The funding fee may be waived for veterans with a service connected disability of 10% or more



### **ESCROW ACCOUNT ON VA LOANS**

Note that;

All VA loans require an escrow account for annual:

- Taxes
- Insurance

Note that;

The escrow account is set up at closing

Note that;

The borrower is required to pay several monthly in advance for taxes and insurance into escrow account

Note that;

The number of months required to be paid into escrow varies

Note that;

The number of months required depends on the time of years the closing takes place

Note that;

After closing, the borrower must pay an amount into the escrow account each month and is 1/12 of the annual amount for each taxes and insurance; along with the principal and interest on the mortgage payment

Note that;

The term PITI =:

- Principal
- Interest
- Taxes
- Insurance

### **VETERAN'S DEFAULTS ON A VA LOAN**

Note that;

If a veteran defaults on a VA loan, they are liable to the VA for any losses the VA must pay as a result of the default



Note that;

If another buyer assumes a VA loan, the veteran remains liable for any losses

Note that;

The VA may release the borrower of any losses if a loan is assumed by another veteran

Note that;

If another veteran assumes a VA loan, it is possible to transfer the VA entitlement and the liability for VA losses to the new buyer

Note that;

The veteran must get VA approval to be release from liability for losses

### **RESTRICTIONS ON VA LOANS**

Note that;

VA loans may not include:

- Prepayment penalty
- Due on sale clause
- Alienation clause

Note that;

Prior to 03/01/1988, anyone could assume a VA loan without qualifying

Note that;

On 03/01/1988 or after, anyone that assumes a VA loan must qualifying for the a VA loan

Note that;

The VA can purchase the property directly from the lender and market the property themselves

Note that;

If the proceeds from the sale are less than the outstanding balance on the loan, the VA pays the difference



### **LIMIT IN THE AMOUNT THE VA WILL PAY**

Note that;  
That there is a limit in the amount the VA will pay

Note that;  
The limit for loan amounts of \$45,000.00 or less:

- 50% of the loan amount

Note that;  
The limit for loan amounts of greater than \$45,000.00 to \$144,000.00

- 40% of the loan amount or \$36,000.00, whichever is less
- Not less than \$22,500.00

Note that;  
The limit for loan amounts greater than \$144,000.00

- 25% of the loan amount
- Up to the maximum guarantee of \$104,250.00

### **ENTITLEMENT**

Note that;  
A veteran's entitlement is the amount of guarantee she/he is eligible to receive on a guaranteed loan

Note that;  
The maximum entitlement is computed as 25% of the conforming loan limits as set by Freddie Mac

Note that;  
The maximum entitlement base on \$417,000.000 loan limit = \$104,250.00

Note that;  
The veteran may use all of the entitlement or part of the entitlement on any single transaction



Note that;

If the veteran uses part of their entitlement and later sells the home by assumption without paying off the loan, they may use the remaining entitlement on another home

Note that;

If the veteran sell the home and pays off the original VA loan, the entitlement is restored and may be used again up to the entitlement limit

Note that;

All agents are to check with local VA lender for current policy/limits

#### **ELIGIBLE VA PROPERTIES**

Note that;

The veteran may finance a 1-4 unit residential property that is occupied by the veteran

Note that;

Investment property may NOT be used on a VA guaranteed loan

#### **ADVISE AND CONSULTATION**

Note that;

All brokers/affiliate brokers/managers/agents/licensees are to work towards developing high levels of:

- Advice and Consultation
- Service
- Relationship with clients/partners
- Accept high responsibility
- Master high skill
- Perceiving information
- Anticipating needs
- Interpreting data
- Take a big picture viewpoint
- Maximum legal responsibility
- Owning the results
- Educating and guiding
- Decision-making



- Judgment and intuition
- Work to become irreplaceable
- Get highly paid

### **PROPERTY RIGHTS**

Note that;

All agents/licensee/managing brokers/associate brokers may advise the client that the term “property” refers to the “rights” of ownership, real property or personal property, and are:

- To use
- Possession
- Enjoyment
- Disposal

Note that;

Property rights excludes everyone else from interfering with the “rights” listed and is called “the bundle of rights”

Note that;

Rights of ownership are limited by government rights

### **SYSTEMS OF OWNERSHIP**

Note that;

There are two “SYSTEMS” of “ownership” in land which are:

- Feudal system
- Allodial system

#### **FEUDAL SYSTEM**

Note that;

Land is owned by the sovereign, not by individuals and may possess rights for their lifetime only and may NOT hold an INHERITABLE interest.

Note that;

This system of ownership has nearly disappeared in the free world and has been replaced with allodial system.



### ALLODIAL SYSTEM

Note that;

Land may be owned by individuals and MAY hold INHERITABLE interest and is only limited by government interest.

### "FORMS" OF OWNERSHIPS

Note that;

There are two basic "FORMS" of ownerships, which are:

- Sole-ownership
- Concurrent ownership

#### -Sole-Ownership

Note that;

Sole ownership is when land/property is owned by one person/entity.

Note that;

Sole ownership is called: **SEVERALTY**, think of severed ownership.

Note that;

Any Freehold estate can be held in Severalty/by one person/entity.

Note that;

When a corporation owns property by itself, the property is owned in severalty/alone.

#### -Concurrent ownership

Note that;

Concurrent ownership is when more than one person/entity owns the land/property.

Note that;

In GA only two forms of concurrent ownership is recognized:

- Tenancy in common
- Joint tenancy





Note that;  
GA does not recognize:

- Tenancy by the entirety
- Community property

Note that;  
When a corporation owns property with other corporation, this is called concurrent ownership

Note that;  
There are "**4 TYPES**" of concurrent ownership:

- Joint ownership
- Tenant in common ownership
- Tenancy by the entirety ownership
- Community property ownership

Note that;  
In all cases, each co-owner holds an "undivided interest" in the property as a whole.

### **JOINT OWNERSHIP/TENANCY**

Note that;  
The primary distinguishing characteristics of joint tenancy is the fact that it carries "SURVIVORSHIP".

### **SURVIVORSHIP**

Note that;  
Survivorship means that when a joint tenant dies, his/her interest automatically goes to the surviving joint tenants NOT the heirs of the deceased or his/her estate.

Note that;  
In GA, for joint tenancy to have survivorship, the granting instrument must specifically state that survivorship is intended.

Note that;  
Because of survivorship, a joint tenancy IS **NOT INHERITABLE**



Note that;  
Survivorship has priority over:

Dower/wife rights  
Or  
Curtesy/husband rights

### **UNITIES**

#### **JOINT TENANCY**

Note that;  
Joint tenancy requires the presence of 4 unities:

One, unity of possession  
All tenants must hold an undivided interest in the whole property

Two, unity of interest  
Holds equal degrees/shares of interest

Three, unity of time  
Must acquire their interest at the same time

Four, unity of title  
Must acquire title in the same way in the form of ONE single title to the whole property

Note that;  
A co-owner may sell his/her interest without the consent of the remaining co-owners however if one joint tenant sells, the new owner becomes a tenant in common.

#### **TENANCY IN COMMON OWNERSHIP**

Note that;  
Tenancy in common requires only the unity of possession, which requires that all owners hold an undivided interest in the property.

Note that;  
Any two or more persons/entities may hold property as tenants in common.



Note that;  
Unity of possession is the only unity required.

Note that;  
Each tenant holds a separate title to his/her undivided interest.

Note that;  
Co-owner may sell without consent of the others.

Note that;  
The right of survivorship MAY NOT exist among tenancy in common.

Note that;  
Tenancy in common is inheritable.

Note that;  
“Unity of interest” is NOT required for tenancy in common

Note that;  
The co-owners may hold unequal or equal degrees/shares of interest in the property.

Note that;  
In most states, if there are two or more owners of a property and no specific form of concurrent ownership is indicated, the owners are presumed by law to be tenants in common; this is the case in GA.

Note that;  
The ONLY form of concurrent ownership for corporation is tenancy in common.

#### **TENANCY BY THE ENTIRETY OWNERSHIP**

Note that;  
Tenancy by the entirety requires the four unities of:

- Possession
- Interest
- Time
- Title
- Requires a fifth unity; the unity of person



Note that;  
It is limited to ownership jointly by husband and wife, who are considered to be one person.

Note that;  
It usually carries the right of survivorship and is recognized in only about half of the states in the US.

Note that;  
Tenancy by the entirety is not recognized in GA.

Note that;  
Neither spouse may encumber the title or dispose of the property without the consent of the other.

Note that;  
Tenancy by the entirety can be terminated only by joint action of husband and wife, or by death of either spouse.

### **COMMUNITY PROPERTY OWNERSHIP**

Note that;  
It is based on the concept that each spouse has an equal interest in any property acquired during the marriage.

Note that;  
In all cases of concurrent ownership, each co-owner holds an “undivided interest” in the property as whole, not separate parts of the property.

Note that;  
Only a few states recognize community property.

Note that;  
GA does not recognize community property.

### **CORPORATIONS**

Note that;  
Corporations **MAY NOT** hold property as joint tenants.

Note that;  
Corporation may own property in severalty, alone or concurrently, jointly



Note that;  
The only form of concurrent ownership for corporation is tenancy in common.

### **PARTITIONING OF CONCURRENT OWNERSHIP**

Note that;  
The holder of concurrent estates have an undivided interest in the property, the interest can be separated in some cases by partition.

Note that;  
Partition is the dividing of common interest into separate interest owned in severalty.

Note that;  
Joint Tenancy and Tenancy in Common can be partition.

Note that;  
"Tenancy by the entirety" CANNOT be partitioned.

### **METHODS OF PARTITION**

Note that;  
Partitioning can occur by two methods which are: Partition in kind and Partition at law.

#### **-PARTITION IN KIND**

Note that;  
The property itself can be subdivided and split among the owners.

Note that;  
Co-owners can agree voluntarily to partition.

Note that;  
The co-owner can partition by selling the property, if subdividing is not possible.

#### **-PARTITION AT LAW**

Note that;  
The property can be sold and the proceeds divided among the owners.



Note that;

One or more co-owners can ask the court to partition the property if owners cannot agree among themselves.

### **METHODS OF DESCRIPTION OF PROPERTY**

Note that;

There are four methods of describing property:

- 1) Recorded subdivision plat map,
- 2) Metes and Bounds,
- 3) Government rectangular survey and
- 4) Informal reference

Note that;

For the purpose of transferring title, only the first three are legally acceptable, called “legal descriptions”.

### **RECORDED SUBDIVISION (S/D) PLAT MAP**

Note that;

A plat is a map of a subdivision.

Note that;

A plat/map is created by the developer or sub-divider when a parcel of raw land is subdivided into building lots.

Note that;

A plat/map is recorded in the “public land records” when the subdivision is created along with a list of any restriction covenants which apply to the subdivision.

Note that;

After a plat/map is recorded, any property located in the subdivision can be identified by reference to the recorded plat/map.



Note that;

A plat/map of a subdivision describes the property by breaking in down into units called:

- Blocks
- Lots

### **BLOCK**

Note that;

The block is the largest unit within a subdivision

### **LOTS**

Note that;

Each block is subdivided into individual lots that houses are built on.

Note that;

Plat/map also shows the boundaries of ALL streets and ALL easements in the S/D and any other relevant details of the S/D.

### **METES AND BOUNDS**

Note that;

You would think of “metes and bounds” as a set of instructions you would give on how to walk around the outside boundaries of the property.

### **METES**

Note that;

Metes = Direction and Distance

### **BOUNDS**

Note that;

Bounds = Monuments: Natural and permanent



### **NATURAL MONUMENTS**

- Wells
- The creek
- The large oak tree
- The rock

### **PERMANENT MONUMENTS**

Note that;

Permanent monuments are **MAN-MADE** objects:

- Iron pin driven into ground by a surveyor

### **CORNER**

Note that;

The above are objects that are used to define a corner of a parcel.

Note that;

A corner is any place you have to change direction in walking around the property.

### **PERMANENT REFERENCE MARKERS**

Note that;

Permanent monuments are tied to what are called: permanent reference markers:

- “PRM”/”BENCHMARKS”

Note that;

PRM/BENCHMARK is a precisely identified location which is identified by reference to “LATITUDE” and “LONGITUDE” using:

- Degrees
- Minutes
- Seconds





## **SURVEY**

Note that;

Metes and bounds methods using; “permanent monuments” is commonly referred to today as a “survey” of the property and is used as the PRIMARY METHOD OF DESCRIPTION IN MANY STATES.

Note that;

A survey is very useful in describing parcels those are irregular in shape.

## **POINT OF BEGINNING**

Note that;

The description **MUST** always “begin” at a “Point Of Beginning/POB” on the plat, usually marked by an iron pin placed by the surveyor.

Note that;

Description **MUST** always “return” to the “Point Of Beginning/POB”, if not, it is invalid.

Note that;

From the POB, the boundaries are described using:

- Direction
- Distance

Note that;

The description is from the distance of travel from a permanent monument or location or distance between natural monuments, a corner, going around the outside boundaries of property.

Note that;

If the POB is vague or unclear, the resulting legal description is invalid.

Note that;

This means that the contract or deed based on the description may be void.



### **ACTUAL DISTANCE**

Note that;

If an error in description, the actual distance between monuments takes precedence over the distance stated in the “metes and bounds” description.

### **GOVERNMENT RECTANGULAR SURVEY**

#### **CONGRESS**

Note that;

Government Rectangular Survey was established by congress in 1785.

#### **APPLIED**

Note that;

It has been applied in most States that have been formed since that date, with a few exceptions.

Note that;

It has not been applied to those States which were formed prior to its inception, including the original 13 States and few others.

#### **USED**

Note that;

The States where it is used are primarily in the:

- West
- Midwest

#### **BASED**

Note that;

Government rectangular survey is based on Principal Meridians (PM) and Base Lines (BL):

#### **PRINCIPAL MERIDIANS**

Longitude lines



Note that;  
Principal meridians are north-south longitude lines (up-down)

### **BASE LINES**

Latitude lines

Note that;

Latitude lines are east-west latitude lines (right –left).

Note that;  
Each PM is intersected by only one BL

Note that;  
Each PM is given a name

Note that;  
Each intersecting pair of PM and BL is used to describe a large geographical area, usually 1 or more States, with NO overlap in areas.

### **TOWNSHIP**

Note that;  
Each square in a grid is called a township.

Note that;  
Each township = six miles square or six mile long on each side of the square or total miles = 36 miles area/square miles:  $6 \times 6 = 36$  miles.

### **INFORMAL REFERANCE**

Note that;  
Informal reference is:

- Street address
- Locally recognized name



Note that;

For the purpose of transferring title, informal reference IS NOT legally acceptable method of description of property and is not accurate enough for title transfer.

Note that;

Informal reference can be used in a listing, since no transfer of title is involved.

Note that;

Informal reference cannot be used in most State for Deeds or any other Contracts involving title transfer.

#### **OWNERSHIP OF COMMUNITIES OF PROPERTY**

Note that;

In community ownership, the owners surrender some of their property rights in additions to government's rights.

Note that;

"Ownership of community property" has ALL the requirements for:

- Some form of self-government to the citizens/owners.

Note that;

Self-government is created in the form of an "owners association".

Note that;

Unit owners are automatically member.

Note that

The owners association is a "not for profit" corporation.

Note that;

The owners association may elect board or hire professional management company to manage/maintain common elements and provide insurance for common element.

Note that

The home owner associations controls and regulate/maintains common elements.



Note that;

If there are ANY mortgage loans on the common areas, the HOA will be the borrower/mortgagor.

Note that;

Taxes or HOA dues to fund the operation of the community may include:

- Insurance
- Legal expenses
- Management expenses
- Taxes on common elements
- Reserves for capital expenditures
- Provision of services- Varies with community

Note that;

There are “four” types of ownership of “communities of properties”:

- Condo
- Cooperative
- Plan Unit Development
- Resort Timesharing Development

## **CONDO**

State Legislature

Note that;

In order for a Condo development to exist there must be enabling legislation passed by the State Legislature”, either:

- HORIZOTAL PROPERTY ACT
- STRATA TITLE ACT
- CONDO ACT

## **AIR LOTS**

Note that;

In each case, the LEGISLATION provides for “horizontal subdivision of the air above the land” into cubicles called “air lots”.



Note that;  
Each unit in the development “occupies” one “air lot”.

### **MASTER DEED**

Note that;  
Title to condo is derived from a deed to the entire property, called the master deed.

### **SEPARATE DEED**

Note that;  
By splitting the FEE title to the air above the land, each owner receives a separate deed to his/her unit.

Note that;  
Condo is a “FEE” ownership of “a unit” within a multiple unit development, Attached or Detached.

Note that;  
A condo may be organized as:

- High rise building
- Garden type apartment
- Townhouse development
- Warehouse
- Office building
- Detached, single family residence

Note that;  
Condo ownership is ownership in both:

- Separate property
- Common property

Note that;  
Each unit in a condo is subject to property taxes separately and receives separate tax bill.



Note that;

Individual unit owners hold “two” types of interest in a Condo:

- Fee simple title
- An undivided interest in the common elements as tenants in common

### **FEE SIMPLE TITLE**

Note that;

Owner gets “Fee simple” title to unit or separate property:

- Walls
- Floors
- Ceiling

### **UNDIVIDED INTEREST**

Note that;

Owner gets an undivided interest in the remaining elements/common elements in the development as “tenants in common”:

- Land
- Interior and exterior walls
- Pools
- Tennis courts
- Recreation areas
- Landscaping
- Hallways
- Stairs
- Parking lots

### **COOPERATIVE**

Note that;

The title to the land, building and all improvements are held by a “not-for-profit-corporation”.

Note that;

Individuals who wish to be a part of a cooperative, must PURCHASE STOCK in a “not for profit corporation”.



### **PROPRIETARY LEASE**

Note that;

The stockholder is given a “proprietary lease” which conveys the “right to occupy” one of the units in the property.

### **UNIT OCCUPANTS**

Note that;

All stockholders are called “unit occupants”.

Note that;

The cooperative owns the individual units/building, not the unit occupants.

### **TENANTS ASSOCIATION**

Note that;

All stockholders/unit occupants composed the tenants association

Note that;

Since the borrower is a stockholder, their lease does not require the payment of rent.

Note that;

The cooperative tenants association makes the rules for coop living.

Note that;

The Cooperative typically elects a board of directors to manage the business operations of the building.

### **PROPORTIONATE SHARE**

Note that;

Each “unit occupant” usually pays a fixed monthly FEE covering his/her “proportionate share” of all items that the coop not for Profit Corporation is responsible for:

- Mortgage payments on the entire property
- Taxes
- Common elements
- Repairs and maintenance
- Management expenses





### **PLANNED UNIT DEVELOPMENT/PUD**

Note that;

With PUDs the property usually consists of homes within homeowner association with common elements/areas.

#### **COMMON ELEMENT**

Note that;

The home owners association owns the common element/areas.

Note that;

The unit owners own a share of the association.

#### **LOCAL ZONING**

Note that;

PUDs are created by LOCAL ZONING rather than State Laws.

Note that;

The developer is required to create and develop the common areas.

Note that;

Each owner owns the:

- Land
- Air above the land
- Unit/property

Note that;

Vertical stacking is not possible.

Note that;

Most PUDs are:

- Detached dwellings
- Attached townhouses



## **RESORT TIMESHARE DEVELOPMENTS**

Note that;

Resort timeshare developments are the “dividing up” and selling a living unit for a” specified period” each year.

### **FEE SIMPLE OWNERSHIP**

Note that;

The owner of a resort timeshare development gets FEE Simple ownership to the living unit along with other buyer/owners of the living unit.

### **RIGHT TO USE**

Note that;

Timeshare developments may be organized in ANY of several ways:

Right to use, gives the buyer the right to:

- To occupy the living unit for a specified time, usually one week
- Usually each year for a specified number of years

Club plan membership

Note that;

The “club plan” is membership in a club, which owns the property.

Note that;

Timeshare developments can be:

- Resort properties
- Hotels
- Condo
- Townhouses
- Villas
- Recreational vehicle parks
- Campgrounds



## **INTEREST/RIGHTS IN LAND**

Note that;

There are two types of “interest/rights” in land:

- INDIVIDUALS
- GOVERNMENT

## **INDIVIDUALS**

Note that;

“rights/interest in land”/property for INDIVIDUALS is called:

- Estate in Land

Note that;

Estate in land =

- Degree
- Quantity
- Nature

Note that;

Rights in land =

- Extent of one’s interest in the land

Note that;

Estate in land refers to an individual interest in the land and NOT the land itself

## **ESTATE IN LAND**

Note that;

There are two types of estates in land:

- Freehold estate
- Less than freehold estate, leasehold estate



## FREEHOLD ESTATES

Note that;  
Freehold estates are considered real property

Note that;  
A freehold estate is:

- Ownership interest in land
- Held for a lifetime or longer
- Both ownership and possession

Note that;  
An “Estate in land” which is conveyed by a lease, 5 years or more, is technically called:

- “leasehold estate”

Note that;  
Leasehold estate in GA it is considered real property and outside of GA it is personal property

Note that;  
A leasehold estate for less than 5 years may be called:

- “Tenancy in land”

Note that  
There are four types of leasehold estates:

- Estate for years
- Estate from year to year/Periodic estate
- Estate at will
- Estate at sufferance



### **ESTATE FOR YEARS**

Note that;

An estate for years is leasehold estate which has a specific starting date and a specific ending date, any duration, as long as the duration is specified in the lease.

Note that;

It is a “definite” term

Note that;

Estate for years is created with a specified duration with an OPTION TO RENEW at the end of each rental period.

Note that;

It DOES NOT AUTOMATICALLY RENEW unless the contract includes a provision to that effect. Both parties must agree to renew at the end of period.

### **ESTATE FROM YEAR TO YEAR (A PERIODIC ESTATE)**

Note that;

A periodic estate is created with a specified duration

Note that;

Periodic estate will AUTOMATICALLY RENEW for another period of the same duration, unless the lessor or lesser acts to terminate it

### **ESTATE AT WILL**

Note that;

Estate at will is created when the rental agreement does not include a specific period of occupancy.

Note that;

Estate at will may be terminated by either party

Note that;

In GA, there are certain limitations to terminate estate at will:



Note that;  
The landlord must give 60 days' notice before notice before terminations

Note that;  
The tenant must give 30 days' notice before termination

### **ESTATE AT SUFFERANCE**

Note that;  
Estate at sufferance is created after a definite term expires and the tenant remains in possession of the property without the permission of the landlord.

Note that;  
Estate at sufferance is an unlawful occupation of rented property after the duration of the valid lease expired

Note that;  
Because estate at sufferance is unlawful occupation, there is no should thing as estate at sufferance

### **FREEHOLD ESTATES**

Note that;  
There are two types of FREEHOLD ESTATES:

- FEE ESTATES
- LIFE ESTATES

**FEE ESTATE**= ownership and possession.

Note that;  
There are two general types of FEE ESTATES:

- Fee simple estate
- Qualified fee estate

### **FEE SIMPLE**

Note that;  
Fee simple estates are the most common form of ownership



Note that;

With fee simple estates, **OWNERSHIP INTEREST IN LAND** is held for a lifetime or longer

Note that;

With a fee simple estate there is **POSSESSION IN LAND** for lifetime or longer.

Note that;

A fee simple estate is **INHERITABLE**; can be willed to heirs.

Note that;

Fee simple has three primary characteristics:

- It is the least restricted form of ownership
- It is an **INDEFEASIBLE** estate
- Limited only by government rights of:
  - Eminent domain
  - Taxation
  - Police power
  - Escheat

Note that;

**IT CANNOT BE “DEFEATED OR OVER-COME”** by another individual under any circumstances.

**QUALIFIED FEE ESTATE** or “fee simple determinable estate”; has three characteristics

Note that;

Qualified fee estate may be called a:

- DEFEASIBLE estate
- DEFEASIBLE FEE estate
- FEE SIMPLE DETERMINABLE estate

Note that;

More restricted form of ownership.

Note that;

In addition to government rights, also restricted by some additional limitations



Note that;

These limitations are usually imposed by the person creating the qualified fee estate.

Note that;

It can be defeated or overcome if some conditions is not met or maintained.

Note that;

A "fee simple determinable estate" is one which will terminate if conditions stated in the deed/contract comes into being or is terminated.

Note that;

If the property is used for anything other than the conditions of the estate, the title to the property REVERTS back to the grantor or heirs.

### LIFE ESTATES

Note that;

Life estate = possession.

Note that;

A life estate has two primary characteristics:

It is held for a lifetime

It is **NOT INHERITABLE**, cannot be willed to heirs

Note that;

The person, who holds the life estate, is called:

- The life tenant

Note that;

Life estates cannot be willed to heirs with one exception:

- Pur Autre Vie





Note that;  
The term Pur Autre Vie is French which means:

- For another's life

Note that;  
Pur Autre Vie is inheritable

Note that;  
Inheritance can only be allowed if the "life tenant" dies before the third party on whose life the estate is based

Note that;  
In that if the "life tenant dies before the third party, the "life tenant" may pass the life estate to an heir.

Note that;  
The "life estate, Pur Autre Vie" will be owned by that heir UNTIL the death of the third party on whose life the life estate is based.

Note that;  
On the death of the third party, the life estate REVERTS to the grantor, regardless of whether it is owned by the original "life tenant" or an "heir" of that person.

Note that;  
When the person/life tenant dies, ownership reverts back to grantors or their heirs.

Note that;  
The life tenant must pay property taxes during life tenancy.

Note that;  
Life tenant has right to:

- Sell
- Mortgage
- Convey



Note that;

The life tenant may sell, mortgage or convey the property but not the fee estate on which it is based; which reverts back to grantor upon original grantee death.

Note that;

A life estate originates from a fee estate and returns to fee status upon termination.

Example: fee simple title conveyed to a life estate reverts back to fee estate when life tenant dies.

Note that;

There are two types of life estates:

- Voluntary life estate
- Statutory life estates

### **VOLUNTARY LIFE ESTATE**

Note that;

Voluntary life estate arises from voluntary acts of the grantor.

Note that;

There are two types of voluntary life estates:

- **LIFE ESTATE IN REVERSION** = one in which ownership of the fee estate reverts back to the grantor or their heirs upon the death of the life tenant/grantee.
- **LIFE ESTATE IN REMAINDER** = one in which fee estate reverts to a third party upon death of the life tenant.

Note that;

The third party named to receive the fee estate is called the remainderman.

### **STATUTORY LIFE ESTATES**

Note that;

Statutory life estates are not created by voluntary action, but by law.



Note that;

There are three types of statutory life estates:

- Dower
- Curtesy
- Homestead protection

**DOWER** = the wife's rights to receive, upon the death of her husband, a share of ALL property held or owned by the husband during the marriage.

**CURTESY** = the husband's rights/interest in property at time of wife's death during the marriage.

**HOMESTEAD PROTECTION** = provides a life estate to a widow or widower.

Note that;

This is not the same thing as a homestead tax exemption

### **ESTATE LESS THAN FREEHOLD**

Note that;

An ESTATE LESS THAN FREEHOLD is called:

- "Interest in land" or "tenancy in land"

Note that;

An interest in land or tenancy in land is a lease for less than 5 years

Note that;

Estates less than freehold can be called:

- Leasehold estates
- Rental interest in land
- Personal property

Note that;

An estate less than freehold is held "less than" a lifetime.

Note that;

There is possession/occupancy but NOT ownership.



Note that;  
The holder of an estate less than freehold is called:

- Tenant/lessee

### **GA LAW OF BRRETA**

Note that;  
GA LAW of BRRETA treats leasehold as **REAL PROPERTY!**

Note that;  
The **PURPOSE** for **GA LAW** treating leasehold as real property is to regulate the activities of those involved in the leasing of property as a business!

### **COMMON LAW**

Note that;  
Common law treats leasehold as **PERSONAL PROPERTY!**

### **LEASES**

Note the;  
Essential elements of a valid lease/rental agreement:

- The names of both the lessor and lessee
- Starting and ending dates
- The signature of the lessor, the lessee is not required however All Real Estate Consultants, Inc. require both signatures of lessor and lessee
- A description of the property/street address **ONLY** is not acceptable; must be legal description
- An agreement to convey by the lessor/landlord and acceptance by the lessee/tenant
- Starting date and ending date/duration of the lease/rental agreement
- Provision for payment of rent



### **ASSIGN OR SUBLETTING OF LEASE**

Note that;

A tenant may assign or sublet a leased/more than 5 year period leased property UNLESS it is otherwise prohibited in the lease.

Note that;

A USUFRUCT/less than 5 year period/typical lease/rental contract for RESIDENTIAL real estate may not be assigned or subleased unless provision in contract provides for assignment/sublease.

### **ASSIGNMENT**

Note that;

An assignment of a lease = the transfer of all rights the tenant holds in the property

Note that;

When a lease is assigned, both the original tenant and new tenant has liability for the lease

### **ASSIGNEE**

Note that;

The new tenant is called the assignee and becomes primarily liable for performance of the contract

### **ASSIGNOR**

Note that;

The original tenant, the assignor, remains secondarily liable for performance unless there is a novation agreement.

Note that;

A lease is a contract that one person is given the right to occupy or use the property of another



Note that;  
A lease can be either written or oral to be valid

Note that;  
A lease requires the payment of rent

Note that;  
A lease can be for a definite or indefinite period of time

Note that;  
Statute of frauds require leases for more than 1 year must be in written to be enforceable

Note that;  
An oral lease less than 1 year or less is enforceable and valid

Note that;  
The tenant rights included:

- Occupy
- Exclusive use

Note that;  
The tenant has exclusive use as long as there is a valid lease and meets the terms of lease

Note that;  
The tenant has exclusive use as long as rent is paid on time

Note that;  
The tenant is the lessee or tenant

Note that;  
The owner is the lessor or landlord

Note that;  
Lessor/owner cannot occupy property or use property until lease expires or is terminated



Note that;

The lessor/landlord/owner has REVERSION interest in the property

Note that;

Under GA law, there are actually two types of interest in the property that can be conveyed to tenant:

- LEASE/estate in land/leasehold estate
- USUFRUCT/ RENTAL/tenancy in land agreement

Note that;

An estate in land conveys a greater interest in the property than a usufruct

Note that;

In GA, an agreement to rent a property for more than 5 years or longer may be either leasehold or a usufruct, depending on the extent of the rights conveyed

### **SUBLETTING**

Note that;

Subletting is the **TRANSFER OF SOME OF THE RIGHTS** and interest in the leased property held by the original tenant.

### **SUB-LESSOR**

Note that;

The **ORIGINAL TENANT IS CALLED THE SUB-LESSOR** and retains a reversionary interest/right in the property.

Note that;

The **ORIGINAL TENANT REMAINS SOLELY LIABLE TO THE LANDLORD** for performance under the original lease contract, not the sub-lessee.

Note that;

The original tenant has right to retake possession of the property after the new tenant, sub-lessee vacates or evicted during the original tenant term of the lease.



### **SUB-LESSEE**

Note that;

The **NEW TENANT IS CALLED SUB-LESSEE**

Note that;

The sub-lessee is only liable to the sub-lessor.

### **LEASEHOLD ESTATE**

Note that;

Under leasehold estate/5 YEARS OR MORE, the tenant receives an “estate” in land

Note that;

Estate in land is conveyed by a lease

Note that;

Lease for 5 years or more is referred to as leasehold estate

Note that;

With leasehold estate includes rights to:

- Use
- Enjoy
- Possess the property to the exclusive of other
- Pledge the property as security for a loan
- Make improvement to the property
- Assign or sublet the property

Note that;

The tenant might be obligated to take on duties:

- Paying the property taxes on the lease property
- Providing all necessary maintenance and/or upkeep





## USUFRUCT

Note that;

Under a usufruct/LESS THAN 5 YEARS LEASE, the tenant receives a “tenancy” in land, not estate in land.

Note that;

A usufruct is conveyed by a rental agreement

Note that;

With usufruct to tenant rights include:

- To use
- To enjoy
- To possess

Note that;

The tenant does not have right to:

- Pledge the property as security
- Make improvements
- Assign or sublet the property

Note that;

Under GA law, if an agreement to rent a property is for a period of LESS THAN 5 years, it is presumed to be a usufruct, NOT a leasehold estate

## USUFRUCT

Note that;

A “usufruct” is what is technically conveyed by a rental agreement or tenancy agreement



### **TENANCY AGREEMENTS**

Note that;

There are four (4) types of tenancy agreements:

- Tenancy for years
- Tenancy from year to year (a periodic tenancy)
- Tenancy at will
- Tenancy at sufferance

### **TENANCY FOR YEARS**

Note that

Tenancy for years = a lease that DOES NOT AUTOMATICALLY RENEW.

Note that;

It is a lease which has a specific starting date and a specific ending date.

Note that;

Tenancy for years may be for any duration, as long as the duration is specified in the lease.

Note that;

Tenancy for years may be referred to as tenancy for a definite term

### **TENANCY FROM YEAR TO YEAR/PERIODIC TENANCY**

Note that;

Periodic tenancy = a lease that begins with an original lease period with a fixed duration with an option renew at the end of each rental period with the same initial lease duration.

Note that;

When the original lease period expires, it DOES NOT AUTOMATICALLY RENEWED for another period of the same duration, unless the lease includes a provision to that effect or lessor or lessee acts to renew it.



Note that;  
If the lease is not renewed but the tenant remains in occupancy, the tenant becomes either a tenant at will or a tenant a sufferance

### **TENANCY AT WILL**

Note that;  
Tenancy at will may be either written or oral

Note that;  
Tenancy at will does not include a specific period of occupancy

Tenancy at will may be created when a tenancy for a definite term expires, and the landlord agrees to allow the tenant remain without renewing the rental agreement

Note that;  
Tenancy at will is a lease that may be terminated by either party at any time (at will).

Note that;  
In GA, tenancy at will have certain limitations.

Note that;  
The landlord must give 60 days' notice before termination of lease.

Note that;  
The tenant must give 30 days' notice before termination of lease.

### **TENANCY AT SUFFERANCE**

Note that;  
Tenancy at sufferance occurs when a tenant remains in possession beyond his/her legal tenancy without the consent of landlord.

Note that;  
The tenant is known as a holdover tenant or tenant at sufferance

Note that;  
The tenant may be evicted by landlord if this is done in timely manner



Note that;

If landlord approves/give permission to remain after lease terminate/expires, this is called, tenancy at will.

### **SECURITY DEPOSITS**

Note that;

In GA, the LAW includes requirements about the handling of security deposits on rental property for some categories of individuals

Note that;

A licensed broker/licensee will always be subject to the provision of the law concerning security deposit

Note that;

Broker/agent/licensee that manage property for owner or agent's working on behalf of broker's or broker/agent for their own rental property are subject to the requirements of the handling of security deposits

Note that;

There are two categories of individuals:

- Owner of rental property who individually or collectively with their SPOUSE, MINOR CHILDREN; that own MORE THAN 10 RESIDENTIAL RENTAL UNITS.
- All owners who employ licensed brokers to manage their property and the brokers who work for the owners, regardless of how many rental units are involved.

### **REQUIREMENTS:**

- The use of trust accounts to deposit security deposits
- The use of surety bond "in lieu" of depositing funds in a trust account
- The inspection of premises when security deposits are collected
- The return of security deposits to tenants

Note that;

The law requires that all security deposits received by the two categories of individuals be deposited in a trust account and held on behalf of the tenant



Note that;

Under the law, the owners of rental property who own more than 10 rental units may choose to use an alternative of the trust account. The owner may elect to post a surety bond in lieu of using a trust account.

Note that;

The amount of the surety bond must be equal to the total amount of ALL security deposits held or \$50,000.00 whichever is less.

Note that;

The bond must be posted with the clerk of the superior court in the county in which the property is located.

Note that;

The BROKER/MANAGER/LICENSEE MUST NEVER USE A SURETY BOND AND MUST ALWAYS USE A TRUST ACCOUNT.

### **INSPECTION**

Note that;

When the security deposit is collected from the tenant, the landlord or managing broker/agent must meet certain requirements concerning the inspection of the premises and the documentation of damages.

Note that;

**PRIOR TO THE TENANT POSTING THE DEPOSIT**, the following must be done:

- The tenant must be given a list of damages to the unit to be rented
- The tenant must also be given an opportunity to inspect the property to verify the accuracy of the list of damages
- Once agreed on the damages present, both must sign the list of damages

Note that;

At the end of the occupancy/lease:

- The landlord must provide a list of damages and estimated value of damages, if any caused by the tenant during their occupancy
- the tenant must be given the opportunity to inspect the premises within 5 business days after the occupancy is over to verify any list of damages and the estimated value



- Both landlord and tenant should sign the final list of damages and the estimated value

Note that;

If the landlord and tenant cannot agree on the damages, the tenant must list the items they disagree with and sign a statement of disagreement.

Note that;

The landlord would then return the amount of the security deposit paid by the tenant LESS the amount of agreed or disagreed on as the dollar value of the damages caused by the tenant.

Note that;

The tenant may then accept the amount refunded by the landlord or file suit in court to attempt to recover the disputed amount of the security deposit withheld by the landlord

Note that;

The landlord/broker/agent must return the security deposit within 1 month after the rental agreement is terminated or the tenant vacates the property, whichever comes LATER

Note that;

When ANY amount of security deposit is withheld for damages, the LANDLORD MUST SUBMIT A WRITTEN EXPLANATION OF THE EXACT NATURE OF THE DAMAGES for which all or part of the deposit was withheld

Note that;

When an explanation is provided to the tenant, the landlord must include with it a payment of the amount of the deposit less the amount deducted for damages.

Note that;

The landlord may mail the written explanation/report of damages and any refund to the last known address by first class mail.

Note that;

If the letter is returned undelivered and landlord is unable to locate the past tenant through reasonable efforts, the payment will become the property of the landlord 90 days after the payment was postmarked for mailing to the tenant.

Note that;

The landlord may also withhold part or all of a security deposits for reasons other than damages:



- Unpaid rent
- Unpaid late fees
- Unpaid utility bills
- Unpaid cleaning charges
- Physical damage to the property
- Any other damages caused by the tenant's breach of contract

Note that;

In order for the landlord to legally retain security deposit for these purposes, the landlord must notify the tenant of the intent to withhold the security deposit for these purposes and use the funds only for the purposes disclosed to the tenant listed.

Note that;

Is the landlord fails to adhere to the procedures just given for refunding the security deposit; the landlord will suffer the following consequences:

- Forfeits all rights to retain any part of security deposit paid
- Forfeits right to sue the tenant for damages
- Can become liable to the tenant for an amount up to three times the security deposit plus reasonable attorney's fees

## **GOVERNMENT**

Note that;

"Interest" in land/property for GOVERNMENT includes:

- Eminent domain
- Taxation
- Police power
- Escheat

## **EMINENT DOMAIN**

Note that;

Eminent domain = government taking private property for public use.



Note that;

The property must be taken for public use or use that is in the best interest of the public.

Note that;

The government must first attempt to purchase property from owner.

Note that;

If the government cannot be purchased from the owner, it is/may be taken through as "PROCESS" called:

- Condemnation

Note that;

The government must provide compensation.

### **TAXATION**

Note that;

Taxation = the government right to impose taxes on the ownership of land and provides the basis for the levying of property taxes, at the local level.

### **POLICE POWER**

Note that;

Police power = the government right to impose reasonable rules for the use of the land such as:

- Zoning
- Restrictions
- Building codes
- Safety
- Health codes

Note that;

Police power DOES NOT refer to the authority of the police department to enforce all laws





### ESCHEAT

Note that;

Escheat = the government right/STATE to assume ownership of property, not the federal government:

- When the owner dies without a valid will
- Without heirs
- OR
- When property is abandoned

### LAND USE CONTROLS

Note that;

Most "land use controls" are done by private developers, both residential and commercial.

Note that;

Many municipalities require submission of plat map for approval before work starts, in order to protect the consumer against financial loss.

Note that;

The plat map is a visual map of the proposed development.

### SIMILAR PATTERN

Note that;

ALL PROJECTS follow a similar pattern which represents four steps:

- **LAND ACQUISITION**; raw land acquisition
- **SUBDIVIDE INTO PARCELS**  
  
Raw land is subdivided into parcels.
- **DEVELOPMENT** of streets, sewer systems and utility connections



Note that;  
Development may be restricted.

- **CONSTRUCTION** of property/houses

### **PRIVATE LAND USE CONTROLS**

Note that;  
Private land use controls are placed on property by the developer's or sub-divider's of the property.

Note that;  
Private land use controls are recorded along with the master plan of the sub-division when it is recorded in the public record.

Note that;  
Private land use controls may be started by deed restriction

Note that;  
Deed restriction may also be known as:

- Restrictive covenants

Note that;  
"Private land use controls" are more restrictive than the limitation imposed by zoning ordinances.

Note that;  
If there is a difference between private deed restrictions or public zoning ordinances requirements imposed, the more restrictive requirements applies.

### **ENFORCEMENT**

Note that;  
Enforcement of private land use controls are enforced by owner in a sub-division, usually **THROUGH A NEIGHBORHOOD ASSOCIATION.**



Note that;

An owner or the association may file a civil suit in court to block violations.

Note that;

Deed restrictions and other private land restrictions “run with the land” but if outdated, they can be invalidated by court action.

Note that;

” private land use controls” can be identified by deed restrictions, known as restrictive covenants.

Note that;

Deed restrictions or covenants MAY:

- Include any reasonable restriction
- The style and size of homes
- The location, style and materials used in fences
- Limitations on the erection and/or placement of out buildings, such as tool sheds
- Bans on parking of trucks, recreational vehicles or boats IN residential neighborhoods

Note that;

Deed restrictions or covenants MAY NOT:

- Violate existing public ordinances
- Prevent the owner from selling or conveying the property
- Discriminate on the basis of race, color, sex, religion or national origin

Note that;

There are two categories of factors that affect value:

- The physical characteristics of land
- Economic characteristics of land



## THE PHYSICAL/ECONOMIC CHARACTERISTICS OF LAND

Note that land is:

- Immovable

Note that;

Because the land cannot be moved, it can never be transported about and must remain where it is

Note that;

The significance of this characteristic of land is that the market for real estate is a local one

## ECONOMIC FACTORS

Note that;

The economic factors that will affect the value of land will be localized to the area around where the property is located

- Indestructible

Note that;

Barring catastrophic events of unforeseen proportions, land will always remain where it is

Note that;

This gives comfort to the owner of property that ownership will provide value of some permanence

- Non-homogeneous

Note that;

If land were homogeneous, it would all be alike; this is not the case

Note that;

Because every parcel of land is different from every other parcel in some way, it is said to be non-homogeneous



Note that;

This non-homogeneity means that any two properties will always have some factors that contribute to a preference for one property over the other and because of this, if a seller defaults on the sale of property to a buyer, the issue of how to compensate the buyer for the loss of that unique property is not a simple one

Note that;

The characteristic of non-homogeneity comes into play when property is taken under eminent domain and the owner is entitled to compensation for his/her loss

### **THE ECONOMIC CHARACTERISTICS/ELEMENTS OF LAND**

Note that;

Land has some very significant economic characteristics that affect its value which are:

- Demand

Note that;

Demand for property means that someone has a desire to own or use the property

Note that;

If demand is to have an effect on the value of property, it must be accompanied by purchasing power.

Note that;

When someone has a desire for property and the purchasing power to act on that desire, the resulting demand for the property contributes to its value

Note that;

If someone desires a property but doesn't have the financial ability to act on that desire, there is no effective demand for the property

- Utility

Note that;

Utility means usefulness, if land has usefulness, it has utility; therefore if land is useful, this usefulness will contribute to its value

- Scarcity; limited amount of land available



- Transferability

Note that;

The best way to remember these basic elements of value is to use the word DUST, from the first letter of each word

### **GOVERNMENT REGULATION THAT AFFECT VALUE**

Note that;

Because regulations affect the present and future use of land, they can affect the value of the land

Note that;

Broker/agents/managers need to be aware of factors affecting the value of the property which they will work; all licensees will need to be familiar with these regulations

Note that;

All licensees has the responsibility to insure that they are aware of all factors that affect property values in the area served by All Real Estate Consultants, Inc.

### **PLANNING AUTHORITY**

Note that;

A county or municipality may have the following types of regulations:

- Land planning

Note that;

Most counties and municipalities have a local planning authority

Note that;

The planning authority is **RESPONSIBLE FOR DEVELOPING A MASTER LAND USE PLAN FOR THE AREA**

Note that;

This plan indicates the locations for residential areas, businesses, factories, etc.

Note that;

As a real estate professional, you may be able to play an important role in local land planning



Note that;

By participating in land planning, licensees may be able to:

- ✓ Share expertise with the decision-makers, in the area of land development
- ✓ Become aware of plans that may affect the value of property
- ✓ Keep clients and customers informed about plans that may affect their property

Note that;

There are several ways you can become involved in land planning:

- ✓ Become acquainted with the land planners
- ✓ Serve on the local planning board
- ✓ Become a member of local trade associations
- ✓ Become a member of the chamber of commerce
- ✓ Maintain contact with local homeowners associations
- ✓ Maintaining awareness of:
  - Highest and best use regulations
  - Zoning ordinances
  - Building codes
  - Environmental protection regulations

## **PUBLIC LAND USE CONTROLS**

Note that;

Public land use controls are established under “police power”, primarily at the county & city level.

Note that;

Public land use controls are enacted to:

- Insure an orderly pattern of growth in a community
- Preserve property value
- To protect owners whose properties lie in areas that may be subject to environmental hazards called, **SPECIAL STUDY ZONES WHICH INCLUDE**
  - ✓ Earth quake fault zones
  - ✓ Flood zones
  - ✓ Etc.



Note that;

Many States require seller to disclose if the property lies within:

- Earth quake
- flood zone
- etc.

Note that;

Development in special study zones may be restricted.

Note that;

Owner may be required to get insurance in special study zones before getting a mortgage

Note that;

Owner may be required to get licensed geologist to obtain a study on land

### **MASTER PLAN**

Note that;

Zoning is usually tied to a long term MASTER PLAN for **FUTURE GROWTH IN THE COMMUNITY** in which the property is located.

### **ZONING ORDINANCES**

Note that;

The principal mechanisms of “public land controls” are:

- Zoning “ordinances

Note that;

Zoning ordinances are **NOT RETROACTIVE**

### **ENFORCEMENT**

Note that;

Enforcement of zoning ordinances is accomplished through the issuance of:

- Building permits





- Occupancy permits
- On-site inspections

Note that;

Zoning ordinances may control:

- Uses which may be made of the land
- Types, size and height of property
- Density of occupancy
- Location of structures and is regulated by restriction on the “set back line” from:
  - ✓ The front road
  - ✓ Side lot lines
  - ✓ Rear lot line

Note that;

There are many purposes for zoning ordinances including:

- Controlling the population density by controlling lot size or imposing floor area ratios (floor area of living space to square feet of land)
- Preserving the environment
- Protecting historical areas by controlling the building, remodeling, and destruction of such areas
- Protecting the interest of homeowners by preventing land uses that would be harmful to the homeowners
- Maximizing space, air, and light by controlling building sizes, shapes, and location on the property
- Controlling growth by inviting (or discouraging) uses related to certain economic levels

Note that;

A zoning ordinance may be challenged in court, and it may be terminated if it is found to be too restrictive

Note that;

Owners may be required to get a permit to make changes to their property

Note that;

Zoning ordinances usually are tied to the master land use plan



Note that;

Although zoning ordinances contain specific requirements, the local planning authority may make exceptions for developers of large areas of land

Note that;

In exchange for allowing exceptions to zoning ordinances, the land planning authority may place some demands on the developer

Note that;

Some demands that a planning authority may place on a developer include:

- A developer may be permitted to place homes on lots that are smaller than allowed by zoning in exchange for providing a large recreational area
- A developer may be required to make improvements to the infrastructure such as widening a road or to a drainage area or re-channeling a stream to prevent flooding
- Require developers to contribute land or money to the local government to cover an increase in the population of an area if an increase in the need for services and are called **IMPACT FEES AND ARE CONTROLLED BY STATE LAW**

Note that;

The purpose of imposing impact fees is to slow down development in an area

Note that

Impact fees are passed along to the buyers

### **NON-CONFORMING USE**

Note that;

When the zoning for a particular property is **CHANGED OR IMPLEMENTED AFTER THE PROPERTY IS BUILT**, a non-conforming use results if the zoning is different from the property itself.

Note that;

New or revised ordinances usually contain “grandfather clause” to the existing structure which allows the non-conforming property already in existence to remain in use

Note that;

Changing ownership does not change the status of a property with a non-conforming use



Note that;

A licensee must tell a buyer if a property has a non-conforming use and advise the buyer to contact an attorney

Note that;

The grandfather clause WILL NOT allow for:

- Remodeling
- Expansion

### **ZONING VARIANCE**

Note that;

When zoning is already in effect, any new structure or modification to existing structure must conform to the existing zoning ordinance.

Note that;

A variance can only be issued “within” a zoning category

Note that;

A variance cannot be used to change the zoning category for a given property

Note that;

Permission for an exemption to some of the specific zoning requirements sometimes may be granted through the issuance of a zoning variance

Note that;

Variations are issued to address hardships and are issued based on:

- The hardship must apply to the specific piece of property and not the entire area
- The hardship must deprive the owner of income from the property or use of the property
- The hardship is not created by the owner
- The new use must not change the character of the entire area

### **RE-ZONING**

Note that;

Zoning requirements may be changed by the process of re-zoning



Note that;  
Re-zoning is more difficult to achieve than a variance

Note that;  
Re-zoning involves changing the master land use plan

Note that;  
The procedures for re-zoning are:

- The owner (or potential buyer) files a re-zoning petition with the local planning authority
- The planning authority publishes a notice of a public hearing
- The planning or zoning authority decides on the petition

Note that;  
During the public hearing, the public can voice opinions but cannot vote on the proposal

Note that;  
If the planning authority does not approve the proposal, the decision can be appealed in court

Note that;  
A licensee should never guarantee to a client or customer that re-zoning will be approved and advise the customer or client to contact an attorney who specialize in re-zoning or refer the individual to a list of attorneys

## **ZONING AMENDMENTS**

Note that;  
Changes in a zoning master plan are made through zoning amendments.

Note that;  
“Down” zoning = changing to less active use or less intense use.

Note that;  
“Up” zoning = changing to more active or intense uses.

Note that;  
Spot zoning = the rezoning of a small area in a neighborhood.



Note that;  
When zoning is changed and owner is adversely affected financially, NO compensation is paid to the owner.

### **BUILDING CODES**

Note that;  
The purpose of building codes is to provide protection for the building occupants

Note that;  
**BUILDING CODES CAN BE RETROACTIVE** and the owner of an existing building can be required to make changes so that the building conforms to new building codes

Note that;  
If building codes require sprinkler systems, the owner of an existing building may be required to install a sprinkler system

Note that;  
Building codes often are confused with zoning ordinances

Note that;  
Building codes are NOT part of the zoning process

Note that;  
Building codes are used to set satisfactory construction standards for building materials and methods.

Note that;  
Building codes are established by the local government and under the government's police power

Note that;  
A building permit must be obtained by an owner or builder before a large construction project is undertaken

Note that;  
Typically, the estimated cost of the construction project determines the cost of the building permit



Note that;

After the building permit is obtained, a building inspector makes periodic inspections throughout the construction process

Note that;

In some areas, different features of the construction project are inspected by different inspectors such as:

- Plumbing
- Electrical
- Roofing
- Fire retardant features

Note that;

When the project involves a building that will have public occupancy or a building with hazardous use, there may be special building requirements

Note that;

After verifying the completion of the project and its compliance with building codes, a building inspector issues an occupancy certificate

Note that;

Building inspectors also have the authority to condemn building which are unsafe or violate building codes

## **ENVIRONMENTAL PROTECTION**

Note that;

There has been an increase in government regulations on the local, state, and federal levels related to environmental protection

Note that;

Many of the government regulations concerned with environmental protection relate to land development



Note that;

Government regulations existing on the local level include:

- An area may introduce regulation requiring the preservation of trees
- Environmental impact statements are required before large public works projects are approved

### **INFRASTRUCTURE**

Note that;

The road, sewer, water, and utility systems make up the infrastructure of an area

Note that;

Because these systems run from one local area to another, planning for these services cannot take place solely on the local level

Note that;

In addition to local government controls, there are also state, regional, and federal government controls

### **STATE CONTROLS**

Note that;

The state of Georgia has regulations covering activities related to the following topics:

- **STATE HIGHWAYS**

Note that;

The Georgia state highway system is under the control of the **GEORGIA TRANSPORTATION DEPARTMENT**

Note that;

The Georgia Transportation Department must cooperate with federal engineers whenever federal approval for a highway system is required



Note that;

As a licensee and real estate professional, you may need to contact the Georgia Transportation Department occasionally to obtain information on proposed road improvements

- **WATER AND SEWER SYSTEMS**

Note that;

The Development of water and sewer systems is subject to state government regulations

Note that;

Water and sewer systems must meet the requirements of the **GEORGIA HEALTH DEPARTMENT**

- **UTILITIES**

Note that;

Even though companies that provide electricity, gas, or local telephone service are privately owned, they are subject to state government regulations

Note that;

The reason for this control is that, in the past, it was considered more efficient to have only one company provide each of these services

Note that;

Because these companies did not experience competition, government control was considered necessary to make sure these companies did not charge unfair rates

Note that;

Currently, the government is allowing more companies to provide these services. Even though competition is increasing in these areas, the government still oversees the activities of these companies

Note that;

Privately owned companies that provide electricity, gas, or local telephone service are controlled by the **GEORGIA PUBLIC SERVICE COMMISSION**

Note that;

Any rate increases by these companies must be approved by the Public Service Commission





Note that;  
The Public Service Commission can limit the amount of profit that can be earned by these companies

Note that;  
Government regulations allow these companies to use the power of eminent domain to acquire land or easements

Note that;  
In order for companies to acquire land or easements by eminent domain, the company must:

- ✓ Pay appropriate compensation
- ✓ Prove that obtaining the land would result in public benefit

▪ **STATE PARKS**

Note that;  
The acquisition of land for state parks is regulated by the **GEORGIA NATURAL RESOURCES DEPARTMENT**

Note that;  
The Georgia Natural Resources Department monitors the acquisition of land designated as conservation areas

▪ **ENVIRONMENTAL PROTECTION**

Note that;  
There has been an increase in government regulations on the local, state, and federal levels related to environmental protection

Note that;  
Many of the government regulations concerned with environmental protection relate to land development, and is regulated by the **ENVIRONMENTAL PROTECTION AGENCY, EPA**



Note that;

Government regulations existing on the local level include:

- ✓ An area may introduce regulation requiring the preservation of trees
- ✓ Environmental impact statements are required before large public works projects are approved

▪ **TIME-SHARE PROPERTY**

Note that;

The law covering this property is the **GEORGIA TIME-SHARE ACT**

Note that;

The Georgia Time-Share Act covers any time share property located and/or marketed in Georgia

Note that;

According to the Georgia Time-Share Act, the developer of Time-Share property must meet the following requirements:

- ✓ The buyer must be given the opportunity to rescind the time-share agreement within seven days
- ✓ Trust funds must be deposited with an escrow agent until the seven-day period ends
- ✓ All pertinent information must be recorded with the superior court of the county (counties) where the property is located
- ✓ A public offering statement must be prepared and approved by the Real Estate Commission
- ✓ All potential buyers must be given a public offering statement
- ✓ The developer's sales staff must be licensed salesperson, or they must be employees (not independent contractors)
- ✓ The time-share property must be registered with the Georgia Real Estate Commission, which has authority related to acceptance and investigations
- ✓ If a vacation exchange program is offered with the time-share property, the terms and conditions must be fully disclosed to the buyer

Note that;

This program also must be registered with Real Estate Commission

- ✓ Any requirements related to management, maintenance, repair, and furnishings must be met



Note that;

If the time-share property is real property, an owners association must be established, and this association must have management powers

### **REGIONAL CONTROLS**

Note that;

When projects involve more than one state or political entity, a regional agency may be established

Note that;

A regional authority has been established to control the use of the **CHATTAHOOCHEE RIVER**

Note that;

This authority represents Georgia, Alabama, and Florida, and it controls the amount of water that each state may take out, what can be put into the river by the states, and the water levels that must be maintained

Note that;

In the Atlanta area the **ATLANTA REGIONAL COMMISSION**, representing eight counties, controls the Chattahoochee

Note that;

Before any changes can be made to the river, approval must be obtained from the Atlanta Regional Commission

### **FEDERAL GOVERNMENT REGULATIONS CONTROLS**

Note that;

The federal government has regulations covering activities related to:

- **TRANSPORTATION SYSTEMS**

Note that;

Interstate highway systems must be approved by **FEDERAL TRANSPORTATION AUTHORITIES**



Note that;

Approval is needed for such features as:

- ✓ Route
- ✓ Design
- ✓ Safety
- ✓ Signage
- ✓ Etc.

Note that;

Other transportation systems built with federal funds, such as bridges and rapid transit systems, must be approved by federal transportation authorities

#### ▪ **WATERWAYS**

Note that;

The ocean (below the mean high tide line) and commercially navigable waterways are under the control of the federal government

Note that;

Typically, any improvements to land on the ocean or on a navigable waterway must be approved by the **UNITED STATES ARMY CORPS OF ENGINEERS**

Note that;

If an owner wanted to make improvements to land on a navigable river, approval must be obtained from **ALL RELEVANT LOCAL AUTHORITIES AND THE UNITED STATES ARMY CORPS OF ENGINEERS**

#### ▪ **FLOOD CONTROL**

Note that;

Owners of land in areas where federal engineers have determined that floods may occur must have flood insurance

Note that;

The requirement for flood insurance only applies if the land is improved or when a permit for improving the land is being obtained



- **NATIONAL PARKS**

Note that;

National parks are subject to federal government regulations

Note that;

National parks are under the control of the **UNITED STATES DEPARTMENT OF THE INTERIOR**

- **ENVIRONMENTAL PROTECTION**

Note that;

One environmental concern is the dumping of hazardous wastes

Note that;

The disposal of hazardous wastes and the clean-up of hazards resulting from past dumping are under the control of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Note that;

Another environmental issue is the development of conservation areas

Note that;

Some lands may be designated as conservation areas by the United State Environmental Protection Agency such as: wetlands

Note that;

Conservation areas are NOT taken by the government, but the owners are prevented by the government from developing the lands

Note that;

The purpose of this type of control is to protect plants and animals which may become extinct if wetlands are drained during development

- **SUBSIDIZED HOUSING**

Note that;

Occasionally, housing projects for the poor and/or elderly are developed using federal funds

Note that;

The location and design of these projects are monitored by the **UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**



Note that;

Once these projects are built, control over the daily operations typically is delegated to local authorities

Note that;

The United State Department of Housing and Urban Development may continue to monitor their operations

- **INTERSTATE LAND SALES**

Note that;

The United States Department of Housing and Urban Development regulates Interstate land sales

Note that;

The United States Department of Housing and Urban Development administers the interstate land sales full disclosure act

Note that;

The Interstate Land Sales Full Disclosure Act **APPLIES TO SUBDIVISIONS OF MORE THAN 50 LOTS WHICH ARE SOLD USING INTERSTATE MARKETING**

Note that;

Potential buyers of land covered by this law/Act and registered with the United States Department of Housing and Urban Development must be given all information about the land

Note that;

Potential buyers must be given a federal government booklet about buying land

Note that;

Sales contracts involving land covered by this law must contain a provision that **ALLOWS THE BUYER TO CANCEL THE CONTRACT WITHIN THREE DAYS OF SIGNING IT**

Note that;

If a buyer cancels the sales contract within the three days, all deposits must be fully refunded to him/her



Note that;

There are exceptions to the Interstate land Sales Full Disclosure Act which include:

- Lots containing existing buildings or lots with existing contracts for buildings
- Lots that are five or more acres in size
- Cemeteries
- Lots sold for cash, on site

Note that;

The State of Georgia also has a law which covers intrastate land sales

## **CONDEMNATION**

Note that;

Another area of government control is related to the process of condemnation

Note that;

Condemnation is the process whereby the government can acquire ownership, an easement, or a lease of property

Note that;

This process is granted through the power of eminent domain

Note that;

This power is not limited to any one level of government, but rather it can be exercised by all levels of the government including:

- Local
- State
- federal

Note that;

When the government intends to take land, the owner is entitled to due process of law and compensation



Note that;

The steps involved in the process of condemnation are as follows:

- The government may try to buy the property and avoid the condemnation process
- If the owner does not accept the offer by the government to buy the property, the government may file a suit in court

Note that;

The owner has the right to ask for a jury trial

Note that;

In court the government must prove that taking the property is for public benefit

Note that;

Proving taking the property for public benefit can be difficult if the defense is able to show that there are other alternatives to taking the property

Note that;

If the court decides in favor of the condemnation, the government and the owner will decide on compensation

Note that;

If an agreement on compensation cannot be reached, a special master may be appointed to make the decision, or the court may make the decision

Note that;

The owner is entitled to the property value and any loss in value of the remaining property

Note that;

Currently there is much legal debate as to whether or not down-zoning can be considered taking property according to condemnation law

Note that;

Down-zoning involves changing the zoning to a less active or intense use





### **MORATORIA/MORATORIUM**

Note that;  
Another type of government control is the moratorium

Note that;  
When an area goes through rapid growth, problems may arise such as water shortages and/or sewage overflows

Note that;  
When rapid growth causes water shortage and/or sewage overflows, a moratorium may be declared. This means that new permits for water or sewer hook-ups will not be issued until the moratorium is lifted and hook-ups can be resumed once the capacity of the system is increased

Note that;  
Licensees should be aware of any moratoria because of the impact they may have on real estate values

### **OVERCROWDED ROADWAYS**

Note that;  
Licensees should be aware of if there are any problems with overcrowded roadways

Note that;  
Overcrowded roadways can result in:

- More businesses relocating to suburbs
- A decrease in the growth rate of the area as businesses relocates
- Higher values being placed on residences that are located near work places
- A focus on expanding rapid transit systems

### **SEWAGE DISPOSAL & WATER SUPPLY**

Note that;  
Many local authorities have **REQUIREMENTS** for sewage disposal & water supply.

Note that;  
Land **PLANNERS/DEVELOPERS MUST SUBMIT INFORMATION** related to how the requirements will be met.



### **PERCOLATION TEST**

Note that;

The percolation test is a test conducted by an engineer to determine the extent the soil is able to absorb water.

Note that;

A "PERCOLATION TEST" is required "before" an area can be developed.

### **PROPERTY CLASSIFICATION**

Note that;

Property is "classified" into two groups:

- Real Property
- Personal property

Note that;

Plants, trees and crops can be real property or personal property and is classified as:

- Fructus Naturales = real property
- Fructus Industriales = personal property

### **REAL PROPERTY**

- Land
- Everything attached permanently to the land
- The surface of the earth
- Things permanently attached to the surface
- Things beneath the surface
- The air above surface
- Residential property/single/multi-family
- Commercial property/business/shopping center/offices
- Industrial/warehouse/factory
- Agricultural property/farm
- Special purpose property/school/cemetery/hospital/parks



Note that;

**FRUCTUS NATURALES; REAL PROPERTY:**

- Growing plants that are considered to be part of the land
- Trees
- Cultivated perennial plants **WITHOUT THE HELP FROM HUMANS** to grow
- Uncultivated vegetation of any kind:

- Naturally growing shrubs and bushes, etc.

**FIXTURES**

Note that;

Initially was personal property, but has become real property and is determined by:

- Manner of attachment
- If permanently attached
- Adaptation/Adapted to real property
- Agreement of the parties

Note that;

Agreement of the parties; takes precedence over Manner of attachment/Adaptation

Note that;

Fixtures add to value

Note that;

Fixtures are included as part of insurance of real property

Note that;

Whenever a property value is determined or insurance is issued, it is important to determine between fixture and personal property

Note that;

Fixtures become part of real property

Note that;

Fixtures are taxed at the sale of real property



Note that;  
Fixtures add to value and personal property does not add to value

## PERSONAL PROPERTY

### FRUCTUS INDUSTRIALES: PERSONAL PROPERTY

Note that;  
Growing plants that are cultivated “annually” and **DEPEND ON HUMANS** for their existence and growth

Note that  
They are called emblements.

Emblements:

- Corn
- Wheat
- Vegetables

Note that;  
Personal property is any property that can be moved

Note that;  
Personal property is the “Rights/interest” in real property that are held for less than a life time, such as a lease

Note that;  
When the property is sold, issues of whether property is real or personal may come up.

Note that;  
Personal property is not taxed at the sale of real property

### CHATTLE

Note that;  
Chattle = personal property

Note that;  
Chattle can be “chattle personal” or “chattle real”.



### “CHATTLE PERSONAL”

Note that;

Personal property that is **MOVABLE**:

- Automobiles
- Tools
- Furniture
- Boats
- Clothes
- Money
- Not attached permanently

### “CHATTLE REAL”

Note that;

“Chattle real”, **NOT MOVABLE**:

- Attached
- Trade fixtures
- Emblements (crops)

Note that;

“Chattle real” can be tangible or intangible.

### TANGIBLE

Note that

Tangible includes:

- Trade fixtures
- Emblements/crops

### INTANGIBLE

Note that;

Intangible includes:

- Mortgages



- Leases
- Options
- Easements

### TRADE FIXTURES

Note that;

Trade fixtures are attached to or installed in real property for business purposes only

Note that;

The trade fixture items are considered personal property as long as two conditions are met:

- Must be removed prior to the end of the lease
- Must be returned to its original conditions when the items are removed

### APPURTENANCE

Note that;

Appurtenance is a right, privilege or improvement associated with land NOT necessarily a part of the land such as:

- An assigned parking space
- Stock in a mutual water company, owned by landowner that serves the land of those owners

Note that;

Appurtenances **"RUN WITH THE LAND"**.

Note that;

Some easements are appurtenances and are an appurtenance to the "DOMINANT ESTATE".

Note that;

An easement IN-GROSS does not attach to a parcel of land, it attaches to the owner of the easement and is NOT an appurtenance to land.



## WATER RIGHTS

Note that;

When land/property borders on a body of water, the land carries with it certain rights to the adjoining water and the rights are called:

- RIPARIAN
- LITTORAL

## RIPARIAN

Note that;

Riparian = flowing water

Note that;

With property that borders river/Stream/flowing water, the owner has rights to:

- Limited, non-exclusive use of the water out of the watercourse

Note that;

The owner does not own the water itself, however may use it for reasonable purposes.

Note that;

The **BOUNDARY** of the property carrying riparian rights depends on whether the river or stream is navigable or not.

**-IF NAVIGABLE, THE LAND OWNER'S PROPERTY ENDS AT THE LOW WATER MARK.**

**-IF NOT NAVIGABLE, THE LAND OWNER'S PROPERTY ENDS AT THE MIDDLE OF THE WATERCOURSE.**

Note that;

The **DOCTRINE OF PRIOR APPROPRIATION** states that the first owner to divert water for his/her own use may continue to do so, even if it is not fair to other owners along the water course/waterway.

Note that;

**THE DOCTRINE OF PRIOR APPROPRIATION IS APPLICABLE IN SOME STATES, NOT ALL;** check with local/state municipalities as appropriate.



**LITTORAL** = stationary body of water/lake or sea.

Note that;

The owner has the right to use the water in a lake/sea which adjoins his/her property

Note that;

The owner of the property cannot or does not alter water's positions by artificial means.

### **EASEMENTS**

Note that;

An easement is the right to use or occupy the property of another in a limited way for a specific purpose.

Note that;

It is not necessary for an easement to be in writing to be created.

Note that;

Easements "ARE NOT" an estate in land

Note that;

There is no ownership with an easement

Note that;

There are three types of easements:

- Easement appurtenant
- Easement in-gross
- Party wall

### **EASEMENT APPURTENANT**

Note that;

There are two or more properties, usually adjacent to each other called:

- A DOMINANT ESTATE/DOMINANT TENEMENT
- A SERVIENT ESTATE/TENEMENT/OWNER OF LAND





Note that;

An easement appurtenant become a part of the dominant estate

Note that;

The easement is the right of the owner of the DOMINANT ESTATE to use the property of the owner of the SERVIENT ESTATE/LAND OWNER, such as: Driveway.

Note that;

The easement appurtenant permits the dominant estate access to that property from the street

Note that;

The easement 'GRANTED' to the owner of the DOMINANT ESATE is an easement appurtenant.

Note that;

An easement appurtenant means that the easement now in effect is PERMANENTLY ATTACHED to the Dominant Estate and becomes a part of the land itself and for use by whoever owns the dominant estate/land.

### **EASEMENT IN-GROSS**

Note that;

There is only one person or involves only one property, the SERVIENT ESTATE/OWNER OF LAND; there is no dominant estate.

Note that;

An easement in-gross attaches to the owner of the easement NOT to a parcel of land

Note that;

Easement In-gross CANNOT BE REVOKED.

Note that;

The easement in-gross holder has the right to use part of the servient estate for a specific purpose.

Examples:

- Telephone lines
- Sewer lines
- Gas lines



- Power lines
- Ditch easement for storm runoff

### COMMERCIAL EASEMENTS

Note that;  
All of above are called “commercial easements/business or government.

Note that;  
Commercial easement do not attach to land

Note that;  
There is no dominant estate

Note that;  
The servient estate gives the right of business/government to use the owner’s land

Note that;  
All future owners’ of the servient estate is bound by the easement in effect

Note that;  
“Commercial easements” **ARE ASSIGNABLE.**

Note that;  
Commercial easements **CANNOT BE REVOKED**

### PERSONAL EASEMENT IN-GROSS

Note that;  
A personal easement in-gross, **THE HOLDER IS A PERSON, NOT A BUSINESS OR GOVERNMENT.**

Note that;  
A personal easement in-gross **CANNOT BE TRANSFERRED**

Note that;  
“Personal easements” In-gross are **NOT ASSIGNABLE.**



Note that;

A personal easement in-gross, it **TERMINATES WITH THE DEATH OF THE HOLDER.**

Note that;

A personal easement in-gross will **TERMINATE IF PROPERTY IS SOLD**

Note that;

A personal easement in-gross **CANNOT BE REVOKED**

### **PARTY WALL EASEMENT**

Note that;

A party wall easement exists when a single wall which forms part of:

Two buildings

Or

Is located on a lot line

Note that;

In this case, each owner owns the half of the wall on his/her property plus an easement in the other half of the wall on the adjacent property.

### **EASEMENTS "CREATED" OR "TERMINATED"**

Note that;

Easements can be "created" or "terminated" in five ways:

### **EASEMENT CREATED**

Note that;

It is not necessary for an easement to be in writing to be created

### **PRIVATE GRANT**

Note that;

A private grant is a written agreement between land-owner and easement holder.



### **PRESCRIPTION**

Note that;  
Prescription is an acquisition of an easement by:

- Continuous
- Hostile
- Uninterrupted possession

Note that;  
Uninterrupted possession requires a set period of possession for a period set by law, in GA:

- 7 years/private easement
- 20 years/public easement

### **CONDEMNATION**

Note that;  
Condemnation is the acquisition of an easement by the government under its power of eminent domain.

### **RESERVATION**

Note that;  
Reservation occurs when a landowner reserves or retains for him/herself the easement in a deed which conveys title to the land to another party.

### **NECESSITY**

Note that;  
Necessity prevents a landowner from becoming “landlocked”; which means having no way to reach a street or road.

Note that;  
The seller of a parcel CANNOT sell the property and refuse to grant the easement by necessity.



Note that;  
The Seller cannot “landlock” new owner of parcel access to street/road.

### **EASEMENT TERMINATED:**

#### **RELEASE**

Note that;  
Release is when the party holding the easement gives a written release to the owner of the servient estate/land owner, usually in the form of a quit claim deed.

#### **ABANDONMENT**

Note that;  
Abandonment is when the party holding the easement fails to use it for a sufficient period to raise the “presumption” of release.

#### **VACATION**

Note that;  
Vacation is terminated/termination by “Court Order”; when the need for the easement no longer exists.

#### **MERGER**

Note that;  
Merger occurs when the Dominant and Servient estate come under the same ownership

#### **EXPIRATION**

Note that;  
Expiration occurs if the easement was created for a specified period of time.



## LICENSES

Note that;

A license is a **PERSONAL "PRIVILEGE"** to use another's land in a limited manner.

Note that;

A license is **NOT A RIGHT OR INTEREST IN LAND/PROPERTY**, but is confused with a personal easement In-gross.

Note that;

**A LICENSE CAN BE REVOKED** at any time by the person who granted it.

Note that;

A license **IS NOT ASSIGNABLE**.

Note that;

A license **TERMINATES ON THE DEATH OF EITHER PARTY**

Note that;

A license **TERMINATES ON THE SALE OF THE PROPERTY** by the person granting the license/owner of property.

## ENCROACHMENT

Note that;

An encroachment is an "unauthorized intrusion" of a building/fixture or other improvement on the land of another.

Note that;

The encroachment can constitute either: trespass or nuisance.

TRESPASS = if it encroaches on the land

NUISANCE = if it violates the neighbors "airspace"

Note that;

Encroachments can be discovered in two ways:

- Survey
- Observation



Note that;  
Disputes may be settled by the courts

Note that;  
The court can require the removal of the encroachment or award monetary damages in lieu of removal of the encroachment.

### **TITLE/DEFINITION**

Note that;  
The title is a “sum” of ALL FACTS how ownership was founded.

### **MARKETABLE TITLE**

Note that;  
A MARKETABLE title is one which it is free of REASONABLE DOUBT as to ownership.

### **CHAIN OF TITLE**

Note that;  
Chain of title is the record of ownership transaction that connects the present owners to the original source of title.

Note that;  
NO SINGLE documents prove title to a property; it is based on an assessment of the abstract and other instruments indicated by the abstract.

### **ABSTRACT OF TITLE**

Note that;  
An ABSTRACT OF TITLE contains a **FULL SUMMARY OF ALL INSTRUMENTS AFFECTING THE TITLE** to a property.

Note that;  
An abstract of title **INCLUDES A STATEMENT OF ALL LIENS AND ENCUMBRANCES** and their present status which may include:

- Deeds



Note that;  
Deeds are recorded in the jurisdiction in which the land is situated and at the county level, sometimes the city level but never the State level.

Wills  
Grants  
Etc.

### **STATUTE OF FRAUDS**

Note that;  
Before the enactment of "STATUTE OF FRAUDS" in England in 1677, determining who owned a parcel of land was based on who was in physical possession of the land.

Note that;  
Possession gave notice of ownership.

Note that;  
After 1677, written deeds were mandatory to show transfer of ownership from one owner to another.

### **PUBLIC RECORDS**

#### **RECORDING**

Note that;  
Recording is at the county/city level

Note that;  
**RECORDING IS A PRIVILEGE AND IS NOT REQUIRED BY LAW**

Note that;  
Recording purpose allows the owners to give public and constructive notice of claim of ownership/interest

Note that;  
Recorded deeds can be examined by anyone





## **PUBLIC RECORDS**

Note that;

Public records was established to record deeds so that no disputes could arise about who held the most recent deed

Note that;

According to LAW if an interested party wants to determine ownership, he/she must:

- Examine the public records
- Look at the property itself to see who occupies it

Note that;

The law combines these two ideas:

- 1) People give notice by public recording and occupancy.
- 2) It is “presumed” that anyone interested in the property has inspected both the records and the property itself to determine ownership.

Note that;

Recorded deeds constitute constructive notice:

## **CONSTRUCTIVE NOTICE**

Note that;

Since 1677, there are two ways people give notice of claim or right/ownership to land:

- Recording deed or documents in the public record
- By physically occupying the property

## **ACTUAL NOTICE**

Note that

Actual notice is specific knowledge based on what you have actually:

- Seen
- Heard
- Read
- Observed



## TORRENS LAND TITLE

Note that;

In order for Torrens Land Title system to be used in a State, it requires enabling legislation known as:

- Torrens Title Act

Note that;

Torrens land title is a system of registered land title.

Note that;

Very few states use this system.

Note that;

Torrens land title verifies ownership using a single document.

Note that;

Torrens Land title establishes the status of title including any existing encumbrances **“OTHER THAN” TAX LIENS.**

Note that;

Torrens Land title DOES NOT require further title search, because title is based on a single document.

## TORRENS TITLE CERTIFICATE

Note that;

The court orders the registrar of title to issue a Torrens title certificate to the property

Note that;

The certificate identifies:

- Exact boundaries of the property
- The name of the current title holder/owner only
- Any encumbrances beside tax liens

Note that;

Once registered, any following liens/owners must be entered on the registrar’s copy of the certificate of title in order to give constructive notice.



Note that;  
When ownership is conveyed, the grantor gives the grantee a deed

Note that;  
That deed is taken to the registrar's office of title that destroys the old certificate and issues a new one naming the grantee as owner.

Note that;  
This system is used in GA.; but is used extremely rarely.

### **QUIET TITLE ACTION**

Note that;  
A "quiet title action" is filed in court to establish ownership and asks the court to establish the true condition of the title.

### **METHODS OF TITLE TRANSFER**

Note that;  
When both personal and real property are sold at the same time two documents must be completed:

- Deed
- Bill of sale

Note that;  
There are four "methods" to transfer title to real property:

- Deed
- Inheritance
- Adverse possession
- Acts of nature

Note that;  
The actual "act" of conveying ownership/title is called:

- A grant



### **BILL OF SALE**

Note that;  
“Personal property”, sold or conveyed, is done through the use of a document called:

- Bill of sale

### **DEED**

Note that;  
Deed is the most common method used to convey title

Note that;  
Real property, sold or conveyed, the ownership is transferred through the use of a document called:

- A deed

### **ELEMENTS OF DEEDS**

Note that;  
There are two parties to a deed:

- Grantor/owner/giver
- Grantee/person obtaining title/receiver

### **COMPETENT PARTIES**

Note that;  
Deeds must have competent parties, both grantor and grantee

### **GRANTOR**

- Must be legal age
- Must be of sound mind



### GRANTEE

- Must be sound mind
- But does not have to be of legal age

### CONSIDERATION

Note that;  
Deeds must include **CONSIDERATION** given by the grantee to grantor; **CAN BE VALUABLE OR GOOD CONSIDERATION**

### WORDS OF CONVEYANCE

Note that  
Deeds must have **WORDS OF CONVEYANCE**-intent of the grantor to transfer title; using the word grant or convey in the deed (granting clause)

### DESCRIPTION

Note that;  
Deeds must have property **LEGAL DESCRIPTION**

Note that;  
Street address used for legal description may not be used in deed

### NAMES OF GRANTOR AND GRANTEE

Note that;  
Deeds must have both names of grantor and grantee

Note that;  
For the purpose of chain of title, both grantor and grantee name must be stated on a deed.

Note that;  
A fictitious name may be used by the grantee



Note that;  
If grantee uses fictitious name on the deed, that same name must be used at time the property is later conveyed/transferred

### **GRANTOR SIGNATURE**

Note that;  
Deeds must have **GRANTOR SIGNATURE** in order to be valid.

Note that;  
The grantee signature is not required

### **WITNESSED**

Note that;  
Some States require the grantors signature be witnessed.

### **DELIVERY**

Note that;  
Deeds must have “delivery” and “acceptance” to be valid.

Note that;  
To be valid, a deed must have delivery by the grantor to the grantee

Note that;  
A deed must be delivered during the grantor’s lifetime, to be valid

Note that;  
Delivery does not have to be a physical act of hand deed from grantor to grantee

Note that;  
If the grantor actions indicate the intend for the grantee to own the property

Note that;  
“Delivery” =

Deed found in possession of the grantee  
Or  
Deed is recorded



## ACCEPTANCE

Note that;

**“ACCEPTANCE”** = grantee:

- Retains the deed
- Records the deed
- Encumbers the title
- Performs any other act of ownership

Note that;

To be valid, a deed must have accepted by the grantee

## ACKNOWLEDGE

Note that;

In order to be admissible for public records, a **deed must be “acknowledged”** in most States.

Note that;

**ACKNOWLEDGE** = A formal declaration that the person signing the document, **GRANTOR IS THE PERSON NAMED IN THE DOCUMENT.**

Note that;

The signing of the deed must be a free and voluntary act before an authorize official, usually notary public.

Note that;

The notary public job is to insure that the person signing the deed is the grantor named in the deed

Note that

Acknowledgment is a declaration by the grantor; not the notary public.

Note that;

To have a deed allowable for public records, they must be acknowledged in most states



Note that;

In GA, acknowledgment must be witnessed by two witnesses, one of whom must be a notary public, in order for the deed to be established for **PUBLIC RECORDING**.

### **STATUTE OF FRAUDS**

Note that;

Statute of frauds requires:

- Deed be in writing
- Be signed by the grantor in order to transfer title

Note that;

The signature of grantee is not required.

Note that;

A fictitious name may be used by the grantee.

### **NON-ESSENTIAL ELEMENT OF DEED**

#### **HABENDUM CLAUSE**

Note that;

Habendum clause is **NOT REQUIRED** but may or may not be included in deed

Note that;

Habendum clause contains:

- Any guarantees or warranties of title
- The type of estate being granted

### **TYPES OF DEEDS**

Note that;

There are 4 types of deeds:

- General warranty deed
- Special warranty deed
- Bargain & sale deed
- Quit claim deed





Note that;  
Deeds differ primarily in the guarantees (warranties) provided

Note that;  
Deed guarantees/warranties are provided through:

- Covenants included in the deed

Note that;  
Covenants are the means by which the grantor agrees to DEFEND against all other persons.

Note that;  
Deeds do not “require”:

- Any guarantees or warranties
- The “type of estate” being granted

Note that;  
Deeds do not transfer different AMOUNTS of title or different DEGREES of title

Note that;  
The AMOUNTS and DEGREES of title being transferred are determined by the TYPE of estate being transferred:

- Fee simple estate
- Life estate

### **GENERAL WARRANTY DEED**

Note that;  
General warrant deed is the most common.

Note that;  
General warranty deed provides the “greatest guarantees” about the title being conveyed.



Note that;  
General warranty deed contains:

- **COVENANT OF SEIZING**

Note that;  
Covenant of seizing = the grantor warrants that **THEY ARE THE OWNER** and has right to convey.

Note that;  
**RIGHT TO CONVEY** is another name for covenant of seizing

- **COVENANT AGAINST ENCUMBRANCES**

Note that;  
Covenant against encumbrances = the grantor warrants that there are no encumbrances on the property which are not talk about in the deed.

Note that;  
The grantor states that all liens that exist are stated in the deed

- **COVENANT OF QUIET ENJOYMENT**

Note that;  
Covenant of quiet enjoyment = the grantor declare that the grantee will enjoy the property free of claims by anyone else.

Note that;  
The covenant guarantees that the grantee will not be challenged by the claims of others

- **COVENANT OF FURTHER ASSISTANCE**

Note that;  
Covenant of further assistance = necessitate the grantor to perform any acts necessary to protect the title being conveyed to the grantee.

Note that;  
Covenant of further assurance is another name for covenant of further assistance

- **COVENANT OF WARRANTY OF TITLE**



Note that;  
Covenant of warranty of title = the **GRANTOR WILL BEAR THE EXPENSE OF DEFENDING THE TITLE** against the claims of others.

Note that;  
There is **NO TIME LIMIT** on this covenant.

Note that;  
Covenant of **WARRANTY FOREVER** is another name for covenant of warranty of title

### **SPECIAL WARRANTY DEED**

Note that;  
Special warranty deeds are used when the grantor is unable or unwilling to include all of the covenants in a general warranty deed.

Note that;  
Special warranty deeds are often used when the grantor is acting as:

- An agent
- A fiduciary for a principal
- As a trustee or executor of a will

Note that;  
With a special warranty deed, the agent is willing to guaranty that he/she has not encumbered the property, but is not willing or able to provide any other guarantees

Note that;  
It includes **ONLY** one covenant, the covenant against encumbrances.

Note that;  
Grantor does not warrant that someone else had not encumbered the property PRIOR to assuming ownership of the property.

### **BARGAIN AND SALE DEED**

Note that;  
Bargain and sale deeds contains no warranties/guarantees about the state of the title



Note that;  
Bargain and sale deeds, **IMPLIES OWNERSHIP**

### QUIT CLAIM DEED

Note that;  
There are no warranties to title either EXPRESSED OR IMPLIED.

Note that;  
Quit claim deeds do not convey different amounts or degrees of title

Note that;  
Quit claim deeds straightforwardly conveys “whatever interest” the grantor held at the time of conveyance.

Note that;  
Quit claim deeds are used normally to transfer or release minor interests in property for clearing any clouds/doubt on a title

Note that;  
The **GRANTEE HAS NO RECOURSE TO THE GRANTOR**, if the title should prove to be defective.

Note that;  
A quit claim deed is NOT inferior to other deeds.

Note that;  
Quit claim deeds can be used in any type of estate:

- Fee simple
- Life estates

Note that;  
Quit claim deeds can be used to:

- Release a lien that has been satisfied; for the purpose of releasing owner from the lien



## **PREPARING DEED**

Note that;  
State laws decide who may prepare a deed.

Note that;  
In some States, attorneys must prepare a deed.

Note that;  
Some States allow owner to prepare the deed.

Note that;  
Some States allow Real Estate Broker to prepare a deed on which he/she is acting as an agent for the sale.

Note that;  
All managers/agents are to check with local/state laws related to preparing deeds.

Note that;  
Non-essential elements are not required in deed:

- Habendum Clause/any guarantees or warranties of title.

## **INHERITANCE**

### **STATE LAW**

Note that;  
State law governs the rules for transfer by inheritance

Note that;  
Inheritance rules /laws differ from State to State.

### **DECEDENT**

Note that;  
The person who dies is called:

- DECEDENT



Note that;  
Someone must be appointed to administer the estate of a decedent.

### **VALID WILL**

Note that;  
When a person dies and leaves a "VALID WILL", the death is said to be:

- TESTATE

Note that;  
If decedent leaves a valid will, testate, they are called:

- TESTATOR

Note that;  
If decedent leaves valid will/TESTATE, the person appointed to administer the estate of the decedent is called:

- EXECUTOR

### **NO VALID WILL**

Note that;  
When a person dies and NO VALID WILL is left/"no valid will"; the death is said to be:

- INTESTATE

### **HEIRS**

Note that;  
When there is an INTESTATE DEARTH/no valid will, the heirs are called:

- DISTRIBUTEES

Note that;  
The distribution of an INTESTATE decedent's estate is governed by State law; called:

- Law of succession



- Law of descent

Note that;

If the decedent death is INTESTATE, without a valid will, the person appointed by the court is called:

- ADMINSTRATOR

### **ESCHEAT**

Note that;

If no heirs are found, the property reverts to the State under the right of escheat.

### **PERSONAL REPRESENTATIVE**

Note that;

Both executor and administrator are referred to as:

- The personal representative of the decedent

### **GIFT OF REAL PROPERTY**

Note that;

A GIFT OF REAL PROPERTY in a will is known as a:

- DEVISE

Note that;

The RECIPIENT of the property is the:

- DEVISEE

Note that;

The DECEDENT is the:

- DEVISOR



### **GIFT OF PERSONAL PROPERTY**

Note that;  
A GIFT OF PERSONAL PROPERTY may be known as a: bequest or legacy.

### **BEQUEST**

Note that;  
Bequest usually denotes property other than money

### **LEGACY**

Note that;  
Legacy usually denotes **A GIFT OF MONEY**

### **ADVERSE POSSESSION**

Note that;  
By the occupation of another person's property WITHOUT permission from owner/against owner's will, you can transfer title/interest in property.

Note that;  
There are 4 legal requirements that must be met: E.C.H.O.

- EXCLUSIVE
- CONTINUOUS
- HOSTILE
- OPEN

### **EXCLUSIVE**

Note that;  
Possession must be "exclusive" of anyone else, "with the intent of gaining title".

### **CONTINUOUS**

Note that;  
Possession must be "continuous and uninterrupted" for the legal number of years.





Note that;

In GA, the person must occupy/have possession of property for 20 years, against owner's will/"hostile".

### **HOSTILE**

Note that;

Hostile means against the owner's will

### **OPEN**

Note the;

Possession must be "visible/open" to anyone who visited the property.

Note that;

Once a person has met the requirements for adverse possession, they acquire LEGAL title to the property

### **QUIET TITLE**

Note that;

The person may have to go to court to:

- "Quiet title" to obtain a "marketable title" to the property

Note that;

Gaining legal title is increased if either two conditions are met:

**PAYS PROPERTY TAX** on the property during the period of adverse possession

**HAS "COLOR OF TITLE"**, some plausible but not clear cut claim or indication of ownership

Example:

- Heir
- Defective deed
- Defective legal description



## **TACKING**

Note that;

“TACKING” = tack on to a predecessor’s prior adverse possession period.

Note that;

Adverse possession can be prevented by two methods:

- Evicting the person
- Giving the person permission to occupy the property/land

## **ACTS OF NATURE**

Note that;

Acts of nature can transfer title.

Note that;

Property can be lost or gained by the acts of nature.

## **PROPERTY/LAND “GAINED”**

### **ACCRETION**

Note that;

Property/land “gained” = ACCRETION

Note that

The “gradual” process of adding to one’s own land through acts of nature = ACCRETION

Note that;

There are two types of accretion:

- ALLUVION
- RELICTION

ALLUVION = the “gradual” depositing of SOIL by flowing watercourse.

RELICTION = the “gradual” receding of a lake, sea or river that exposes dry land



Note that;

When additional land is deposited or exposed through accretion, the land becomes the owners of adjoining property.

EXP:

- LAKE
- SEA
- STREAM

### **PROPERTY/LAND "LOST"**

Note that;

Property/land "lost" = EROSION and AVULSION.

**EROSION** = the "gradual" removal of land by acts of nature:

- Water
- Rain
- Air

Note that;

Land lost by erosion is lost forever and **CANNOT BE RECLAIMED BY THE OWNER**

**AVULSION** = the "sudden" and "rapid" washing away of land by the action of water.

Note that;

Land lost by avulsion can usually be reclaimed and property boundaries remain the same, no matter how much land is lost.

### **TAXATION OF REAL PROPERTY**

Note that;

Real property taxation is a PRIMARY SOURCE of revenue for the **STATE AND LOCAL GOVERNMENTS** normal operations.

Note that;

There are two kinds of taxes on real property:

- Ad valorem taxes



- Special assessment taxes

### **AD VALOREM TAX**

Note that;

Ad valorem means:

- According to valuation

Note that;

Another name for ad valorem tax is, **PROPERTY TAX**

Note that;

Ad valorem taxes take priority over special assessment taxes and income taxes

Note that;

Ad valorem taxes are assessed on a regular basis, usually annually

Note that;

Ad valorem tax is assessed according to the **VALUE OF THE PROPERTY, LAND AND IMPROVEMENTS** to the land.

### **ASSESSED VALUE**

Note that;

The assessed value is the value established for the purpose of determining taxes.

Note that;

In GA, the assessed value is 40% of the market value of the property.

### **MILL RATE**

The MILL RATE is set by the local government entity by dividing the amount of revenue needed from property taxes by the total assessed value of all real property to be taxed.



Note that;

The MILL RATE or MILLAGE RATE is the rate of taxation on the assessed value and is expressed as **“THOUSANDTHS OF A DOLLAR”**:

- one mill equals 1/1000 of one dollar or 1/10 of one cent
- .1 = 1 dime = 1 tenth **OF A DOLLAR**
- .01 = 1 cent = one hundredth **OF A DOLLAR**
- .001 = 1 mill = one thousandth **OF A DOLLAR**

Note that;

To convert the mill rate to dollars, divide the number of mills by 1000:

$$50 \text{ mills}/1000 = .05 \text{ dollars}$$

Example:

$$\begin{aligned}
 &100,000.00 \text{ market value} \\
 &X 40\% \\
 &= \\
 &40,000.00 \text{ assessed value} \\
 &X 50 \text{ mills or } 50/1000 = .05 X 40,000.00 \\
 &= \$2,000.00 \text{ tax to be paid}
 \end{aligned}$$

### **SPECIAL ASSESSMENT TAXES**

Note that;

Special assessment tax = property taxes assessed on “certain properties only” to pay for improvements for those properties.

Note that;

Special assessment taxes are usually levied to fund a specific project that benefits only some of the citizens in a government jurisdiction.

Note that;

Special assessment taxes have a lower lien priority than ad valorem taxes



Note that;  
Special assessment taxes take priority over all liens except ad valorem tax liens

### **AMOUNT OF THE TAX**

Note that;  
The amount of the tax is based on the benefits received, NOT necessarily on the value of the property owned.

Example:

- Putting street lights in a neighborhood at their request
- Street paving in a neighborhood
- Water and sewer installation

Note that;  
The assessment is assessed on the basis of the front footage on the road of the property.

### **COLLECTION OF THE TAX**

Note that;  
The collection of the tax is usually collected in a series of payments spread over a period of years.

Note that;  
When the assessments have been paid off, the tax is dissolved and the tax is terminated.

### **EXEMPT FROM TAXATION**

Note that;  
Government owned properties are exempt from taxation:

- Schools
- Roads
- Parks
- Military bases
- Churches
- Charitable organization
- Non-profit hospital opens to the public



- Educational institutions open to the public

### **TAX REDUCTIONS OR INCENTIVES**

Note that;

Certain other properties are sometime given tax reductions or incentives:

- A homestead exemption; some states allow a partial exemption on a principal residence in the first year of ownership.
- Tax abatement incentives for businesses or industry are used to attract new businesses to a community.
- Special exemptions for veterans of military service
- Special exemptions or tax deferments for the elderly, handicapped or indigent property owners

### **FEDERAL INCOME TAXES RELATED TO REAL PROPERTY**

Note that;

There are two major issues involving federal income tax and real property:

- Whether or not certain items may be deducted when calculating income tax due
- How income tax is calculated when real estate is sold

Note that;

How these issues are handled depends on whether you are dealing with:

- An individual who owns their own home
- A business or investor who owns property

Note that;

Interest on mortgage, local property taxes and uninsured losses are deductible for both individual's residence and businesses/investors



Note that;  
Individuals **MAY NOT** deduct from federal income taxes of their own home/personal residence:

- Depreciation
- Expenses of operation
- Operational losses

#### **INDIVIDUAL WHO OWNS THEIR RESIDENTAL HOME**

Note that;  
Individual who owns their home may deduct from federal income:

- **INTEREST ON MORTGAGES**

Note that;  
Interest paid on all mortgages on first and second homes is deductible from federal income taxes

Note that;  
Mortgage interest **ACTUALLY** paid during the year is deductible

Note that;  
**ONLY INTEREST DUE AND PAYABLE, YEAR-END PLUS ONE MONTH**, can be claimed as a current deduction

Note that;  
Delinquent or late payments which are accrued by December 31 of each year **ARE NOT** deductible for that year

Note that;  
Extensive prepayment of interest **IS NOT** deductible

- **LOCAL PROPERTY TAXES**

Note that;  
Any property taxes paid on residential property are deductible in the year they are paid

- **UNINSURED LOSSES**





Note that;  
Uninsured casualty losses are deductible in the year that they occurred

Note that;  
Uninsured casualty losses are losses that occur by:

- Fire
- Theft
- Weather
- Earthquakes
- Floods
- Natural causes

Note that;  
Casualty losses that are not covered by insurance may be deductible from federal income tax in the year that they occurred

Note that;  
An uninsured casualty loss is only deductible if it exceeds a \$100 IRS deductible plus 10% of the taxpayer's adjusted gross income

#### **BUSINESS OR INVESTOR WHO OWN PROPERTY**

Note that;  
Businesses or investor may deduct from federal income:

- Interest on mortgage
- Local property taxes
- Uninsured losses
- **EXPENSES OF OPERATION**
- **DEPRECIATION**

Note that;  
Investment property vacancy losses ARE NOT deductible



Note that;

Common deductible expenses for investment property are:

- Repairs to the property
  - Maintenance costs, such as repair of appliances
  - Insurance
  - Management fees
  - Utilities
- **DEPRECIATION**

Note that;

Depreciation is based on the concept that all property loses its value over time and must be replaced

Note that;

Depreciation is a tax issue and DOES NOT MEAN THE PROPERTY WILL ACTUALLY LOSE ITS VALUE OR REQUIRE REPLACEMENT at the end of the depreciation period

Note that;

Depreciation can be thought of as the deduction of a certain percentage of the cost of any improvement to the land over a period of years set by the tax law

Note that;

Improvement to the land can be:

- Buildings
- Fruit and nut trees
- Fences
- In ground pool

Note that;

Land is never depreciated

### **TAX ASSESSMENT**

Note that;

One way to remember or determine the value of improvements to land separate from the land itself is by using the property tax assessment



Note that;

The tax assessment is broken down into two categories, the value of the land itself and the value of any improvements to the land

### **DEPRECIATION PERIODS**

#### **STRAIGHT LINE METHOD**

Note that

Tax law allows residential rental property improvements to land to be depreciated over a period of 27.5 years

Note that;

If you divided the cost of improvement by the total allowable depreciation period and DEDUCT THE SAME AMOUNT FOR EACH year will be called:

- Straight line method of depreciation

Note that;

Straight line method using 27.5 year recovery period is used for residential rental property put into use after December 31, 1986

Note that;

Straight line method may be used in some commercial properties as well however the recovery period used for non-residential real property depends on when the property was put into use

Note that;

For non-residential property put into use after May 13, 1993, the recovery period is 39 years

#### **ACCELERATED METHOD**

Note that;

Another method of calculating depreciation is called the accelerated method and can be used on some real property put into use before December 31, 1986



Note that;

The primary difference in the acceleration method and the straight line method is that the acceleration method results in greater amounts of depreciation in the early years and less depreciation in the later year

- Operational losses

### **FEDERAL GOVERNMENT**

Note that;

The Federal Government DOES NOT has the authority to tax real property directly however it does have the authority to tax the sale of real property.

### **TAX ON SALE OF PROPERTY FOR SELLER**

Note that;

When real property is sold, the profits that are made are called gains

### **CAPITAL GAINS**

Note that;

The PROFITS are called:

- GAINS OR CAPITAL GAINS

Note that;

Capital gains are taxed

Note that;

The gains that are taxes are called capital gains taxes

### **CAPITAL GAINS TAX RATES**

Note that;

The maximum capital gains tax rate depends on:

- The type of property sold



- How long the property was held before the sale

Note that;

The procedures for calculation capital gain tax for residential and business or investment is slightly different for each

### **RESIDENTIAL PROPERTY**

The capital gain which is subject to taxation is the DIFFERENCE between the AMOUNT REALIZED on the sale of the property and the ADJUSTED BASIS of the property:

- AMOUNT REALIZED “MINUS” ADJUSTED BASIS = CAPITAL GAIN
- AR – AB = capital gain

Note that;

The costs of sale are not deductible from the seller’s income in the year they are paid unless they are interest expenses

Note that;

One deductible interest expense is the interest prepayment penalty charged by a lender when the existing mortgage loan balance is paid off early when the home is sold

### **AMOUNT REALIZED**

Note that;

You determine the amount realized by “subtracting” from the sale price:

- Real estate commission paid
- Closing cost paid
- Points paid by the seller
- Attorney fees paid
- Survey costs paid
- Etc.

Note that;

By subtracting these items from the sale price, the amount of profit for tax purposes is reduced by the amount of these expenses, which lowers the amount of tax that must be paid.



## **BASIS**

Note that;  
The basis is simply the original cost of the home

## **ADJUSTED BASIS**

Note that;  
You obtain the adjusted basis by getting the ORIGINAL COST OF THE HOME/PURCHASE PRICE  
“plus” original ACQUISITION COST AND CAPITAL IMPROVEMENTS = ADJUSTED BASIS.

Note that;  
The original acquisition cost and capital improvements include:

- Attorney fees
- Appraisal report fees
- Added bedroom
- Upgraded kitchen
- Added bathroom
- Added In ground swimming pool
- Etc.

Note that;  
By adding these items to the basis/original purchase price, the amount of profit for tax purposes is reduced by the amount of these expenses which lowers the amount of tax that must be paid.

Note that;  
By treating major improvements to the property as capital improvements, the cost of these items is not deductible from income in the year they are paid.

Note that;  
Capital improvements are added to the basis of the property, which is the original cost of the property/basis.

Note that;  
These costs are in effect deducted from the profit realized on the sale of the property, which lowers the amount of tax which must be paid on the sale.



Note that;  
They increase the amount which is subject to depreciation, so capital improvements are depreciated over the life of the property.

**RECALL THIS “DEPRECIATION” CANNOT BE TAKEN ON PERSONAL RESIDENCE!**

Note that;  
There is **ONLY ONE DIFFERENCE IN THE FORMULA TO DETERMINE THE ADJUSTED BASIS** when dealing with business/investment property and residential property:

**RESIDENTIAL:**

	ORIGINAL PURCHASE PRICE
PLUS	COST OF ACQUISITION
PLUS	CAPITAL IMPROVEMENTS
EQUAL	ADJUSTED BASIS

**BUSINESS/INVESTMENT:**

	ORIGINAL PURCHASE PRICE
PLUS	COST OF ACQUISITION
PLUS	CAPITAL IMPROVEMENTS
<u>MINUS</u>	<u>ACCUMULATED DEPRECIATION</u>
EQUAL	ADJUSTED BASIS

Note that;  
This modification entails subtracting from the adjusted basis the total amount of depreciation deducted during the ownership of the property.

Note that;  
By treating major improvements to the property as capital improvements, the cost of these items ARE NOT deductible from income in the year they are paid, unless they are interest expense



## **EXCLUSION OF CAPITAL GAIN**

Note that;

Under the current tax law, some homeowners can exclude from taxable income some or all of the gain they experience when they sell a home.

Note that;

Homeowners are allowed to exercise the exclusion of gain only once every 2 years

Note that;

A homeowner cannot exclude gain on the sale of a home if during the previous 2 years period the homeowner sold another home and excluded ALL or PART of the gain from a previous sale

Note that;

The homeowner may be allowed claim a reduced exclusion if the home was sold because of a change in health or place of employment; therefore the homeowner should consult the relevant IRS publication or an experienced tax advisor

Note that;

Prior to the enactment of the taxpayer fairness act of 1997, homeowners 55 years of age or older enjoyed a once in a lifetime tax exclusion on gain from the sale of their primary residence of up to \$125,000.00

Note that;

If a homeowner exercised an exclusion prior to the enactment of the taxpayer fairness act of 1997 and who was 55 years old or older can now use the newer exclusion law of exclusion even if they already exercised the exclusion from the previous law

Note that;

A homeowner (s) can exclude gains up to maximum of:

- \$250,000.00 individually
- \$500,000.00 if married filing a joint return

Note that;

Either spouse meets the ownership test

Note that;

Both spouses meet the use test





Note that;

If only one spouse meets the use test, they can exclude up to \$250,000.00 of gain on a separate or joint return

Note that;

Neither spouse is excluding gain from the sale of another home during the year

### **QUALIFYING RULES**

Note that;

To qualify for this exclusion of a gain, must meet ownership and use test.

### **OWNERSHIP TEST**

Note that;

To meet the ownership and use test, must have OWNED the home for at least 2 years during the previous 5 years period ending on the date of sale

### **USE TEST**

Note that;

The homeowner must have LIVED IN the home as their principal residence for a period totaling 2 of the previous 5 years ending on the date of sale

Note that;

The 2 year period may be continuous or interrupted

Note that;

The homeowner DOES NOT have to be occupying the property as a principal residence on the date of sale



## **REAL ESTATE EXCHANGES**

### **DEFERMENT OF TAXES**

Note that;

Real estate exchanges may involve the deferment of taxes that would otherwise be due if the property were sold outright

Note that;

Real estate exchanges is often referred to as tax free exchanges, but they are not really tax-free

Note that;

With Real estate exchanges, they just postpone the payment of taxes; therefore should be called tax-deferred exchanges

Note that;

The only properties eligible for tax deferred exchanges include real property held for:

- Investment
- Income
- Trade
- Business

Note that;

Both properties must be from an eligible category

Note that;

Eligible category is often referred to as:

- Like for like trade

Note that;

Within the general category of eligible properties, any specific type of property may be traded for any other specific type of property



Note that;

There are two possible trade situations:

- One in which the “value” of the two properties are the same

Note that;

When the values of the two properties are the same, neither party will be required to pay income tax resulting from the exchange

Note that;

For tax purposes, the cost basis, no tax is due since there is no gain or loss for either party

- One in which the “value” of the are different

Note that;

The party trading the lower valued property usually gives the other party some additional money or item of value in addition to the real property exchanged

Note that;

This can occur for either of two reasons:

- The payment of “boot”
- The exchange of mortgage with different balances

Note that;

The additional money or item of value is called:

- Boot

Note that;

The party who trades a lower value property for a higher valued one is called:

- Trade up

Note that;

The party that is trading up WILL NOT have to pay taxes resulting from the exchange



Note that;

The party who trades a higher value property for a lower valued one is called:

- Trade down

Note that;

The party that is trading down WILL usually have to pay taxes resulting from the exchange

Note that;

The party that is receiving the boot usually will have to pay taxes on the monetary value of the boot

Note that;

A tax liability can also occur when two properties are exchanged that have two different mortgage balances, even if no boot is paid

Note that;

If a taxpayer receives a smaller mortgage balance in exchange for a larger one, the difference in the balances is considered income to that taxpayer and is called:

- Mortgage relief

Note that;

The amount of the mortgage relief or reduction in mortgage balance is taxable

Note that;

A PERSONAL RESIDENCE IS NOT ELIGIBLE FOR TAX FREE/DEFERRED EXCHANGES

## **TITLE INSURANCE**

Note that;

Title insurance protects the insured against a loss which might be sustained by a defective title or any liens or encumbrances not disclosed.



Note that;

Title insurance coverage includes:

- Forged documents
- Undisclosed heirs
- Documents filed incorrectly
- Mistakes n legal interpretation of wills
- Gaps in the chain of title

Note that;

The most two common types of title insurance are:

- Owner's title insurance
- Mortgagees/lender title insurance

### **OWNER' TITLE INSURANCE**

Note that;

Owner' title insurance names the owner as the insured.

Note the;

Owner's title insurance is issued in an amount equal to the acquisition cost/purchase price.

Note that;

Owner's title insurance may include inflation cause, which increase the amount of coverage as the property appreciates.

Note that;

Owner's title insurance remains in force for as long as the owner or heirs retain an interest in the property.

Note that;

Owner's title insurance is terminated only when the owner or heirs no longer have any interest in the property.

### **MORTGAGEES/LENDER TITLE INSURANCE**

Note that;

Mortgagee/lender title insurance is the majority issued



Note that;  
Mortgagee/lender title insurance covers losses suffered by the mortgage company/lender, not the buyer/mortgagor.

Note that;  
Mortgagee title insurance is issued in an amount equal to the original balance on the mortgage loan.

Note that;  
Mortgagee title insurance decreases as the balance decreases.

Note that;  
Mortgagee's title insurance terminates when the loan is fully paid.

Note that;  
Both owners and mortgagees title insurance are single premium policy's.

Note that;  
The premium is paid only once, when the policy is issued.

Note that;  
The mortgagee's insurance "coverage" is less than owner's title insurance coverage because mortgagee's insurance is issued base on loan amount and owner's insurance is issued base on purchase price/acquisition cost

Note that;  
The cost for coverage is less for mortgagee's insurance

### **LIENS/ENCUMBRANCES**

Note that;  
A lien/encumbrance is a legal hold or claim a person/entity has upon the property of another.

Note that;  
Liens are used as security for a debt.



Note that;  
There are two parties to a lien/encumbrance:

- Leinor
- Lienee

### **LEINOR**

Note that;  
Leinor = is a person who has a right of lien upon the property of another.

### **LIENEE**

Note that;  
LIENEE = is a person whose property is subject to a lien.

### **LIENS CREATED**

Note that;  
Liens can be created in two ways:

- Voluntary
- Involuntary

### **VOLUNTARY LIENS**

Note that;  
Voluntary liens are liens created by agreement of the parties. Ex: mortgage liens.

### **IN-VOLUNTARY LIENS**

Note that;  
In-voluntary liens are created by the "operation of law". Ex: tax liens/mechanic liens/judgments

Note that;  
In-voluntary lien may be called "statutory liens"



### **GENERAL LIENS**

Note that;

A “general liens” = a lien that attaches to all property owned by the lienee, both real and personal.

### **SPECIFIC LIENS**

Note that;

Specific liens may also be called:

- Special liens

Note that;

A “specific liens” = a lien that attached only to a specific property identified in the lien:

- Property tax
- Mortgage liens
- Mechanic liens

### **TYPES OF LIENS**

Note that;

There are five types of liens:

- Mortgage liens
- Tax liens
- Mechanic liens
- Judgment liens
- Deficiency judgment liens

### **MORTGAGE LIENS**

Note that;

Mortgage liens are created when property is used for collateral for a debt/loan





## **TAX LIENS**

Note that;

Tax liens include:

- Ad valorem tax
- Special assessment tax
- Federal income tax

## **AD VALOREM TAX LIEN**

Note that;

Ad valorem tax liens are created when taxes are not paid on a property.

Note that;

If property taxes are not paid when due, this may result in the sale of the property to pay for the taxes.

Note that;

The owner is given a redemption period in which he/she may redeem the property by paying:

- All back taxes
- Any penalties and interest required

Note that;

The redemption period in GA is 12 months

Note that;

Prior to the tax sale of the property, the government will place a tax lien on the property.

## **SPECIAL ASSESSMENT TAX LIEN**

Note that;

Special assessment tax take priority over all other liens except ad valorem tax liens



### **FEDERAL INCOME TAX LIEN**

Note that;  
Federal income is when income taxes are not paid.

Note that;  
Federal income tax liens apply to all property owned, both real and personal.

Note that;  
There are two major issues involving federal income tax and real property:

- Whether or not certain items may be deducted when calculating income tax due
- How income tax is calculated when real property is sold

Note that;  
How these issues are handled depends on whether you are dealing with:

- An individual who owns his/her own home
- A business or investors who own property

### **MECHANIC'S LIENS**

Note that;  
Mechanic's liens are for the protection of those whom provide "Labor or Material" in the construction/improvement of buildings.

Note that;  
The lienor must file a lawsuit in court to enforce a claim.

Note that;  
In order to give notice and protect lien from expiration while the suit is pending, the lienor files "notice of lis pendens in the public record.

### **JUDGMENT LIENS**

Note that;  
When the person wins a lawsuit against another person in court to receive monetary damages



Note that;  
The person winning the suit is awarded a judgment.

Note that;  
The judgment is against all of the property owned/general lien; both real and personal of the defendant; the loser of the lawsuit.

#### **WRIT OF EXECUTION**

Note that;  
If the lienee/defendant does not voluntarily pay, the court will issue a “writ of execution” to sell enough property to pay the judgment and cost of the sale.

#### **SHERIFF SALE**

Note that;  
A writ of execution results in a sheriff sale of defendant/loser of lawsuit property

#### **DEFICIENCY JUDGMENT LIENS**

Note that;  
A deficiency judgment lien arises when a property is foreclosed on and sold to satisfy the debt.

Note that;  
Deficiency judgment are to satisfy the outstanding balance on the debt, the mortgagee/lender

Note that;  
If the proceeds from the sale of the property are not sufficient to satisfy the outstanding balance on the debt, the mortgagee/lender may obtain a deficiency judgment against all of the mortgagor’s assets, both real and personal.



### **PRIORITY OF LIENS**

Note that;

Priority of liens will come into effect when two or more liens exist, it becomes important to determine the priority of liens.

### **RACE STATUTES**

Note that;

In most states, priority is determined by “race statutes”, the first to arrive; not genealogy.

### **DATE OF RECORDATION**

Note that;

The date of recordation, in the public record or the first to be recorded has priority

### **EXCEPTIONS**

Note that;

There are two exceptions:

Real property tax liens: ad valorem/special assessment

Note that;

Ad valorem has priority over special assessment

Note that;

Real property tax liens take priority over all other liens on a property, not on the date recorded

Note that;

Federal income tax liens do not have any special priority.

Note that;

Federal income tax liens take priority on the date of recordation

Note that;

An exception to the “race statutes” is mechanic’s liens, NOT the date the mechanic lien was recorded.



Note that;

Mechanic liens take priority on the basis of when:

- The work began
- When the material were delivered

### **TRANSFER OF ENCUMBERED TITLE**

Note that;

A lien is an encumbrance on the “title” to real property to which it attaches.

Note that;

To transfer the title, the lien MUST either be:

- Satisfied
- Assumed by the person to whom the title is being transferred (Grantee)

### **FEES TO CLIENTS**

Note that;

All agents/managing brokers can charge fees to client (must have written agreement) for duties:

- Assists in procuring prospects for real estate
- Listing
- Buying
- Selling
- Leasing
- Exchanging
- Options to buy/sell/offers for any real estate

Also can charge fee for:

- Consultation services
- Negotiating a real estate contract/counter offer
- Acting as a referral agent (not all referral agents can charge fees)
- Transaction consulting services
- Auctions or offers or attempts or agrees to auction real estate
- Performing property management services or community association management services
- Collection of rents, assessments or other trust funds
- Time-share intervals/parcels/lots



Note that;

All managing brokers can charge an advance fee to clients (other than advertising fee).

### **COMMISSION/FEES**

Note that;

All agents/sale people/branch manager/associate broker/managing broker's must not receive any commission/fees from anyone other than broker/All Real Estate Consultants, Inc.

### **ASSOCIATE BROKERS**

Note that;

All associate brokers' must have passed the same exam as a broker in the State in which it operates but works for and acts on behalf of broker/All Real Estate Consultants, Inc.

Note that;

All associate brokers licensed under one broker may serve as the broker/qualifying broker with another firm as long as he/she notifies and gets approval from the broker/All Real Estate Consultants, Inc. holding his/her license in writing.

### **LINCENSEE ACKNOWLEDMENT**

Note that;

All licensees may not work "FULL TIME" directly for a principal under a listing or management agreement.

Note that;

A sale person must work only on behalf of broker/All Real Estate Consultants, Inc.

Note that;

If sale person wants to work full time for a principal he/she must surrender license, not just place it on inactive status.

Note that;

All agents/branches/managing brokers/associated brokers must have Brokerage engagement/written agreement with client or Landlord agreement/agency before working with client.



Note that;  
All brokerage engagement/agreements must be reviewed and signed off on by management before signing by client/principal.

Note that;  
All agents/branches must perform the terms of the Brokerage Engagement/Landlord agreement made with the client.

Note that;  
All agents/branches must promote the interest of the client.

Note that;  
All agents/branches must exercise ordinary skill and care in performing their duties to the client.

Note that;  
All agents/branches must keep confidential all info received during the engagement/agreement that the client request is kept confidential, unless the client permits disclosure or such disclosure is required by law.

Note that;  
All agents/branches must disclose to all parties in the transaction of any relationship changes at any time during engagement/agreement as soon as possible.

Note that;  
All agents/branches must advise seller/landlord to obtain expert advice about matters beyond the agent's expertise.

Note that;  
All agents/branches must seek a Sale price/terms stated in engagement/agreement or acceptable to the seller/landlord.

Note that;  
All agents/branches must not knowingly give potential buyers/tenant/customer false information.

Note that;  
The agents/licensee is not liable if agent did not know info was false and discloses to the buyer/customer the source of info.



## **FRAUD**

Note that;

All agents/branches/licensees must not engage in any type of fraud

Note that;

In Georgia, Fraud means any artifice (an artifice can be either “An Act” or “failure to Act”), intended to deceive another

Note that;

All Real Estate Consultants, Inc. and its affiliated branches/management will apply this meaning to all states in which it operates.

## **WORKING WITH SELLER**

Note that;

All agents/branches must report to seller, if the purchase will be financed by a loan assumption or seller providing all/part of the financing, all material facts known by the agent about buyer’s financial ability to meet the terms of the sale.

Note that;

All agents/branches must disclose to seller in the case of residential transaction the buyer’s intent to occupy the property.

Note that;

Caveat emptor = let the buyer beware

Note that;

The caveat emptor describe a general legal environment in which the burden of obtaining information about a property was almost entirely on the buyer, not the seller or the seller’s agent and the agent was under no obligation to voluntarily disclose pertinent information about a property to the buyer

Note that;

The agent was bound only to tell the truth when they said anything about the property but was not obligated to say anything

Note that;

If the buyer was to obtain pertinent information about the property, it was their responsibility to get it him or herself





Note that;

Caveat emptor no longer applies as the main or prevailing principal and the broker/agent has a much greater responsibility to safeguard the interest of the buyer as the customer, even if he/she represents the seller as the client

Note that;

According to common law of agency, a broker/agent who represents a seller under a listing agreement owns the buyer the following duties:

- Fairness and honesty
- Make truthful statements when statements are made
- Avoid misleading statements
- Full disclosure of material facts

## **DISCLOSURE**

Note that;

All agents/branches must disclose in a timely manner to buyer/tenant/customer:

- Material facts

Note that;

Material facts or adverse material facts = any fact that would have an impact on the buyer's decision whether to buy or affect the price that a buyer would be willing to pay for the property including any other facts required by law to be disclosed which are known by the agent and which could not be discovered by the buyer upon a reasonably diligent inspection within 1 mile.

Note that;

The seller and seller's broker/agent are responsible for disclosing any material facts to the buyer voluntarily

Note that;

The seller is obligated to disclosed any material or adverse material facts to the broker/agent that is not obvious

Note that;

Both the seller and broker/agent are obligated to disclose any material facts that are not obvious to the buyer



Note that;

If a material fact is obvious to a buyer when the buyer looks at the property, the broker/agent is not obligated to disclose the information under the premise that the buyer will see the information for him or herself

Note that;

GA law of BRRETA does not obligate the agent to discover adverse material facts about the property or the surrounding neighborhood.

Note that;

Disclosure is required from both the seller and agent/broker for any material facts that are not obvious.

Example:

- A roof that leaks
- A basement that floods when it rains
- Whether the property is connected to sewer system or septic
- The fact that no fire protection service is available

Note that;

When the material fact is obvious to a buyer when the buyer looks at the property, the broker/agent is not obligated to disclose the information under the premise that the buyer will see the information for him/herself.

Note that;

A seller and the seller broker/agent can incur liability for disclosure of material information when:

- Information is provided

Note that;

When information is provided, the most important consideration in determining whether seller and/or agent is liable is whether the information provided is fact or opinion



## FACTS VS OPINIONS

Note that;

When the information provided is a fact and/or is presented as a fact, the seller or agent is subject to liability

Note that;

When the information provided is an opinion, the seller or agent is not generally subject to liability with some exceptions

Note that;

Providing opinions doesn't usually result in liability, since the courts usually hold that opinions are not statements that a buyer may claim that he/she relied on in making a decision whether to buy

Note that;

The determination of facts VS opinion is left up to the court when a case is brought before it

Note that;

A seller can be held liable for misrepresentation on the basis of statements involving incorrect facts

Note that;

A licensee is always held liable for misrepresentation on the basis of statement involving incorrect facts

Note that;

A real estate licensee is held to a higher standard than a non-licensee when determining what a fact and what an opinion

Note that;

If a broker/agent makes a statement of opinion to a buyer, the licensee should be careful to state also that the information is merely an opinion and not a statement of fact



## **MISREPRESENTATION**

Note that;

Misrepresentation is a legal term which encompasses three sets of conditions under which a licensee may be held liable for damages suffered by a buyer

Note that;

Misrepresentation is:

- An unfair trade practice
- Punishable in court
- A violation of the license law

Note that;

In general, misrepresentation occurs when false information which is material to a sale is provided to a buyer, or information is withheld from the buyer. The buyer then relies on the information provided or withheld and the buyer is adversely affected

Note that;

Depending on the specific facts of each situation, the cases could represent different **TYPES** of misrepresentation

## **ILLEGAL MISREPRESENTATION**

Note that;

Illegal misrepresentation occurs when five conditions are met:

- False information must be provided, or material information must be withheld
- The false or withheld information must be material (as defined earlier in the policy and procedure manual).
- The person who provides the information intends for the buyer to rely on the information
- The buyer relies on formation in making a purchase decision
- The buyer suffers harm

Note that;

All agents/branches/licensees must not engage in any Misrepresentation.



Note that;

A licensee is NOT liable for misrepresentation if the licensee relies on apparently reliable information which later turns out to be incorrect

Note that;

If a licensee has a reasonable basis for making a statement, then the licensee is not liable if the statement was in fact false

Note that;

Misrepresentation can be:

- Fraud
- Negligent misrepresentation
- Negligence

## **FRAUD**

Note that;

The feature which distinguishes fraud from other types of misrepresentation is that the act is intentional

Note that;

When a seller or licensee who provides information KNOWS the information is false, it is considered fraud

Note that;

Fraud may be also called:

- Intentional misrepresentation

Note that;

Fraud can be both:

“Active”- intentionally giving false information

Or

“Passive”- intentionally withholding information

Note that;

When a seller or licensee who provides information does NOT KNOW the information is false, then one of the other forms of misrepresentation has occurred



## **NEGLIGENT MISREPRESENTATION**

Note that;

Negligent misrepresentation is **NOT DONE INTENTIONALLY**

Note that;

When broker/agent does not know the information provided was false but **SHOULD HAVE KNOWN IT WAS FALSE** will be considered negligent misrepresentation

Note that;

The use of “due care” in inspecting the property is required

Note when;

The broker/agent uses ordinary care in inspecting property would reveal that statements made by the seller/landlord to the broker/agent were untrue.

Note that;

The purpose of inspection is to discover any defects as well as any indirect signs that indicate that defects may exist.

Note that;

When inspecting the property, look for patches of oil or areas where nothing will grow and any signs of dumping.

Note that;

All brokers/agents are to use a checklist of items that the seller should be asked about when listing the property

Note that;

The broker/agent must never simply accept the seller's/landlord word concerning potential material defects without attempting to **VERIFY** the information given.

Note that;

The broker/agent is required to use reasonable efforts or ordinary care to confirm or verify the information provided to them by seller/landlord.



## NEGLIGENCE

Note that;

Negligence can be the basis for a court action against a licensee for misrepresentation when the licensee fails to use due care in inspecting a property to **DISCOVER** any potential material defects

Note that;

If the broker/agent fails to inspect the property, this is negligence therefore all licensee must always complete a thorough inspection of a property

Note that;

If the broker/agent fails to “disclose” any relevant information “obtained from inspection” to the seller/landlord, this is called negligence.

Note that;

An agent can be found guilty of negligent if he/she engages a surveyor or any vendor for the buyer and surveyor/vendor fails to properly perform their duties.

Note that;

Therefore all agents must provide the buyer or seller with:

- A vendor list, from which the buyer/seller chooses vendor
- A form permitting the broker/agent to hire the selected vendor and will hold broker/agent harmless if vendor fails to properly performs

Note that;

If agents/branches provide vendor list to buyer/customer/seller, they must provide a minimum list of three/vendor/ each and a copy of the list must be included with file.

Note that;

Any defects found during any inspection must be disclosed to future prospective buyer/seller.



## **PENALTIES FOR MISREPRESENTATION**

Note that;

Penalties for misrepresentation under Georgia License Law and court action:

### **LICENSE LAW**

- Reprimand
- Suspension of license
- Revocation of license

### **COURT ACTION**

- Lose of commission on the sale
- Liable to the seller for the sale price if the buyer rescinds the contract
- Liable for the payment of damages to the buyer equal to:
  - The difference in the sale price and the actual value of the property with the actual value is less
  - Any expenditure made by the buyer as a result of relying on the broker/agent statements

## **DISCLOSURE**

Note that;

All agents/branches must disclose agency relationship in writing to any potential buyer with whom he/she is working.

Note that;

Disclosure must be made no later than when a written offer is submitted.

Note that;

Licensee must disclose agency relationship to any seller or seller's agent on any buyer behalf when licensee first calls the seller/seller's agent about showing a property.

Note that;

Agent/licensee cannot work for both client's under single agency.





Note that;

Under seller single agency or seller single agency with a subagent, broker will be sharing commission with selling broker/agent.

Note that;

All agents/branches must disclose agency relationship that All Real Estate Consultants, Inc. may be involved in, in any give transaction, which is:

- Single agency representing seller
- Single agency representing buyer
- Single agency for the seller with a subagent working with listing broker
- Broker-tenant agency
- Designated agency
- Dual agency
- Landlord agency
- Transaction agency
- Commercial agency

Note that;

If active in commercial real estate, licensee should engage in single agency in which the agent represents the buyer and engage commercial real estate attorney with client/buyer.

Note that;

Commission comes from the buyer not the seller in a commercial agency.

## **DUAL AGENCY**

Note that;

All agents/branches must disclose agency relationship to all parties in any transaction that All Real Estate Consultants, Inc. may be involved in

Note that;

Dual agency is when the agent is presenting two principals in the same transaction

Note that;

All agents must disclosure dual agency to all parties to the transaction



Note that;

Disclosure should include:

- Description of the property
- Acknowledgement that the Broker/agent as a dual agent is serving two clients whose interest is or could be different or adversarial.
- Broker/agent as a dual agent must disclose to all parties adverse material facts related to the transaction that are known by the dual agent and the agent may not disclose to any client information made confidential by another client unless the disclosure is required by law.
- Disclose in a timely manner any material relationship the broker may have with either client, personal, familial or business.
- Statement the client does not have to consent to the dual agency and that the broker may terminate representation of a client who has not consented to a dual agency at any time before the dual agency is created and may receive referral fee for referring that party to a broker at a different firm.
- Statement that client's consent is given voluntarily and that the dual agency agreement has been read and understood.

Note that;

Dual agency can be created by actions

Note that;

All agents must not engage in any actions that create dual agency without disclosure to all parties' involved and getting written approval from all parties prior to any actions that create a dual agency relationship.

Note that;

Dual agency is "almost never" an intentional act.

Note that;

Unintentional dual agency is a dangerous thing and should be avoided at all cost.



### **DESIGNATED AGENCY**

Note that

All agents/branches understand and agree that Broker/All Real Estate Consultants, Inc. may be involved with designated agency and may assign different licensees affiliated with the broker as designated agents to exclusively represent different clients in the same transaction.

Note that;

Designated agent/agency may not disclose confidential info to anyone other than his /she broker/managing broker.

### **TRANSACTION AGENCY**

Note that;

Transaction agent's does not have a client relationship with any of the parties to a particular real estate transaction.

Note that

Transaction agent does not provide any advice to any parties.

Note that;

Transaction agents should understand that commission may be from one or more of the parties according to a written agreement that broker/managing broker approves.

Note that;

A transaction agent only performs ministerial acts for one or more of the parties:

- Identifying properties for sale, lease or exchange
- Provide real estate statistics
- Provide information on property
- Provide pre-printed real estate form contracts
- Act as a scribe in preparing pre-printed real estate form contracts
- Locating:
  - Lender
  - Insurance agent
  - Attorney
  - Surveyor
  - Engineers
  - Architects



- Schools
- Shopping facilities
- Places of worship
- Other professionals

### **REFERRAL AGENTS**

Note that;

All agents/branches understand some Referral Agents:

- Does not actually perform any services of a broker/agent
- Does not receive any compensation from the referred party
- Does not charge an advance fee
- Does not refer more than three transaction per year
- Does not receive any compensation from a licensed broker, associated broker or salesperson

Note that;

A Referral agent may “NEVER” receive a referral fee from anyone who has any type of real estate license.

Note that;

An unlicensed person to whom the referral is made may pay a referral fee to another unlicensed person (example: tenant to owner of apartment building).

Note that;

A licensed broker/managing broker may pay a referral fee to another licensee or another broker/associate broker/salesperson.

Note that;

A “licensed broker” may not pay a referral fee to an unlicensed individual under any circumstances!

Note that;

A “salesperson or associate broker” may not pay a referral fee to anyone, either licensed or unlicensed.



## MINISTERIAL ACTS

Note that;

All agents/branches may perform Ministerial acts for customer/buyer without being dual agent/agency.

Note that;

When performing ministerial acts for a buyer/customer, the broker/agent/licensee cannot provide advice or becomes an advocate for the buyer/customer rather than seller.

Note that;

The broker/agent cannot inform the buyer of seller's motivation to sell.

Note that;

The broker/agent cannot take the buyer/customer side in the process of offer and counteroffer.

Note that;

Agent can show buyer a number of different properties

Note that;

Agent can make factual representation about the seller's property

Note that;

Agent can point out features that would make the property desirable to the buyer

Note that;

Agent can act as a scribe in preparing PRE-PRINTED REAL ESTATE FORM contract and related exhibits and addenda

Note that;

Agent can provide "info" on:

- Schools
- Shopping facilities
- Recreational facilities
- Other amenities
- Present any written offer made by the buyer
- Assist the buyer in preparing an offer using a form contract used by licensee's broker firm



- Financing
- Legal Counsel
- Insurance
- Termite Inspection
- Home inspection
- Surveyors
- Places of worship
- Architects
- Engineers

## **CONTRACT RENT -VS- ECONOMIC RENT**

### **CONTRACT RENT**

Note that;

Contract rent = the amount of rent the **TENANT MUST PAY UNDER THE TERMS OF THEIR CONTRACT.**

### **ECONOMIC RENT**

Note that;

Economic rent = the amount of rent that **COULD BE "RENTED FOR" ON THE OPEN MARKET AT A GIVEN TIME.**

Note that;

At the time the rental contract is signed, the economic rent and contract rent are the same.

Note that;

As the contract matures, the economic rent will often exceed the contract rent.

## **TYPES OF LEASE/RENTAL AGREEMENTS**

Note that;

There are six types of rental agreements:

- GROSS RENTAL AGREEMENT/CONTRACT
- NET RENTAL AGREEMENT/CONTRACT
- PERCENTAGE RENTAL AGREEMENT/CONTRACT



- GRADUATED RENTAL AGREEMENT/CONTRACT
- INDEX RENTAL AGREEMENT/CONTRACT
- SANDWICH RENTAL AGREEMENT/CONTRACT

### **GROSS RENTAL AGREEMENT**

Note that;  
The tenant pays a fixed monthly rent ONLY

Note that;  
The landlord pays ALL expenses.

Note that;  
The landlord pays expenses from the rent collected from the tenant

### **NET RENTAL AGREEMENT**

Note that;  
The tenant pays a fixed monthly rent PLUS some or all the EXPENSES.

Note that;  
The landlord pays only those expenses not paid by the tenant

### **PERCENTAGE RENTAL AGREEMENT**

Note that;  
A percentage rental agreement is commonly used for:

- “RETAIL ESTABLISHMENTS” **IN SHIPPING MALLS**

Note that;  
The landlord receives a percentage of the gross sales of the business as part (or) all of the rent.

### **GRADUATED RENTAL AGREEMENT**

Note that;  
The tenant pays a fixed rent for an initial period but the rent increases at specific intervals thereafter.



Note that;  
Graduated rental agreement can be called:

Step up contract

Note that;  
Graduated rental agreement is commonly used:

- For long term contracts to COVER INCREASES IN COST OF LIVING EXPENSES
- Attract a tenant in SLOW MARKET CONDITIONS
- Retail stores in a shopping mall/center where a CLIENTELE HAS NOT YET BEEN ESTABLISHED/NEW MARKETS

### **INDEX RENTAL AGREEMENT**

Note that;  
Index rental agreement contains AN ESCALATOR CLAUSE based on some economic indicators called an index.

Note that;  
They usually have a cap on the allowable annual increase.

Note that;  
They are usually used for long-term commercial rentals.

Note that;  
Index rental agreements contain a provision for future rent increases based on increased operation costs to the landlord for:

- Taxes
- Insurance
- Utilities
- Janitorial services
- Etc.

### **SANDWICH RENTAL AGREEMENT**

Note that;  
A sandwich rental agreement is a SUBLEASE





Note that;

The original lessee/tenant becomes the lessor/landlord to the new tenant/SUBLESSEE.

Note that;

The original lessee is sandwiched between the owner/landlord and the new tenant/sublessee

### **TERMINATION OF A LEASE/RENTAL AGREEMENT**

Note that;

Both:

- Tenancy at will
- Tenancy at sufferance

ARE terminated by:

- The death of either party
- The sale of the property

Note that;

Termination of a lease/rental agreement can by either party

Note that;

A lease/rental agreement will terminate:

- Expiration
- Mutual agreement
- Destruction or condemnation of the property
- Breach of contract

### **BREACH OF CONTRACT**

Note that;

If either party violates the terms of the lease, the lease may be terminated at the discretion of the other party (innocent party)



Note that;  
If the landlord for a commercial property violates a non-competition clause in the lease by leasing another storefront in the same shopping center to a competitor of the tenant, the tenant may elect to terminate the lease

### **EVICION OF TENANT**

Note that;  
There are two types of eviction:

- ACTUAL EVICTION
- CONSTRUCTIVE EVICTION

### **ACTUAL EVICTION**

Note that;  
Actual eviction is the legal removal of the tenant for some violation of some provision of the lease

Note that;  
The conditions for actual eviction is caused by the tenant

### **CONSTRUCTIVE EVICTION**

Note that;  
The conditions for construction eviction is caused by the landlord

Note that;  
When the landlord causes or permits a situation to occur that makes it impossible for the tenant to enjoy the premises under the terms of the lease/agreement

Note that;  
Under GA LAW of BRRETA, the landlord has an obligation to keep the rental property in “good” repair during the period it is rented, UNLESS the contract requires the tenant to maintain the property.

Note that;  
Once a tenant notifies a landlord that repairs are needed, the landlord is obligated to INSPECT THE PROPERTY AND MAKE ARRANGEMENTS FOR THE REPAIRS.



Note that;

If the landlord fails to have the repairs made within a reasonable time, the tenant may arrange to have the repairs made and deduct the cost of the repairs from the rent paid.

Note that;

Only when repairs/enjoyment is serious enough to constitute constructive eviction may the tenant terminate the lease.

### **LEASE IS NOT TERMINATED**

Note that;

There are significant situation under which a lease IS NOT terminated.

Note that;

Neither:

- Lease for years
- Period lease

Will not terminate by the:

- The death of either party
- The sale of the property

### **MANAGING RENTAL PROPERTY OR PROPERTIES**

Note that;

All licensees of All Real Estate Consultants Inc. must have written consent from broker/managing broker to manage property of others.

Note that;

A salesperson should not manage rental property of others without the consent of the broker/managing broker in writing.

Note that;

Property management may be either person or a company

Note that;

Property managers usually must be licensed as real estate broker.



Note that;

In some state, including Georgia, a license is not required if the property manager is employed directly by owner and manages ONLY that owner's property

Not that;

All branch managers of All Real Estate Consultants Inc. are to check with local guidelines in the state in which it is located for requirements

Note that;

The broker/agent must be loyal to owner.

### **INSPECTION**

Note that;

All agents/branches that manage rental properties must inspect property prior to the tenant posting deposit and must:

- Place all security deposits in a trust account
- Give tenant a list of damages to the unit
- Give tenant opportunity to inspect the property to verify the accuracy of the list of damages
- Both agent and tenant must sign and date the list of damages

### **RENTAL AGREEMENTS**

Note that;

When a rental agreement is established, the property manager may be responsible for making sure the agreement is signed by both landlord and tenant

Note that;

To encourage the tenant to pay rent promptly, a late fee may be included in the rental agreement

Note that;

When the rental agreement is terminated, the property manager may be responsible for making sure the correct procedures are followed such as returning of security deposit



## **FUNDS**

Note that;

Licensee/property managers must keep track of all funds:

- Received
- Held
- Disbursed

Note that;

An agent/licensee **MUST NOT ACCEPT A PARTIAL RENT PAYMENT** from a tenant

Note that;

If the owner allows for partial payments, the owner may forfeit their right to full payment if a partial payment is accepted

Note that;

An agent/licensee must deposit all rent payments/security deposits into a trust account.

Note that;

A licensee who owns rental property (ties) must place all security deposits in a trust account and broker/managing broker must have signatory power on all trust accounts which the firm maintains.

## **MANAGEMENT CONTRACT**

Note that;

A contract is not required legally however All Real Estate Consultants Inc. require that all property manager obtain a property management contract to manage property of others

Note that;

A property management contract should be drawn up.

Note that;

Forms for property management contracts may be available in your area

Note that;

An attorney should be contacted to assist in reviewing and developing the contract.



Note that;

Licensee must have property management contract, signed and dated.

Note that;

Licensee must make sure rental agreement is signed by all parties.

Note that;

Contract should contain items:

- Name and address of the owners
- Name and address of the manager
- Legal description of the property
- Starting and ending dates for the term of contract
- Services to be performed by the manager
- Limitation to the authority of the manager
- Procedures for providing reports to the owner(s)
- Method and schedule of compensation
- Signature of the owner(s)
- Signature of the manager

Note that;

If specified in the management contract with the owner, the property manager may pay expenses out of the trust account for:

- Taxes
- Insurance
- repairs

#### **MANAGER'S COMPENSATION**

Note that;

A property manager's compensation usually is based on a percentage of the rents actually collected

#### **GOAL**

Note that;

There are two goals for the property manager:

- To have the highest level of occupancy
- To have lowest rate of turnover



## DUTIES

Note that;

In order to attract tenants and set appropriate rent levels, the property manager may need to analyze the supply and demand of the market area

Note that;

In analyzing the supply and demand of the market area, the property manager will need to obtain information on:

- Demand for rental units
- Types of units in demand
- Demand for various amenities
- Existence of competition
- Anticipated changes in the number of rental units in the area
- Renter profile
- Cost of upgrading
- Advantages and disadvantages associated with the area
- Future of the area

Note that;

Duties include:

- To manage safety precautions
- Conduct a careful screening of all potential employees
- Control the storage and use of keys
- Encourage tenants to report problems, such as lighting and locks, and repair these problems immediately
- Develop security policies for before and after the occurrence of a crime
- Document all security measures that are taken
- Contact law enforcement for advice on security measures
- Provide tenant and management safety education programs
- Marketing
- Manage tenant selection and tenant services
- Must show respect for the tenants privacy
- Property maintenance including:
  - ✓ Grounds
  - ✓ Buildings



✓ Common areas

- Establishing and terminating rental agreements
- Financial record keeping
- Generate financial reports as required by the owners
- Make sure that all employees who will be handling money are bonded
- Not accept a partial rent payment from a tenant
- Deposit all rental payments and security deposits into a trust account
- Budgeting for expenses, salaries and utilities
- Estimate life expectancy for all items that will need to be replaced
- Develop procedures for handling on-going repairs and emergency repairs
- Look for products and services which may reduce cost
- Conduct a careful screening of all employees
- Develop renter profile
- Estimate costs of up grading
- Understand the advantages and disadvantage associated with the area
- Future of the area
- Developing advertising materials
- Hiring and training on-site employees to show the property
- Hiring and supervising contractors to clean and maintain the building and grounds
- Setting up a model unit to show prospective tenants
- Designing incentive programs to attract tenants-must make sure these programs are designed carefully

Note that;

Any incentive programs could mean a loss of income to the owner and therefore loss of compensation to agent therefore incentive programs should be designed for a short term and/or include an escalation clause

Note that;

According to fair housing laws, it is NOT considered discrimination to refuse to rent to someone because of:

- ✓ Poor credit rating
  - ✓ Insufficient income
  - ✓ Anti-social behavior
  - ✓ Drug dealer
- 
- Avoid renting to tenants who are not able to pay rent
  - Avoid tenants that are engage in activities which cause other tenants to move





- Avoid tenants with poor credit rating
- Avoid tenants with insufficient income
- Avoid tenants with anti-social behavior
- Avoid tenants that engage in drug dealing

### **TENANT SELECTIONS**

Note that;

Selection of tenant should be conducted carefully and should include:

- Forms to be completed by prospective tenants
- Procedures for interviewing prospective tenants
- Credit checks
- Employment verification; including acceptable vocation and employment history
- Reference checks, especially from previous landlords
- Rent to income ratio
- Length of previous residence history

### **TENANT RETENTION**

Note that;

To retain tenants, manager should:

- Establish and maintain good tenant relations
- Continually maintaining security precautions
- Responding promptly to tenant complaints
- Controlling problems related to pets, parking and excessive noise
- Respect the tenant's privacy

Note that;

If tenant decides to move, the manager should try to find out the reason

Note that;

According to landlord tenant law, a landlord may enter an apartment without the tenant's permission ONLY under limited circumstances:

- Fix a dangerous situation
- Prevent destruction of the property
- Tend to an emergency on the premises



Note that;

If periodic inspections are permitted in contract, the landlord must give notice in advance and inspect in a tactful manner

Note that;

Owner must give tenant the opportunity to inspect the premises within 5 business days after the occupancy is over to verify any damages and the estimated value of same and both tenant and or landlord/broker/agent must sign the list of final damages and estimated value.

Note that;

The landlord/broker/agent must return the amount of the security deposit less the amount agreed on as the dollar value for damages caused by the tenant within 1 month after the rental agreement is terminated or the tenant vacates the property, whichever comes later.

Note that;

The landlord must submit a written explanation of the exact nature of the damages for which all or part of the security deposit was withheld and must include with it a payment of the amount of the deposit less damages.

Note that;

The landlord may mail the written report of damages and any refund to last known address by first class mail. If mail is returned and after reasonable efforts to locate tenant, the payment will become the property of landlord 90 days after the payment was postmarked for mailing to the tenant.

Note that;

Landlord may withhold security deposits for:

- Unpaid rent
- Unpaid utility bills/if net lease
- Unpaid cleaning charges/if provided for in initial lease

### **TRAINING**

Note that;

All licensees and property managers must receive adequate training which covers:

- Federal
- State
- Local fair housing laws



- Rights and obligation of landlords and tenants

Note that;

Colleges and universities may offer courses in property management

Note that;

Property management companies may offer training programs

Note that;

Trade associations may offer courses in property management

Note that;

Property manager may obtain additional information from various publications

Note that;

Licenseses may contact the housing services department of the GA residential finance authority to obtain a pamphlet entitled question frequently asked by tenants and landlords.

Note that;

Property management publications which may be of use to a property manager may be found in real estate trade association libraries or public libraries

Note that;

Licenseses may be able to obtain pamphlet or information from an attorney.

Note that;

It may be wise to contact an attorney to determine whether or not specific actions are legal.

### **DRUG ENFORCEMENT ACT OF 1988**

Note that;

Licenseses must be aware of Federal laws related to drug dealing

Note that;

When a property is rented to a drug dealer, not only is the owner at risk, the broker/agent acting as a property manager could be liable



Note that;

The drug enforcement act of 1988; property considered accessory to a crime may be seized and sold by law enforcement agencies.

Note that;

An owner may be able to prevent the loss of the property only by providing that they:

- Was not aware of the activity
- Did not give consent to the activity
- Took steps to prevent the activity
- Having documented procedures for tenant selection and tenant supervision

### **COMMERCIAL PROPERTY MANAGEMENT**

Note that;

Commercial property management should be only handled by managers/agents who have received specialized training.

Note that;

Commercial property management agreement should be completed between owner and broker

Note that;

Commercial property lease agreement to be completed for tenant/owner

Note that;

Commercial property lease agreements are typically a 10 year term

Note that;

Commercial contracts are often quite long

Note that;

Commercial contracts are less likely to appear on a familiar form

Note that;

Commercial contracts may contain every type of contingency

Note that;

When a commercial contract is signed, ALL parties to the contract often obtain legal counsel



Note that;

The space for a commercial property is often an:

- Office building
- Loft space
- Retail space
- Industrial space

#### **OFFICE BUILDINGS**

Note that;

The tenant is responsible for making improvement to the interior

Note that;

The manager must know what type of improvements are permitted and what types are not permitted

Note that;

The agreement is often a GRADUATED OR STEP UP rental agreement

Note that;

The tenant pays a fixed low rent or NO RENT for an initial period, but the rent increases at specific intervals thereafter

Note that;

The initial low rent or no rent is offered as an incentive for the tenant to relocate and to offset relocation costs

#### **LOFT SPACE**

Note that;

The tenant is responsible for making improvement to the interior

Note that;

The manager must know what type of improvements are permitted and what types are not permitted



Note that;  
The agreement is often a GRADUATED OR STEP UP rental agreement

Note that;  
The tenant pays a fixed low rent or NO RENT for an initial period, but the rent increases at specific intervals thereafter

Note that;  
The initial low rent or no rent is offered as an incentive for the tenant to relocate and to offset relocation costs

#### **OFFICE BUILDING/LOFT SPACE**

##### **LANDLORD**

Note that;  
The landlord should be concerned with:

- The credit rating of the tenant
- The effect of the tenants business on other occupants

##### **TENANT**

Note that;  
The tenant should be concerned with:

- The services provided by the landlord
- Any restrictions on uses of the property
- The existence of security measures
- Availability of parking
- Hours of operation of the building

#### **RETAIL SPACE**

Note that;  
The agreement is often a percentage rental agreement

Note that;  
The agreement often comes with a base rent



## **SHOPPING CENTERS**

Note that;

The agreement is often a **PERCENTAGE RENTAL AGREEMENT**

Note that;

The tenant pays a specified percentage of revenues to the landlord

Note that;

The agreement is often with a base rent

Note that;

The tenant may be required to have specific hours of operation

Note that the tenant may be required to employ a specified number of salespeople

Note that;

The tenant may be required to spend a specified amount of money for advertising

## **INDUSTRIAL PROPERTY**

### **LANDLORD**

Note that;

Landlord should be concern with:

- Credit rating of the tenant
- Tenant's willingness to take over maintenance duties

### **TENANT**

Note that;

The tenant should be concern with:

- Ease with which necessary material can be moved into and out of property
- Cost of moving material into and out of property



### CONDOMINIUM OWNER'S ASSOCIATION PROPERTY MANAGER

Note that;

When an owner's association employs a manager, the management contract is between the broker/manager and the board of directors of the owner's association.

Note that;

The manager works for a board of directors which represents many different individuals, not just a single owner.

Note that;

The board of directors is elected therefore the board can be changed at each election

Note that;

If a managing company has a separate contract with the owner's association and with individual owners, a conflict of interest may exist; therefore a licensee must obtain the written consent of the board of directors before attempting to rent or sell a condominium unit on behalf of an individual owner

Note that;

If the manager is licensed, ALL funds collected must be deposited in a trust account.

### TRUST ACCOUNT

Note that;

The trust account **MUST BE REGISTERED WITH GA REAL ESTATE COMMISSION.**

Note that;

If the manager is NOT LICENSED, no trust account is required however, **A BOND IS REQUIRED IF THE FUNDS ARE NOT DEPOSITED IN A TRUST ACCOUNT.**

Note that;

The manager provides the following services:

- Collection of association fees
- Keeping financial records
- Maintain common areas
- Enforcing rules





- Provide the board of directors with any additional advice within the manager's area of expertise

Note that;

When funds are inadequate, one way of dealing with major expenses is by issuing special assessment as expenses arise instead of raising fees to the association members

### **SECURITY DEPOSITS**

Note that;

In GA, the LAW includes requirements about the handling of security deposits on rental property for some categories of individuals

Note that;

A licensed broker/licensee will always be subject to the provision of the law concerning security deposit

Note that;

Broker/agent/licensee that manage property for owner or agent's working on behalf of broker's or broker/agent for their own rental property are subject to the requirements of the handling of security deposits

Note that;

There are two categories of individuals:

- Owner of rental property who individually or collectively with their SPOUSE, MINOR CHILDREN; that own MORE THAN 10 RESIDENTIAL RENTAL UNITS.
- All owners who employ licensed brokers to manage their property and the brokers who work for the owners, regardless of how many rental units are involved.

### **REQUIREMENTS:**

The use of trust accounts to deposit security deposits

The use of surety bond "in lieu" of depositing funds in a trust account

The inspection of premises when security deposits are collected

The return of security deposits to tenants



Note that;

The law requires that all security deposits received by the two categories of individuals be deposited in a trust account and held on behalf of the tenant

Note that;

Under the law, the owners of rental property who own more than 10 rental units may choose to use an alternative of the trust account. The owner may elect to post a surety bond in lieu of using a trust account.

Note that;

The amount of the surety bond must be equal to the total amount of ALL security deposits held or \$50,000.00 whichever is less.

Note that;

The bond must be posted with the clerk of the superior court in the county in which the property is located.

Note that;

The BROKER/MANAGER/LICENSEE MUST NEVER USE A SURETY BOND AND MUST ALWAYS USE A TRUST ACCOUNT.

### **INSPECTION**

Note that;

When the security deposit is collected from the tenant, the landlord or managing broker/agent must meet certain requirements concerning the inspection of the premises and the documentation of damages.

Note that;

**PRIOR TO THE TENANT POSTING THE DEPOSIT**, the following must be done:

- The tenant must be given a list of damages to the unit to be rented
- The tenant must also be given an opportunity to inspect the property to verify the accuracy of the list of damages
- Once agreed on the damages present, both must sign the list of damages

Note that;

At the end of the occupancy/lease:



- The landlord must provide a list of damages and estimated value of damages, if any caused by the tenant during their occupancy
- the tenant must be given the opportunity to inspect the premises within 5 business days after the occupancy is over to verify any list of damages and the estimated value
- Both landlord and tenant should sign the final list of damages and the estimated value

Note that;

If the landlord and tenant cannot agree on the damages, the tenant must list the items they are in disagreement with and sign a statement of disagreement

Note that;

The landlord would then return the amount of the security deposit paid by the tenant LESS the amount of agreed or disagreed on as the dollar value of the damages caused by the tenant.

Note that;

The tenant may then accept the amount refunded by the landlord or file suit in court to attempt to recover the disputed amount of the security deposit withheld by the landlord

Note that;

The landlord/broker/agent must return the security deposit within 1 month after the rental agreement is terminated or the tenant vacates the property, whichever comes LATER

Note that;

When ANY amount of security deposit is withheld for damages, the LANDLORD MUST SUBMIT A WRITTEN EXPLANATION OF THE EXACT NATURE OF THE DAMAGES for which all or part of the deposit was withheld

Note that;

When an explanation is provided to the tenant, the landlord must include with it a payment of the amount of the deposit less the amount deducted for damages.

Note that;

The landlord may mail the written explanation/report of damages and any refund to the last known address by first class mail.

Note that;

If the letter is returned undelivered and landlord is unable to locate the past tenant through reasonable efforts, the payment will become the property of the landlord 90 days after the payment was postmarked for mailing to the tenant.



Note that;

The landlord may also withhold part or all of a security deposits for reasons other than damages:

- Unpaid rent
- Unpaid late fees
- Unpaid utility bills
- Unpaid cleaning charges
- Physical damage to the property
- Any other damages caused by the tenant's breach of contract

Note that;

In order for the landlord to legally retain security deposit for these purposes, the landlord must notify the tenant of the intent to withhold the security deposit for these purposes and use the funds only for the purposes disclosed to the tenant listed.

Note that;

Is the landlord fails to adhere to the procedures just given for refunding the security deposit; the landlord will suffer the following consequences:

- Forfeits all rights to retain any part of security deposit paid
- Forfeits right to sue the tenant for damages
- Can become liable to the tenant for an amount up to three times the security deposit plus reasonable attorney's fees

## **LAWS**

Note that;

All agents/branches/licensees must not violate any State/County/local laws or any rule/laws of agency or Federal laws in which they are licensed or operates in.

## **COMMON LAW**

Note that;

Common law = a body of laws derived from court rulings

Note that;

COMMON LAW relating to agency = a body of laws derived from USAGE, GENERAL ACCEPTANCE AND CUSTOMS as established by ruling of the court



Note that;

Common law is contrasted to state law, which has been implemented or codified through specific legislation, state law.

Note that;

One of "COMMON LAW" features is that it is NOT specific to any particular State, nor is it specific to the real estate industry.

Note that;

Common law = Legal decisions related to agency relationships that are influenced by:

- Many laws
- Many States
- Encompass many areas of business

Note that;

Under COMMON LAW of agency, the broker has a FIDUCIARY responsibility to the client to act in the client's best interest.

Note that;

Common law use to provide the entire legal basis for regulations related to agency relationships in the real estate business.

Note that;

Many states have implemented their own laws that specifically relate to agency relationships in the real estate industry

## **GEORGIA LAW**

Note that;

In 1993, the Georgia legislature passed an amendment to Title 10 of the official code of Georgia Annotated

Note that;

The law relates directly to agency relationship in real estate transactions



Note that;

The law in GA is titled BROKERAGE RELATIONSHIP IN REAL ESTATE TRANSACTION ACT: BRRETA

Note that;

BRRETA became effective January 1, 1994 and has been amended since that date

Note that;

BRRETA purpose is to protect the best interest of the public

Note that;

Before BRRETA was passed, agency relationship in real estate were governed by common law

Note that;

BRRETA was written to prevent agency misunderstandings

Note that;

BRRETA describes relationship between:

- Broker
- Client
- Buyer
- Seller
- Tenants
- Landlord
- Customer

Note that;

BRRETA is not intended to affect the relationship between the broker and affiliated licensees

Note that;

BRRETA is not intended to limit the Georgia Real Estate Commission in regulating the broker/agent/licensee

Note that;

BRRETA deals specifically with brokerage relationships



## **BROKERAGE RELATIONSHIP**

Note that;

Brokerage relationship as defined by BRRETA = an agency or a non-agency relationship formed between a broker and a client or customer

Note that;

A client is a person represented by a broker who is acting in an agency capacity

Note that;

A customer is a person who is not represented by a broker in an agency capacity whom the broker/agent may perform ministerial acts

Note that;

In order to create an agency relationship between a broker and client, there must be a written agreement called:

- Brokerage engagement

Note that;

A brokerage engagement is a written contract between broker and client, either:

- Seller
- Buyer
- Landlord
- Tenant

Note that;

BRRETA specifies the responsibilities that a real estate broker/agent owes to the client

Note that;

Under BRRETA these responsibilities include an obligation to:

- Perform the terms of the brokerage engagement made with the client
- Promote the interest of the client
- Exercise ordinary skill and care in performing the duties under the engagement with the client
- Comply with ALL requirements of BRRETA and ALL other applicable laws and regulations, including but not limited to fair housing and civil rights laws



- Keep confidential all information received during the engagement that the client request be kept confidential, unless the client permits disclosure or such disclosure is required by law
- Comply with common law of “low pain”

Note that;

Keep confidential information **DOES NOT APPLY TO BROKER AND AFFILIATED LICENSEE THAT IS WORKING WITH CLIENT**

Note that;

BRRETA is to supplement and/or replace common law as the basis for governing agency relationships in real estate.

Note that;

BRRETA, specifically provides that under a brokerage agreement a broker/agent does not owe a fiduciary responsibility to a client

Note that;

Under BRRETA, a broker is the only person who can enter into listing agreement with a principal.

Note that;

In order to create an agency relationship between a broker and a client, there must be a written agreement called brokerage engagement.

Note that;

The broker is required to provide certain specific information to a potential client BEFORE ANY BROKERAGE ENGAGEMENT is signed:

- Advise the prospective client of the types of agency relationship available through the broker.
- Advise the prospective client of the types of agency relationships the broker may have that may conflict with the interest of the prospective client.
- Advise about broker’s compensation and whether the broker will share compensation with broker who represents other parties in the transaction in an agency capacity/sub-agency.
- Advise of the broker’s duty to keep information confidential.





Note that;

If the brokerage relationship between the broker and client or a customer changes at any time, all parties involved in the transaction must be informed of the change as soon as possible

Note that;

The buyer/customer IS NOT a client of broker, even though the broker/salesperson may spend a lot of time working with the customer/purchaser.

Note that;

All agents /branches must comply with all requirements of BRRETA and all other applicable laws of the state/county in which they operate in, including but not limited to fair housing and civil rights laws.

#### **FEDERAL LAWS**

Note that;

There are two primary federal laws relating to fair housing: the civil rights act of 1866 and 1968

#### **THE CIVIL RIGHTS ACT OF 1866**

Note that;

The civil rights act of 1866 is based on "Race only"

Note that;

The civil rights act of 1866 prohibits discrimination in the:

- Purchase
- Sale
- Lease
- Or other conveyance of real or personal property based on race

#### **THE CIVIL RIGHT ACT OF 1968**

Note that;

The civil Rights Act of 1968 which may be also referred to as:

- **FAIR HOUSING ACT OF 1968**



Note that;

The fair housing act of 1968 also makes it illegal to discriminate in the:

- Purchase
- Sale
- Lease
- Negotiate
- Sell
- rent
- Or otherwise deal with any person based on a protected class

Note that;

It is strictly prohibited by all licensees to refuse to sell, rent, and negotiate or otherwise deal with any person based on:

- Race
- Color
- Religion
- Sex
- National origin

Note that;

The Fair Housing Act of 1968 covers discrimination related to property only, NOT PERSONAL PROPERTY

Note that;

It is also a violation of Fair Housing Laws 1968:

- Less favorable treatment to minorities
- Changing the terms or conditions for buying or selling based on a protected case.
- Steering: the proactive/influencing potential buyer or minority to buy only in certain areas or neighborhoods on the basis of Race, Color, Religion, Sex or National origin.
- Blockbusting: “Panic Peddling”; it is an illegal practice of inducing panic selling for financial gain through the use of information about changes or expected changes in the “make-up” of the neighborhood. Claiming that the racial makeup of the neighborhood is about to change, and that this change would or is likely cause property value to fall, schools to deteriorate, or crime to increase



- Changing the terms or conditions for financing base on any protected/cover class
- Advertising that housing is available to only some buyers or otherwise excluding some buyers
- Claiming that housing is not available for inspection, rent or sale when it actually is available
- Discriminatory advertising
- Excluding access to real estate services, such as multiple listing services, or broker's associations

Note that;

The Fair Housing Act of 1968 applies to:

- ALL single family residences owned by businesses
- Any single family home owned by a private individual when a Broker/agent is used and/or discriminatory advertising is used
- Any single family home NOT owned by individuals
- Any single family home owned by an individual who owns more than 3 houses or sells more than one house in 24 months (other than his/her own home)
- Covers multiple family dwelling of 4 or fewer units "if" the owner does not live in one of the units
- Covers multiple family dwellings of 5 units or more

Note that;

While the types of housing covered leave out some categories of housing that are not covered in the fair housing act of 1968, they are still covered under the civil rights act of 1866 which makes it illegal to discriminate on the basis of RACE under any circumstances!



Note that;

All agents must not engage in any violations of law and must be avoided by all agents:

- -Blockbusting; can occur when salesperson attempt to get listing by conveying information about a minority group(s) using an intensive solicitation campaign.
- -Improper listing; refusing to accept a listing because the owner is a minority or accepting a listing on which the seller attempts to place restrictions on selling to one or more minority groups.
- -Steering; influencing buyer toward or away from a minority or changing neighborhood
- -Advertising; advertising only to (or) about minority groups
- -Less Favorable Treatment to Minorities:
  - ✓ Insults or ignores a minority buyer
  - ✓ Refers a minority buyer only to a licensee of the same minority group
  - ✓ Does not use best efforts to close a sale
  - ✓ Gives preference in submitting offers base on minority status
  - ✓ Treats buyers differently in terms of financial matters

#### **FAIR HOUSING AMENDMENTS ACT OF 1988 (9/13/1988)**

Note that;

Fair Housing amendments Act of 1988 was signed into law on 09/13/1988 and which amends Fair Housing Act of 1968 and will not override local laws about number of individuals who may occupy a dwelling, if reasonable.

Note that;

Fair housing amendment act of 1988 adds/covers:

- Handicapped individuals, both physically and mentally
- Families with children



## **HANDICAPPED INDIVIDUALS**

### **INCLUDES:**

- Physically or Mentally
- Alcoholics
- HIV/AIDS
- Any other disease that is not transmitted by casual contact

### **EXCLUDES:**

- Illegal drugs or other controlled substances
- Threat to the Health, Safety or property of others

### **CANNOT ASK/RESTRICTION:**

Whether the person is handicapped  
The extent of any handicap that a person may have  
Whether the person is an Alcoholic  
Whether the person has HIV/AIDS or other illness/disease not transmitted by casual contact  
Whether the person has a mental handicap  
Asking questions about rental history of CERTAIN INDIVIDUALS but not others

### **CAN ASK:**

Whether a prospect is a current illegal abuser of drugs  
Whether a prospect has been convicted of manufacturing or distributing illegal drugs or controlled substances

### **MODIFICATION TO PROPERTY**

Note that;  
The 1988 fair housing amendment act require that property owners must give handicapped individuals the OPPORTUNITY to make physical modification to a building at the individuals own expense under certain conditions:

- Grab bars in bathrooms
- A flashing light instead of door bell



- Etc.

### **IF INTERIOR**

Note that;

The landlord may require that the property be returned to its original condition at the tenant expense.

### **IF EXTERIOR**

Note that;

The tenant IS NOT obligated to return the property to its original condition.

Note that;

The landlord must always allow to tenant to make modification to the exterior at the tenants expense so that they can make full use of the property

Note that;

Any modification made must be in a safe and workmanlike manner

Note that;

The landlord may require escrow account to return property to original condition

Note that;

The owner may require the establishment of an escrow account to have tenant make monthly payments into the account to cover the cost of returning the property to its original condition

Note that;

The establishment of an escrow account by the landlord is for extensive or significant restoration cost and overly restrictive use of an escrow payment requirement can be interpreted by HUD as a violation of the fair housing law.

### **REASONABLE ACCOMMODATIONS**

Note that;

If an apartment complex has a rule against having pets, the owner must make a reasonable accommodation to allow a person with a visual impairment to have a seeing-eye dog in their apartment



Note that;

The landlord will have to allow a handicapped person who drives a specially-designed van to park in the parking lot even if there is a prohibition against parking vans in the complex

Note that;

The landlord will be required to provide a designated parking space for a handicapped person near the entrance of their unit even if there is a first come, first served rule for parking in the complex

#### **ACCESSIBILITY STANDARDS FOR NEW CONSTRUCTION**

##### **PROVISIONS**

Note that;

The following requirements must be met in design and construction:

- Public area and areas of common use must be readily accessible to and usable by handicapped persons
- All doors, interior and exterior, must be wide enough to allow passage of a wheelchair
- There must be an accessible route into and through the entire dwelling
- The walls of bathrooms must be reinforced so that grab bars can be added by a tenant
- Kitchens and bathrooms must allow someone in a wheelchair to maneuver in them
- All electrical switches, receptacles, thermostats, and other such devices must be positioned so that they are readily accessible to handicapped individuals

Note that;

The provisions apply to all newly constructed multi-family dwellings that are made available for occupancy after March 13, 1991



Note that;  
Buildings which are renovated and made available for occupancy after March 13, 1991  
ARE NOT covered

Note that;  
The provisions apply to building with an elevator which has 4 or more dwelling units in  
the entire building/complex

Note that;  
The provisions apply to building without elevator which has 4 or more dwelling units on  
the ground floor

Note that;  
When a building is covered because it has 4 or more units on the ground floor, the  
entire units must be on the ground floor, this means that units such as townhouse and  
cluster units with more than one floor per unit ARE NOT covered under these provisions

### **FAMILY WITH CHILDREN**

Note that;  
It is illegal to discriminate against any family with children under the age 18 when providing  
housing

Note that;  
Children means children "under" the age of 18

Note that;  
Family with children includes:

- Either two parents and one or more children
- Single parent with one or more children
- Pregnant women
- An individual in the process of obtaining legal custody of a minor child





Note that;

An owner of an apartment complex:

- Cannot advertise no pregnant women
- Cannot advertise itself for “Adults Only”
- Cannot rent solely to individuals without children
- Cannot refuse to rent to a family because of the presence of children
- Cannot impose stricter requirements on family with children, such as larger security deposit
- Cannot establish “dual purpose” developments, one for adults and one for family with children

Note that;

The landlord/owner can implement rules for use by children:

- Exercise room
- Swimming pools
- Saunas

Note that;

If a landlord/owner implements rules for the use of the above, they must be based on safety or health considerations

Note that;

If there are “reasonable” local laws which limit the number of individuals who may occupy a dwelling unit, the provisions of the fair housing amendments act WILL NOT override those local laws.

Note that;

The fair housing amendment act defines “reasonable” as laws which are legitimately based on safety or health considerations



### **EXEMPT FROM THE FAMILY WITH CHILDREN ACT**

Note that;

SENIOR CITIZENS are exempt from provisions about Families with Children

- Must be provided under a State or Federal program designed to accommodate the needs of the elderly
- Must be intended solely for persons over the age of 62 and all occupants must be over 62 or at least 80% of the units in the housing complex must be occupied by one person over the age of 55
- Must provide services & facilities specifically tailored to the needs of senior citizens
- Must be intended for & marketed to the elderly

### **ENFORCEMENT OF FAIR HOUSING LAWS**

Note that;

Any individual who feels that he/she has been discriminated against may take action to enforce the fair housing laws.

Note that;

HUD itself may also choose to file a complaint whenever it feels that a violation has occurred

Note that;

The innocent party can file a written complaint with HUD/Department of Housing and Urban Development in Washington, D.C.

Note that;

The innocent party can file an action in court:

- US district court
- State court
- Local court

Note that;

The innocent parties can FILE A COMPLAINT WITH THE US ATTORNEY GENERAL

Note that;

The **CIVIL RIGHTS ACT OF 1866 CAN ONLY BE ENFORCED BY FILING A SUIT IN FEDERAL COURT.**



Note that

All agents of All Real Estate Consultants, Inc. are to use extreme cautions with their action as actions can lead to a violation of the fair housing act.

Note that;

Violation of the fair housing act can be intentional or unintentional actions!

Note that;

The common violations of the fair housing act are:

**WHILE WORKING WITH SELLER:**

▪ **BLOCKBUSTING**

Note that;

A salesperson can be found guilty if in attempting to get a listing and by conveying information about a minority group in the neighborhood or coming into the neighborhood

Note that;

If a salesperson "states" to a seller that a "BLACK/HISPANIC" or any minority family had bought a house down the street from them in order to obtain a listing is guilty of blockbusting

Note that;

When a salesperson states or uses an intensive solicitation complain in a neighborhood whose makeup is changing in terms of one or more minority groups to obtain a listing is guilty of blockbusting

Note that;

When a salesperson "implies" to a seller there may or may not be a reason to be afraid because a black or minority family were moving in the neighborhood

Note that;

**A LICENSEE MAY NOT MAKE ANY DIRECT OR IMPLIED REPRESENTATION THAT A CHANGE IN THE MINORITY MAKEUP OF A NEIGHBORHOOD WILL RESULT IN CRIMINAL OR ANTI-SOCIAL BEHAVIOR IN THE AREA!**



Note that;

The **INTENT** of the salesperson **DOES NOT MATTER** to be guilty of blockbusting and therefore be in violation of the fair housing act

Note that;

The **EFFECT** of the salesperson actions can be cause of an agent being found guilty of blockbusting

- **IMPROPER LISTINGS**

Note that;

Refusing to accept a listing because the owner is a minority is a violation of the fair housing act

Note that;

Accepting a listing on which the seller attempts to place restrictions on selling to one or more minority groups is a violation of the fair housing act and all licensees must never accept a listing where the seller places restrictions based on discriminatory actions based on race or any protected class

Note that;

Refusing to list or accepting a listing with restriction based on race is a violation of the fair housing act and all agent of All Real Estate Consultants, Inc. must never refuse or accept a listing based on race!

Note that;

All licensees of All Real Estate Consultants, Inc. must make the same effort to sell property owned by a minority as they would make to sell property owned by a non-minority

Note that;

Refusing to show a property based on someone race or a minority group is a violation of the fair housing act and all licensees of All Real Estate Consultants, Inc. must never refuse to show property based on someone race or minority group status



**WHILE WORKING WITH BUYER:**

- Showing property to minorities only in minority areas
- **STEERING**

Note that;

Steering can be either:

- Directing a minority buyer TOWARD minority or changing neighborhood
- Directing a non-minority buyer AWAY from minority or changing neighborhood

- **ADVERTISING**

Note that;

Discrimination in advertising is prohibited by fair housing laws

Note that;

Discrimination in advertising can be intentional or not intentional

Note that;

Any advertising based on the racial makeup is discriminatory and therefore all agents/licenseses of All Real Estate Consultants, Inc. may not engage in any advertisement base on one racial group and or excluded another racial group

- **LESS FAVORABLE TREATMENT TO MINORITIES**

Note that;

All licensees of All Real Estate Consultants, Inc. may not:

- Insults or ignore a minority buyer
- Refer a minority buyer to only a licensee of the same minority
- Does not use their best efforts to close a sale
- Give preference in submitting a non-minority buyer's offer over a minority buyer's offer
- Change the conditions of a sale to discourage a minority buyer
- Treat minority buyer's differently in terms of financial matters



## PENALTIES

Note that;

Penalties for violations of Fair Housing Act of 1988 includes

Note that;

If HUD brings charges before an administrative law judge, it can impose civil penalties as follows:

- \$10,000.00 for the first violation
- \$25,000.00 for the second violation
- \$50,000.00 for any subsequent violation

Note that;

If a case proceeds to federal Court, the federal court cannot award civil damages, but it can award punitive damages.

Note that;

Before, the 1968 Fair Housing Act, Fair Housing Act of 1968 punitive damages was limited to \$1,000.00

After 1988, punitive damages:

- May be any amount
- Suspension of license
- Loss/revoked of license
- Civil Damages and penalties
- Criminal prosecution, fines and imprisonment

## LAWS

Note that;

All licensees of All Real Estate Consultants, Inc. must not violate any laws including but not limited to:



### **EQUAL CREDIT OPPORTUNITY ACT**

Note that;

Equal credit opportunity act prohibits discrimination in credit based on:

- Race
- Color
- Religion
- Sex
- National Origin
- Marital Status
- Public Assistance programs
- Ancestry
- Any other protected class

### **AMERICAN WITH DISABILITIES ACT-TITLE III**

Note that;

The American with disabilities act-title III prohibits discrimination based on:

- Disability by places of public
- Accommodation and commercial facilities

Note that;

According to the American with disabilities act, sales offices are considered “public accommodations” and require sale offices to be:

- Accessible to individuals with disabilities
- Large print material with visually impaired
- Telecommunications for the hearing impaired

### **ANTI-TRUST LAWS**

Note that;

Anti-trust laws exist to prevent people from engaging in activities that **RESTRICT OR ELIMINATE COMPETITION**



## **MONOPOLY**

Note that;

The most extreme business situation which restricts business competition is called monopoly

Note that;

A monopoly exists when there is only one company which provides certain goods or services to a particular market

Note that;

The most important characteristic of monopolies is that they reduce or eliminate competition

Note that;

The existence of a monopoly **REDUCES THE IMPACT OF THE MARKET FORCES OF SUPPLY AND DEMAND**

Note that;

When a monopoly exist, prices tend to increase

Note that;

In practice, monopolistic effects occur more often when one or more companies agree to work together to achieve the same restraint on competition that occurs with a true monopoly

Note that;

It is not necessary that the people or organizations enter into an expressed agreement in order for a monopoly to exist

Note that;

It is not necessary for the parties involved to intentionally create a monopoly

Note that;

A monopolistic situation can occur as result of intentional or unintentional acts

Note that;

Whenever the **ACTIONS** result in a restriction of competition, a monopoly can occur





Note that;

Refusing to share information or limit access to listings from other brokers to reduce competition among other brokers is a monopoly under anti-trust laws and therefore refusal to allow some brokerage firms in an area to join a multiple listing service is a violation of antitrust laws

Note that;

Monopolistic activities are regulated by both federal law and state law

Note that;

On the federal level, monopolistic activities are primarily regulated by the Sherman antitrust act

Note that;

The Sherman anti-trust act exist solely for the purpose of regulating antitrust activities

Note that;

In Georgia, there are no laws which exist to regulate antitrust activities directly, so antitrust activities are regulated through the use of other laws

### **FEDERAL ANTITRUST LAWS**

Note that;

Federal antitrust laws apply to ANY business activity which affects TRADE OR COMMERCE

Note that

Federal antitrust laws apply to more than one state

Note that;

The Supreme Court has ruled that federal antitrust laws apply to real estate, since it is an activity that affects trade and commerce in many states

Note that;

Real estate activity is considered a **TRADE** rather than a profession because it is a commercial activity carried on for a profit

Note that;

Real estate activity is considered to involve INTERSTATE COMMERCE rather than INTRASTATE COMMERCE (within a state)



Note that;

The reason why the real estate is considered as interstate commerce is:

As real estate is bought and sold, it results in the movement of people from state to state

- Insurance involved in the sale and ownership of real estate is provided by companies that operate in more than one state and money for insurance is transferred from state to state
- Real estate financing involves companies that operate in more than one state, and money is transferred from state to state
- Large real estate firms that have offices in many states compete with local small firms and individual brokers
- Information such as referrals is distributed across state lines
- Large national franchises join together local independently-owned offices and provide such services as national advertising and interstate relocation services

Note that;

The most important federal antitrust law is known as the Sherman Antitrust Act

Note that;

The Sherman Anti-trust Act:

Note that;

The Sherman Anti-trust Act makes it illegal to enter into any contract or conspiracy which results in a restraint of trade among the states or with foreign nations

Note that;

The Sherman Anti-trust act makes it illegal to engage in any activities that creates a reduction of competition

Note that;

The Sherman Anti-trust act makes it illegal for any combination of individuals or companies to engage in any activity that results in the restraint of trade or commerce or reduction of competition



Note that;

The Sherman Anti-trust act prohibited:

- activities that affect competition in business practice
- Conspiring to fix commission rates
- conspiring to fix price of real property
- limiting access to services; multiple listing services
- boycotting of certain firms by other firms

**PENALTIES FOR VIOLATING SHERMAN ANTI-TRUST ACT:**

-fines up to \$100,000.00 and/or imprisonment for up to 3 years for individuals

-fines up to \$1,000,000.00 for corporations

-damages equal to three (3) times the amount of actual damages caused by the illegal activity plus attorney fees & court cost

**GEORGIA USES FEDERAL SHERMAN ANTI-TRUST LAWS**

Note that;

Most states have adopted their own laws dealing with antitrust activities which are based on the Sherman Antitrust Act

Note that;

Georgia HAS NOT enacted such laws



Note that;

Georgia uses Federal Sherman Anti-trust laws **IN ADDITION** to federal/state and local laws:

- **GENERAL BUSINESS LAWS**

Note that;

There are two primary business statutes which allow the prosecution of antitrust activities:

- **FAIR BUSINESS PRACTICE ACT (FBPA)**

Note that;

The FBPA is designed to prohibit business practices that would adversely affect the citizens of Georgia

Note that;

FBPA restricts any misleading activity that is designed to encourage consumers to buy

Note that;

The FBPA is administered under the authority of the Governor, through the office of consumer affairs

Note that;

The FBPA restricts any activity that is designed to encourage consumers to buy based on fraud

Note that;

The FBPA is directed primarily toward the regulation of advertising

Note that;

In real estate practice, any action by a licensee which involves **INTENTIONAL USE OF FRAUDULENT OR MISLEADING INFORMATION/ADVERTISING** in an effort **TO ENCOURAGE THE SALE OF REAL PROPERTY** could be considered in violation of the FBPA if it:

- Affects at least one consumer transaction
- Will likely have an impact on the consumer public



Note that;

A violation of the FBPA must:

- Affect more than one member of the public
  - Involve the giving of fraudulent or misleading information
  - The information must be provided in order to encourage a consumer transaction
- 
- **UNIFORM DECEPTION TRADE PRACTICE ACT (UDTPA)**

Note that;

The UDTPA is similar to FBPA however it can be used to prosecute fraudulent misrepresentation of ANY aspect of the service they provide to consumers

Note that;

The major difference is that, the UDTPA, no actual consumer transaction has to be completed

Note that;

UDTPA is much broader in scope than the FBPA

Note that;

Conspiring to fix commission rates will be considered a violation under the UDTPA

Note that;

Conspiring to limit the availability of information or services will be considered a violation under the UDTPA

- **LAWS DEALING WITH FRAUD AND MISREPRESENTATION**

Note that;

In Georgia, fraud means any artifice intended to deceive another

Note that;

An artifice can be either an act or a failure to act on the part of someone who is in a position of trust or confidence, such as a real estate licensee



Note that;

The **REAL ESTATE COMMISSION** does not have the authority to enforce the FBPA or the UDTPA; it **CAN TAKE ACTION ONLY UNDER THE LICENSE LAW**

▪ **THE LICENSE LAW WHICH EMPOWERS THE REAL ESTATE COMMISSION**

Note that;

The Georgia Real Estate Commission has the authority to take action against a licensee who:

- Violates the license law
- Engages in any unfair practice specified in the commission rules

**LICENSE LAW: O.C.G.A, SECTION 43-40-25 (2)**

- Misleading advertising
- Misrepresentation of the “terms”, “values”, policies or services of the business conducted
- Unfair Trade Practices:
  - Misrepresentation of facts
  - Dealing dishonestly with consumers

Note that;

Any time a firm attempts to publicize commission rates, combinations with other firms, or services which can lead to a restriction of trade; they may be prosecuted under the license law.



**PENALTIES FOR VIOLATION FAIR BUSINESS PRACTICE ACT (FBPA)**

**STATE**

- Fines up to \$25,000.00 per violation
- being prohibited from engaging in similar activities

**CITIZENS**

- Collect damages up to three (3) times the amount of loss
- Collect attorney fees & court costs
- Nullify the contract involved

**PENALTIES FOR VIOLATION FOR UNIFORM DECEPTIVE TRADE PRACTICE ACT (UDTPA):**

**STATE**

- Fines up to \$25,000.00 per violation
- being prohibited from engaging in similar activities

**CITIZENS**

- Collect damages up to three (3) times the amount of loss
- Collect attorney fees & court costs
- Nullify the contract involved



## **CONSUMER CREDIT PROTECTION ACT**

Note that;

The federal consumer credit protection act was established in 1969

Note that;

Another name for the consumer credit protection act is:

- Truth in lending act

## **TRUTH IN LENDING ACT**

Note that;

The truth in lending act requires/allows:

- Require full disclosure of the cost of credit over the life of the loan
- Require disclosure of the annual percentage rate (APR)

Note that;

The APR combines the interest rate with other cost of the loan into a single figure that reflects the actual annual cost of the loan as a percentage

Note that;

Another way to look at APR = the annual cost of a loan

- Requires a disclosure be given before a contract is made
- Require disclosure of specific items, depending on the type of loan
- Allow the borrower to rescind credit transaction under some circumstances

Note that;

The borrower is given until midnight of the third day following closing or delivery of the credit statement, to rescind a credit transaction

Note that;

The right to rescind protects the homeowner from losing their home to sellers of:

- Home improvement companies
- Appliances companies
- Furniture companies
- Second mortgages





- Refinance of primary residence
- Etc.

Note that;

The right to rescind does NOT apply to loans made to finance a:

- Purchase
- Construction of a principal residence
- Investment property

#### **ADVERTISING FOR CREDIT**

Note that;

The truth in lending act also regulates:

- Any advertising for credit

Note that;

The regulations apply to anyone who advertises:

Consumer credit

Note that;

The regulations apply to:

- Any builder
- Real estate brokers/agents
- Creditors

Note that;

Any advertisement may state the cash price and the APR without having to disclose any other credit information, if it is identified as such.

#### **TRIGGERING TERMS**

Note that;

Additional disclosures are required if any advertisement mention of anything specific credit term other than cash price and APR:

- The Down payment
- The amount of any payment



- The number of payments
- The period of repayment
- The amount of the finance charge
- A statement that there is no charge for credit
- Specific credit term

Note that;

If any advertisement which reflects any item above, the advertisement must also include disclosure of:

- The down payment
- The terms of repayment
- The APR

Note that;

All licensees should avoid including triggering terms in any advertisement

### **FEDERAL TRADE COMMISSION**

Note that;

The truth in lending act is administered by the:

Federal trade commission (FTC)

Regulates under:

- Regulation Z

### **REGULATION Z**

Note that;

Individuals and all firms must comply with regulation Z

Note that;

Individuals and firms may be excluded from complying under the conditions listed:

- Business or commercial loans
- Loans to government agencies
- Loans in amount over \$25,000.00 when secured by personal property



- Loans made without finance charges (including interest) and paid with four or fewer installment payments
- Residential properties containing more than 4 units

### **PENALTIES FOR VIOLATING REGULATION Z**

Note that;

Agent/licenseses that violate regulation z may be subject to:

Criminal penalties for willfully violating the act:

- Up to 1 year in jail
- A fine of up to \$5,000

Civil penalties include:

- Punitive for damages up to twice the finance charges involved, up to a maximum of \$1,000.
- Actual damages
- Attorney fees
- Court costs

### **REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)**

Note that;

The real estate settlement procedures act (RESPA) is a federal law

Note that;

RESPA was established by congress in 1975

Note that;

RESPA covers 1 to 4 family properties only

Note that;

RESPA covers loans made on residential properties only



Note that;

Property like apartment complexes are not covered by RESPA

Note that;

The types of properties covered by RESPA include:

- 1 to 4 family residential
- Condominiums
- Cooperatives

Note that;

Loan covered by RESPA include:

- Any loan that has any involvement by the federal government
- FHA
- VA
- Government backed loans
- Loans from lenders with federally insured deposits
- Loans from federally insured savings and loan associations
- Any loan by a lender who makes or invests more than \$1 million in residential real estate loans annually
- Loans that are to be sold to:
  - ✓ Fannie Mae
  - ✓ Freddie Mac
  - ✓ Ginnie Mae

Note that;

The purpose of RESPA is to insure the buyers of real property are given sufficient info on the nature and costs of the settlement process, so they can shop for settlement services and make an informed decisions



Note that;

The provisions of RESPA fall into two categories:

- Benefits
- Restrictions

### **BENEFITS**

### **HUD INFORMATION BOOKLET**

Note that;

The lender must give the borrower a HUD information booklet, which explains RESPA and how it can help him/her

### **GOOD FAITH ESTIMATE**

Note that;

The lender must give the borrower a good faith estimate of all closing costs

Note that;

The booklet and good faith estimate must be given or mailed within 3 business days at the time the borrower makes application for the loan

### **HUD-1 UNIFORM SETTLEMENT STATEMENT**

Note that;

All lenders covered under RESPA must use HUD-1 uniform settlement statement

Note that;

The HUD-1 is not required if:

- The borrower is paying no costs
- The costs are fixed at the time of application

Note that;

The borrower has the right to inspect the completed/final settlement statement one day before closing



Note that;

There is no requirement that settlement statement be completed by then however the borrower is entitled to inspect settlement statement one day before closing and may inspect any figures that are available

### **RESTRICTIONS**

Note that;

RESPA prohibits:

- Kickbacks
- Referral fees; no one may receive a fee for referrals or when no service is performed
- Unreasonable escrow accounts

Note that;

RESPA limits the amount of any advance property tax and insurance payments that a lender can collect and place in escrow

Note that;

RESPA deals with closing of real estate transactions

Note that;

Another name for closing is:

- Settlement
- Escrow, on the west coast mainly

### **STATE LAWS AND LOCAL LAWS**

Note that;

All agents/branch(s) will follow all State/county laws in which an agent/branch(s) operates in.

State and Local Laws

Prohibited from discrimination based on:

- Additional classes
- Categories of individuals



## STIGMATIZED PROPERTY ACT

Note that;

A property can be referred to as a stigmatized property or psychologically impacted property

Note that;

In Georgia, the stigmatized property act governs the disclosure of information on stigmatized properties

Note that;

There are two categories of stigmatized properties:

- Those for which disclosure of information is regulated by law

Note that;

Under the act, there are stigmatized properties for which disclosure is regulated by law:

- Those which are or were occupied by a person with the HIV virus or with AIDS, or any other such illness that is NOT transmitted by casual contact
  - Those which were the site of a suicide, homicide, or other felony
  - Disclosure of information about a protected category
- Those for which there are no laws relating to disclosure of information

Note that;

A stigma associated with a property which is fact, must be material fact and therefore must be disclosed

Note that;

Material fact is one which would have a significant impact on the buyer's decision whether to buy the property



Note that;

A material fact is required to be voluntarily disclosed about a property by all licensee except any protected class of individuals

Note that;

A stigma associated with a property which is rumor rather than fact; there is no need for disclosure

Note that;

Broker/agent is not required to voluntarily disclose any information about stigma associated with the property

Note that;

If a prospect "Ask" about a stigma, you should answer the question truthfully, except questions about handicapped persons.

Note that;

If asked, a seller/landlord must Disclosure of information about:

- A murder or suicide occurred in the property
- The property is rumored to be haunted
- Mass murderer lived in the property
- Alleged UFO abduction occurred on the property
- Suicide
- Homicide
- other Felony
- A previous occupant had AIDS (Fair Housing amendments Act of 1988 prohibits discriminate against handicapped person and includes HIV/AIDs).

Note that;

You are not to disclosure information about handicapped persons and **AIDS/HIV IS CLASSIFIED UNDER A HANDICAPPED PERSON.**

Note that;

You restricted by the Fair Housing Amendments Act of 1988 about handicapped person





## **THE RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992 OR TITLE X**

Note that;

Seller/lessors must disclose the presence of known lead-based paint hazard and provide available reports to buyer or renters

Note that;

Seller must give buyers a 10-day period to conduct a lead-based paint and lead-based hazard inspection, at buyer expense.

Note that;

Sales contract/leases must include certain disclosures and lead based paint is one disclosure

Note that;

Seller, lessors/landlord and real estate agents/licenseses share the responsibility for ensuring compliance with disclosure

Note that;

The Act does not "require" the testing or removal of lead-based paint

## **OPERATION OF LAW**

### **THE UNIFORM VENDOR AND PURCHASER RISK**

Note that;

The uniform vendor and purchaser risk act covers:

- Destruction of the property will terminate contract
- Bankruptcy of either party will terminate contract, while the contract is still executory, not closed.
- Death of one of the parties

Note that;

If one of the parties dies, the contract is terminated ONLY if it requires an act that ONLY the deceased person could only perform and in the absence of a provision to the contrary, real estate sales contracts are not terminated by the death of one of the parties. It is binding on the estate of the deceased person: buyer or seller.



### **STATUTE OF FRAUDS**

Note that;

Contracts must be in writing to be valid & enforceable and in GA there are only two types of valid contract that are enforceable if they are oral:

- Open Listings
- Leases for a period of one year or less

### **STATUTE OF LIMITATION/THE LACHES PRINCIPAL**

Note that;

The elements in the contract must be performed on or before the date/time specified in the contract

### **THE CODE OF ETHICS OF THE NATIONAL ASSOCIATION OF REALTOR (NAR)**

Note that;

The code of ethics of the national association of realtor (NAR) prohibits discrimination:

- Race
- Sex
- Handicap
- Familial Status
- National Origin

Note that;

An individual who believes they have been subject to discrimination by a realtor may file a complaint with the local board of realtors

### **VOLUNTARY AFFIRMATIVE MARKETING AGREEMENT (VAMA) BETWEEN NAR AND HUD**

Note that;

All licensees should:

- Inform the community about fair housing opportunities
- Cooperate with other community groups to eliminate barriers to fair housing
- Set up procedures to make sure equal services are provided to all groups
- Provide materials explaining their commitment to Fair Housing



**LOCAL PROPERTY TAXES - SUBJECT TO CURRENT LAWS, CLIENTS ARE TO CHECK TO TAX ADVISER**

Note that;

Any property tax paid is deductible in the year they are paid.

Note that;

The deduction for residential property includes:

- Interest on mortgages

Note that;

Interest on mortgage paid on all mortgages on first and second homes is deductible from income.

Note that;

Mortgage interest actually paid during the year is deductible.

Note that;

Only interest due and payable, year-end plus one month can be claimed as a current deduction.

**UNINSURED LOSSES - SUBJECT TO CURRENT LAWS, CLIENTS ARE TO CHECK TO TAX ADVISER**

Note that;

Uninsured casualty losses are deductible that occur by:

- Fire
- Theft
- Weather
- Earthquakes
- Floods
- Natural causes
- Not covered by insurance in the year they occurred are deductible

Note that;

Uninsured casualty losses is only deductible if it exceeds a \$100.00 IRS deductible plus 10% of the taxpayer's adjusted gross income



Example:

100,000.00 adjusted gross income  
 X  
 10%  
 =  
 10,000.00  
 Plus  
 100.00  
 =  
 10,100.00

Note that;

The deduction for business/investment property:

- Interest on mortgages
- Local property taxes
- Uninsured losses
- Expenses for operation

Note that;

Repairs to the property include:

- Maintenance cost
- Repair of appliances
- Insurance
- Management fees
- Utilities

## PROFESSIONAL PROPERTY MANAGEMENT (PPM OR PM)

### Professional real estate PM basics

Note that;

Real estate PM is an “**ORGANIZED**” profession/specialty in real estate; dealing primarily with the management of buildings, both commercial and residential.



Note that;

The property managers (**PM's**) works to balance the needs and desires of both a property owner with those of a tenant at the same time, in a professional way.

Note that;

The **BASIC FUNCTION** of the PM is to:

- **rent/lease the unit/space/property**
- **collect rents**
- **make/supervise minor repairs**
- **market** the unit/space/property.

Note that;

The **BASIC GOAL** of the professional property manager is **RETURN THE PROPERTY TO THE OWNER IN THE LONG TERM, THE HIGHEST POSSIBLE NET RETURN AND CREATE A NET SAVINGS FOR THE OWNER, RATHER THAN A NET EXPENSE;** by:

- Maximization of the income from the real property/space.
- Protect and maintain the condition of the real property/space to preserve the owner's investment
- Rent/Lease space/property at a rate which will produce a return to cover: Operation expenses, both fixed and variable expenses.
- Working to provide a return on the owner's equity.

Note that;

The goal for the tenant is to:

- Rent/lease space at a rental rate that is affordable or that will allow them to utilize the space/property at a profit.



## POTENTIAL DUTIES OF PM

### RENTAL SCHEDULE

Note that;

One of the first jobs for the PM may be to establish and/or review the current **“RENTAL SCHEDULE”**; to verify that it is **PRODUCING THE HIGHEST YIELD TO THE OWNER.**

Note that;

Establishing a “rental schedule” and working to produce the highest yield to the owner is first done by doing a “thorough”: **“NEIGHBORHOOD”** and **“PROPERTY”** analysis.

Note that;

By **INVESTIGATING THE COMPETITION**, the PM can objectively assess the subject property’s competitiveness with other properties in/on the market.

### NEIGHBORHOOD ANALYSIS

Note that;

A neighborhood analysis is somewhat a different process for residential and commercial properties.

#### ○ **Residential neighborhood**

Note that;

In a **residential neighborhood analysis**, the agent/PM should be most concerned with **“TRENDS”** in population composition, such as:

- Population growth
- Family size
- Number of occupants per unit
- Age groups

Note that;

**“ECONOMIC LEVEL”** is another factor that the PM should have in the neighborhood analysis, such as:



- Income range
- Financial capacity
- Stability of income
- Character of buildings/properties in the neighborhood
- Amenities in the neighborhood; availability of: transportation  
Recreation  
Shopping  
Schools  
Etc.
- Degree/scale and growth of employment opportunities

#### **SUBJECT PROPERTY ANALYSIS**

Note that;

The PM should also perform a “**PROPERTY ANALYSIS**” to determine its position in relation to comparable properties in the neighborhood, in setting rental rates; such as:

- Amenities
- Condition of property
- Appearance of property/building
- Etc.

#### **MARKET SURVEY**

Note that;

The PM should select 3-6 nearby properties/comparables properties and that is “**MOST SIMILAR**” to the subject property to prepare a “**MARKET SURVEY**”; the PM will be comparing similar properties on the market to subject property.

Note that;

“**RESIDENTIAL PROPERTY RENTAL**” IS NORMALLY “**COMPARED BY NUMBERS OF BEDROOMS**”.



Note that;

The PM should **USE A GRID** and **look at/consider other facts/factors** that affect the market desirability and rent rates/price, such as:

- Location
- Age of property
- Condition and appearance
- Level of maintenance
- Amenities
- Tenant characteristics
- Tenant turnover rates
- Square feet of rental units
- Etc.

## **GRID**

Note that;

A **GRID** is an effective method of **COMPARING RENTS/PRICE** (looking for: **"RENTAL RATE" PER SQFT** for each competing **"RESIDENTIAL"** property and **"PRICE" PER SQFT** for each competing **"COMMERCIAL"** property).

Note that;

by **LISTING THE "RENTAL RATE" OR "PRICE" FOR EACH TYPE OF UNIT** and then **DIVIDE IT BY THE NUMBER OF SQUARE FEET IN THE UNIT/SPACE**, this will get the **"RENTAL RATE" PER SQUARE FEET-RESIDENTIAL** OR **"PRICE" PER SQUARE FEET-COMMERCIAL**.

Note that;

**"OFFICE"** and/or **"COMMERCIAL PROPERTY"** rentals analysis considers many of the same factors, but are compared and established on the basis on **"ANNUAL PRICE" PER SQUARE FOOT** of rentable space. (ex: \$50 per/sqft.)

Note that;

Consideration should/must be made **IF WHAT IS INCLUDED IN THE RENT/PRICE VARIES FROM PROPERTY TO PROPERTY**.





Note that;

Once you identify/discover the rental rate or price per sqft for subject property, you can compare it with the rental rate or price per sqft for comparables and which will allow you to compete with the actual cost/expense per sqft for similar properties on the market.

**PREPARING GRID**

**RESIDENTIAL PROPERTY ANALYSIS GRID**

PROPERTY	AGE IN YEARS	UNIT SIZE/# OFBEDROOMS	UNIT AREA IN SQFT	MONTHLY RENT	RENT FEE/PER SQFT	LOCATION RATING	FAC & SERV	AMENITIES	ADJUSTED MONTHLY RENT	
<b>SUBJECT</b>	3	1-BR	650 sqft	660	1.02	100%	90	ALL INCL	750	
		2-BR	825 sqft	900	1.08		60		960	
COMP 1	5	STUDIO	450 sqft	600	1.32	80%	-60	ALL	540	
		1-BR	700 sqft	750	1.08		-30		720	
		2-BR	900 sqft	960	1.05		-90		870	
COMP 2	2	1-BR	600 sqft	870	1.44	100%	-45	ALL	825	
		2-BR	720 sqft	960	1.32		-45		915	
		3-BR	950 sqft	1140			-130		VIEW	1010
COMP 3	1	1-BR	710 sqft	900	1.26	90%	-75	ALL	825	
		2-BR	900 sqft	1050	1.17		-50		1000	
COMP 4	6	2-BR	860 sqft	1020	1.20	75%	-30	ALL	990	
COMP 5	8	STUDIO	425 sqft	555	1.32	100%	ALL	ALL	555	
		1-BR	650 sqft	630	.96		INCL		630	
		2-BR	850 sqft	855	.90		-\$30		FIREPLACE	855
		3-BR	980 sqft	1080	1.11					1050

Note that;

Upon completion of the grid and neighborhood, property analysis, the PM should be able to set a rent schedule to provide the maximum income obtainable.

**MARKET THE SPACE/PROPERTY**

**-MARKET**



Note that;

The PM must market the space/property, which requires knowledge of the **KIND OF TENANTS** to which the property would appeal.

#### **-ADVERTISE**

Note that;

The PM should have knowledge of how to best advertise the units/property and/or services provided by the property, from the earlier property and neighborhood analysis.

#### **CONCESSIONS**

Note that;

When times are slow, the PM may have to offer concessions (a concession is a special service and/or discount offered to the tenant).

Note that;

**Concessions don't change the scheduled rent!**

Note that;

A concession will generate a difference between the “**nominal rent**” (the schedule rent) and the “**actual rent**” (the rent the tenant is paying); (ex: scheduled rent = \$1000 x 12 = \$12,000/yr. expense for tenant; while with a **concession, one month free**: \$1000 x 11 = \$11,000/yr. and in effect, the tenant is paying rent: \$11,000/12 = \$917/month actual rent; not \$1000/month).

Note that;

The difference is a savings in “cost” of \$83/month to the tenant and reduced revenue/income for the owner, while the concession is in effect.

Note that;

The PM is letting the tenant rent the property at a “**REDUCED COST**”, **WITHOUT REDUCING THE SCHEDULED RENT.**

Note that;

It is a good idea to include a term/condition for the concession. Some examples of concessions would be:

- One-month free rent
- ½ moving expenses paid



- ½ rent on first month's renewals

Note that;

Concessions can/may have two positives for the PM:

- If market conditions change, the PM can “increase income” by cancelling the concessions rather than having to raise rents to increase income
- The tenant may become loyal and renew at the end of the initial lease because of a concession

#### **REDUCED RENT**

Note that;

Concessions are considered better than offering the tenant a **reduced rent** up front and then at the end of the lease, increase the rent upwards to the scheduled rent which may cause a negative reaction from the tenant at time of renewal; because the tenant has been used to paying a reduced rent.

#### **SCREENING AND SELECTION OF TENANTS**

##### **SCREEN**

Note that;

For **RESIDENTIAL PROPERTY**, the PM **must screen each future tenant the SAME WAY**.

Note that;

Appropriate screening starts with:

- Obtaining authorization to pull credit
- Obtaining and checking/reviewing credit report
- Checking financials (employment/compacity)
- Contacting former landlords



Note that;

The PM should consider **CREDIT AND ABILITY TO PAY** in the screening process.

### **SELECTION**

Note that;

The PM "**CAN NOT**"/**MUST NOT** consider in the selection/screening process factors such as:

- Race
- Religion
- Familial status
- Anything that would violate anti-discrimination laws

Note that;

For **COMMERCIAL PROPERTY**, the PM will consider the **SIZE OF THE SPACE** versus the tenant's requirements, and the **COMPATIBILITY** of the tenant's business with that of the **OTHER TENANTS** in the selection process.

### **NEGOTIATION AND EXECUTION OF WRITTEN RENT AGREEMENTS/LEASE CONTRACTS**

Note that;

After the PM goes through the screening and selection process with the prospective tenants, the next step is to negotiate and execute a written rent agreement/lease contract.

### **WRITTEN AGREEMENTS/CONTRACTS**

Note that;

The PM is to make sure that all units/properties have a current executed **WRITTEN** rental agreement and/or lease contract on file.

Note that;

**Oral/verbal agreements are not enforceable in court.**



## REQUIREMENTS

Note that;

The written executed rental agreement/lease contract will set the requirements of the landlord and the tenant, which includes but not limited to:

- Time and place of payment
- Provision and penalties for late payments
- Termination of rental agreement/lease contract in the event of non-payment of rent
- All things agreed upon at the time of the executed rental written agreement/lease contract.
- Etc.

## TERMS

Note that;

**Residential rental agreements** are typically for month-to-month or a fixed term, such as: 1-year or 6 months.

Note that;

**Commercial lease contracts** are generally longer in term, especially if the owner is to make major alterations to the space to accommodate the tenant, such as: 5-years or 10-years, etc.

## PREPRINTED RENTAL AGREEMENTS

Note that;

The pre-printed rental agreements may include causes specifying the rights and/or duties of the landlord and tenant.

Note that;

In addition to the pre-printed causes, each rental agreements/lease contract should include such items as:

- The license name and business address of the PM.
- The name and address of the tenant.
- The name of licensee who signs on behalf of the broker.



- A description/identification by address, unit number, etc.
- The amount and conditions for payment of rent.
- The rental or lease terms.
- The amount (s) of all deposits made by the tenant and purpose of all deposits.
- The amount (s) of any non-refundable fees paid by the tenant and the purpose of the fees

## COLLECTION OF RENTS

### -COLLECTION POLICY

Note that;

The PM should publish a rental collection policy so that the tenants will pay rent regularly and promptly.

Note that;

Uncollected rent (s) is worse than vacancy because vacancies don't have wear and tear.

Note that;

**Late notices should go out immediately**, one day after due and if rent is not collected/paid within 48 hours then the PM should/will start legal proceeding to collect the rent and/or to have the tenant evicted ASAP.

Note that;

The PM should **never collect an amount less than the full rent**, without concession/incentives/promotions.



#### **-TENANT AND PUBLIC RELATIONS**

Note that;

The PM should create a tenant and public relation policy so that the likelihood of collecting rent on time is high and the likelihood for lease renewal is high as well.

#### **-MAINTENANCE AND REPAIRS**

Note that;

Effective rent collection and high occupancy rates start and ends with development of good **maintenance, repairs schedules** and **responding promptly** to tenant concerns.

Note that;

The PM should know and **stay on top of current and deferred maintenance** needs.

Note that;

The PM should have a staff or have specialists readily available to **respond “quickly”** to tenant’s maintenance needs and complaints.

Note that;

The PM is also trying to maintain the property so to provide the owner (s) with the greatest net return; **maintenance and repairs should be kept up to date and current.**

Note that;

The PM is looking to make the tenant (s) feel like they are getting the services they are paying for and **by responding promptly** to tenant’s maintenance, repairs and/or complaints needs.

#### **-CONDITON OF SUBJECT PROPERTY**

Note that;

The PM should/must know the condition of the subject property always; keeping the owner aware of both current and deferred maintenance needs.

Note that;

For larger properties/buildings, the PM may have a resident manager or building superintendent, in these types of situations, the PM will conduct and personally review the maintenance program with the building superintendent or resident manager.



## **PURCHASING**

Note that;

The PM should supervise/be aware of **all purchasing operations essential and required for the operation and maintenance of the property/building.**

## **REPAIR COST**

Note that;

The PM should **be aware of changing conditions with respect to repair cost**; testing the market to see if the same items purchased a month, week, etc. before can/may be purchased for less, or if better quality items can be obtained for the same cost.

### **-Controlling cost**

Note that;

The PM will be depending on other people to maintain the property, therefore the PM/owner will decide if they/PM/owner is going to use **onsite employees or to contract out** the work for maintenance services, **to control cost.**

### **-Onsite employees**

Note that;

If the PM/owner hires “**onsite employee (s)**”, the **PM will/may have to select, train and supervise them** for the day to day maintenance needs.

Note that;

If the PM/owner hires **onsite employees**, they must provide employees with tax withholding and social security benefits withholding, etc.

Note that;

The PM should know what each **onsite employee** should do, how the employee should do it and when the employee will do it.

Note that;

The PM should make time to “**make sure**” that the **maintenance and repair schedules are strictly adhered to by onsite employees.**





#### **-Outside contracted workers**

Note that;

If the PM/owner decides to “**contract out**” the maintenance services, they should **obtain bids** from the outside companies.

Note that;

The use of **outside contracted workers** will all but stop the day to day supervision of routine maintenance; however, will require the PM to **inspect the work done by the outside company**.

#### **-Comparing cost**

Note that;

The PM/owner will/should be **comparing cost** with onsite employees with that of outside companies for maintenance services.

#### **-record keeping**

Note that;

The PM/owner should consider record keeping and additional expense in their decision to hire onsite employees or outside contractors for the maintenance needs of the property.

### **AUDITING AND PAYING BILLS**

#### **-Audit of records**

Note that;

The PM may be required to audit records for: utilities (water, trash, electric/gas), insurance premiums, property taxes, etc.; recommending tax appeals and changes in insurance when appropriate.

#### **-Paying expenses**

Note that;

The PM may be required to pay regular expenses related to the maintenance of the property, such as:

- Utilities
- Insurance premium



- Property taxes
- Etc.

## INSURANCE COVERAGE

Note that;

The PM should try to locate insurance at a **reasonable cost and appropriate coverage** to cover the owner against losses.

Note that;

One of the responsibilities of the PM is to **assure that the owner is “adequately insured** against:

- Property losses
- Liability claims from injury
- Damage to property of others on the property
- Criminal acts
- Etc.

Note that;

The PM should keep records of ALL insurance policies and will arrange for renewals in a timely manner; insuring no lapse of insurance coverage.

## ACCOUNTING SYSTEM

Note that;

The PM should **maintain a detailed accounting system** and **report periodically/monthly to the owner**, items such as:

- Income
- Expenditures
- Losses
- Liability claims
- Damage to property
- Criminal acts
- Etc.



Note that;

By maintaining detailed accounts and regularly reporting to owner, such records should be helpful in creating an operation budget and creating long-term goals with the owner.

## DEVELOPING MANAGEMENT PLAN

### -Management plan

Note that;

Sometimes, **before** a developer acquires a site for development or decides on improvements/alterations/modernization/rehabilitation to a property, they will call on a PM to help create a management plan.

### -Feasibility

Note that;

The PM may assist the developer with determining the “**feasibility**” of the proposed development for:

- Demand
- Rents in area
- Project design
- Income producing quality of the property/project
- Etc.

### -Market analysis

Note that;

A management plan **begins** with an analysis of the market: **MARKET ANALYSIS**

Note that;

A management plan **ends** with a: forecast of “anticipated” income and expenses in the form of an operation budget.

### -Projections



Note that;

A management plan will “project” in the future: **income and expenses** for items such as:

- **Capital improvements**-club house, pool, tennis courts, etc.
- **Marketing/concession**-programs
- **Alterations**-changes in use of property
- **Modernization**-bring property’s function/design up to date
- **Rehabilitation**-restore property to “good” condition
- **Etc.**

Note that;

A management plan will **typically** consider operations for/to **over a 1-5-year period**.

#### **-Annual adjustments**

Note that;

A management plan will/should be adjusted annually to reflect the actual experience/history of the property and newly anticipated market conditions.

#### **-Objectives**

Note that;

The PM should set-up objectives with annual milestones for:

- Budgeting
- Marketing

#### **OPERATION BUDGET**

Note that;

An OPERATION BUDGET is a: “**PROJECTION**” OF “**FUTURE**” **INCOME AND COST/EXPENSES** for the “**ANNUAL**” **OPERATION OF A PROPERTY/BUILDING**.

Note that;

The goal of the PM in helping create an operation budget, “with the owner”, is to **be as realistically as possible**, based on the PM’s knowledge and experience.

Note that;

Another goal of the PM is to **produce results that are equal to or better than the operation budget/projections/forecast**.



#### -Estimated expenses

Note that;

The PM may obtain information for estimating future operation expenses for the subject property/building from REVIEW OF OPERATING EXPENSES FROM:

- Comparable properties
- Owner's past operating expense

#### BUDGET FORECAST

Note that;

In completing a budget forecast/operation budget, the PM should study:

- Past budgets of owner
- Past income and expense reports
- Past profit and loss statements

Note that;

The **past budget** should show: the "expected results"; "at the beginning of the year".

Note that;

The **past "income and expense" reports** and **past "profit and loss" statements** should show: the actual income and expenses "for the period reported" on those statements.

#### -Estimated expenses

Note that;

The PM should base the budget estimated expenses on:

- Rents from comparables
- Maintenance needs of the property
- Anticipated increases/decreases of expenses during the budgeting estimate period
- Prior year occupancy rates
- Prior experience



## FORECASTED INCOME

### -Estimated income

Note that;  
The PM should reflect forecasted income as:

- Scheduled income
- Effective gross income

Note that;  
Scheduled income is:

- Rent totals @ 100% occupancy

Note that;  
Effective gross income is:

- Income after anticipated vacancies
- Income after anticipated rent delinquencies
- Income from sources other than rents

## OCCUPANCY RATE

Note that;  
-If a 50,000 sqft building was rented for \$5/sqft:  $\$5 \times 50,000 = \$250,000/\text{yr.}$ ; scheduled rental income.

-If the actual income rent collected at the end of the year was \$225,000

-The resulting occupancy rate would be calculated as:  $225,000/\text{actual income}$ , divided by  $250,000/\text{scheduled income}$ :  $225,000/250,000 = 90\%$ /occupancy rate.

Note that;  
Once the effective gross income is obtained/determined, the PM may **calculate the occupancy rate** by:

- Dividing the **actual rental income** by the **scheduled rental income**.



Note that;

If market conditions were unchanged from the prior year, the PM can/may reflect 90% as the occupancy rate in the budget forecast for the next year.

### **FORECASTING OPERATING EXPENSES**

Note that;

The PM should include:

- **Fixed** operating expenses
- **Variable** operating expenses
- **Reserves** for replacement items

Note that;

**FIXED** operating expenses DO NOT CHANGE BASED ON OCCUPANCY; expenses such as:

- Taxes
- Insurance
- Employee wages
- Regular cost that recur/repeat
- Etc.

Note that;

**VARIABLE** operating expenses ARE INFLUENCED BY OCCUPANCY.

Note that;

VARIABLE operating expenses can be both recurring or non-recurring.

Note that;

Some examples of “variable”, **recurring** operating expenses would include but not limited to:

- PM fee
- Decorating costs
- Utilities
- Minor repairs and maintenance
- Etc.



Note that;

An example of a “variable”, non-recurring operating expense would be:

- Repair of fire damage to property/unit/building

#### **-RESERVES**

Note that;

Reserves are an important part if not critical function to cover unexpected property damage and/or replacement parts to subject property/units. Examples could be:

- Shingles on roof
- Mechanical equipment
- Appliances
- Carpets
- Paint
- Ceiling when upstairs unit floods
- Etc.

#### **-MORTGAGE PAYMENTS**

Note that;

Mortgage payments **ARE NOT** included or are not considered to be operating expenses, however maybe listed/reflected in the budget **AFTER CALCULATION OF NET INCOME**, so the owner’s “**cash flow**” can be estimated.

#### **NET INCOME**

Note that;

When expenses and reserves are subtracted from effective gross income, the result is:

- Net income

#### **BUDGET FORMAT**

Note that;

Operating budgets are all **NOT ALIKE** and vary depending on the type of property, such as residential, commercial and/or lease/terms for the property.





**-RESIDENTIAL BUDGET FORMAT**

**INCOME AND EXPENSE STATEMENT**

Note that;

The format for the budget is really a: income “and” expense statement.

	<u>Monthly</u>	<u>Annually</u>
<b>Scheduled gross rental “income” @ 100% occupancy</b>	<b>41,667.</b>	<b>500,000.</b>
Minus vacancy rate @ 10%	-4,167.	-50,004.
Minus Losses/delinquencies @ 5%	-2,083.	-24,996.
=	_____	_____
<b><u>Effective gross income</u></b>	<b>35,417.</b>	<b>425,000.</b>
 <u>“and/minus”</u>		
<b><u>Operating “expenses”</u></b>		
Real Estate Tax	10,000.	120,000.
Insurance	5,000.	60,000.
PM fee	5,000	60,000
Utilities	8,000.	96,000.
Repairs	2,000.	24,000.
Regular maintenance/reserves	2,000.	24,000.
<b>Total operating expenses</b>	<b>-32,000</b>	<b>-384,000.</b>
 <b><u>NET OPERATING INCOME</u></b>	 <b>=3,417.</b>	 <b>=41,004.</b>
 <b>mortgage payment</b>	 <b>-3,000.</b>	 <b>-36,000.</b>
 <b><u>CASH FLOW</u></b>	 <b>=417.</b>	 <b>=5,004.</b>

Note that;

Once you have the net operating income, you may now minus the mortgage payment to estimate the cash flow.



#### -COMMERICAL BUDGET FORMAT

Note that;

Commercial budget consideration/format differ; there would be differences in the budget format for:

- Leases:
  - Gross
  - Net
  - Triple net
  - Etc.
- Condo's
- Community association
- Warehouses
- Office building

Note that;

An example of one difference in the budget format is in condo's; if the PM manages a condo unit owner's association, they will only develop a budget ONLY on expenses, such as:

- Insurance in common areas
- Grounds upkeep
- Building exterior
- Reserves for maintenance and repairs

Note that;

The PM **would NOT include expenses for interior** of the owner's unit for the management of owner's condo associations.

Note that;

There is **NO calculation of scheduled rents** for management of owner's condo associations.

Note that;

There is **NO need to reflect vacancy allowance** in the budget for owner's condo associations.



## NET PROFIT

### -PRINCIPAL EQUITY

Note that;

The “amount” of the mortgage payment applied to “principal” is added back to show the owner’s net profit on the profit and loss statement; to estimate the net profit.

Note that;

The owner’s equity is increased after the principal portion of the mortgage payment is added back on the profit and loss statement.

Note that;

The principal payments represent both an **expense and a gain**.

Note that;

The owner’s accountant should be responsible for determining the financial impact of the property operations however, the PM may be able to provide valuable advice and service to the owner by being aware of the owner’s objectives.

Note that;

The PM may be able to help measure the total performance of the investment after:

- Taxes
- Changes in market condition
- Etc.

## MEASURE PERFORMANCE

### -BREAK-EVEN POINT

Note that;

A PM should be aware of the “BREAK-EVEN POINT” of/on any property the PM manages.

Note that;

The break-even point is:



- The “occupancy level” at which the gross income equal total operating cost, both fixed cost and variable cost; **the occupancy level at which the property will produce enough rent/income to cover both fixed/variable expenses.**

Note that;

In order to determine/estimate the break-even point, the PM must first obtain the variable cost ratio.

#### **-VARIABLE COST RATIO**

Note that;

Variable cost ratio is obtained by “**dividing**” **variable cost by scheduled gross income**:

- Variable Cost/scheduled gross income = **variable cost ratio**

#### **BREAK-EVEN POINT IN DOLLARS**

Note that;

After you get/obtain the variable cost ratio, you can **estimate the break-even point in dollars** by dividing fixed cost by 100% of the scheduled gross income “less” the variable cost ratio:

Fixed cost  
100% of scheduled income -/minus variable cost ratio = break-even point.

$$\frac{\$45,000/\text{fixed cost}}{100\%/\text{scheduled income} - 30\%/variable\ cost\ ratio:(100\%-30\%) = 70\% \text{ or } .70} = \frac{\$45,000}{\$64,285.72/\text{break-even point in dollars.}}$$

#### **INVESTMENT PROPERTY ANALYSIS**

-Rate of “**return on investment**”/ROI

Note that;

One measurement the PM may use for investment property analysis is:

- The owner’s “**cash flow**” rate of “**RETURN ON INVESTMENT**”; ROI



Note that;

Before the PM can estimate the **return on investment**, they will need two amounts:

- Annual **AFTER-TAX** cash flow
- Owner's investment in the property

- **After tax cash flow**

Note that;

**After tax cash flow** is:

- **Net operating income; recall net operating income is:**  
(scheduled gross rental income, minus (-) vacancy rate, minus (-) loss/delinquencies, equals (=) effective gross income, minus (-) total operating expense = **net operating income.**)
- - (less) **debt service/mortgage payment**
- + (plus) any income **tax refund**
- - (less) any income **tax payments** resulting from the property operations.
- = **after tax cash flow**

-**Owner's investment**

Note that;

Owner's investment is the down payment/the amount of money the owner contributed in the project/investment; plus, any principal portion of mortgage payments.

Example of ROI:           \$15,000/annual after-tax cash flow divided by \$50,000/owner investment = 30% ROI/return on investment

## **PM AGREEMENTS/CONTRACTS**

-**Written property management (PM) agreement**

Note that;

All Real Estate Consultants, Inc. requires all PM's/agents/associates/affiliates of All Real Estate Consultants, Inc. to have a current written property management agreement/contract with an owner on file; a copy of which must be submitted to the corporate office: 8491 Hospital Dr. #208, Douglasville, GA 30134 within 48 hours of execution/completion.



Note that;

The PM must have the written PM agreement “BEFORE” performing any activities as a PM.

Note that;

The PM is required to have a written agreement **even/whether the owner demands/wants a written agreement or not!**

Note that;

The written PM agreement is required for both/either:

- Residential properties
- Commercial properties
- Investment properties

#### **-Fiduciary**

Note that;

When a PM completes a written PM agreement with the owner, they, the PM is acting as an agent for the owner and the PM must maintain the standards of fiduciary; because the PM is entrusted with the owner’s physical asset or authority.

Note that;

As a PM, an agent for the owner, the PM is acting as a fiduciary and therefore is required to provide:

- Loyalty and/or good faith to the principal
- Performance of ALL duties with skill, care & due diligence
- Full disclosure of ALL “pertinent” facts
- Refraining from accepting undisclosed compensation
- Refraining from taking personal profits without the principal’s full knowledge and consent of the owner
- Avoidance of commingling or conversion of funds

#### **-Legal restrictions**



Note that;

The PM is subject to **ALL** legal restrictions imposed on a licensed real estate agent! In addition, the PM is subject to **ALL** restrictions in the property management agreement/contract.

Note that;

The PM should investigate and adhere to the current laws/restrictions of the state the PM is operating in **and** if the PM is allowed/required to maintain ALL funds received in client's/principal trust account.

**-PM written agreement "content"**

Note that;

The item in the written PM agreement should include but are not limited to:

- Name & signature of both the owner/principal and PM
- Description of the property to be managed, with street address and unit numbers
- The duration of the written PM agreement with: effective/start date and expiration/end date
- Procedures for early termination of PM agreement "PRIOR TO" expiration/end date
- Conditions for renewal of the PM agreement
- PM compensation and/or commission
- Detailed fee schedule for the duties/services to be performed by the PM
- If the PM may with principal/owner's consent, charge an override and/or percentage for overseeing major repairs of the owner's properties
- Document who is authorized to negotiate and sign leases/rental agreements on behalf of owner/principal
- If the PM can collect a "flat fee" for obtaining credit report from tenant and from the fee, the PM would pay the amount billed by the credit reporting service
- Reimbursement of expenses for advertising to attract tenants and procedures for such reimbursements
- Guidelines for handling tenant problems, such as: late payments, property damage, violation of lease provisions and evictions, etc.



- Reports and accounting requirements
- The type of accounting functions the PM will provide
- Procedures for payment of outstanding bills
- Items, if any, the PM is to pay out of their fee
- Items to be paid for out of owner's trust account
- When bills/payments are to be made
- Procedures for payment of bills when rent collections are insufficient to cover bills when due and the owner's responsibility/liability to cover/contribute to the operation account to pay bills
- If the PM is authorized to obtain certain types of insurance on the principal/owner's behalf and who will pay for the premium; PM or owner.
- Procedures for contracting for emergency repairs, when the owner/principal CANNOT be contracted in advance
- Any limit to the amount of work the PM could pay for without specific prior approval from the principal/owner
- The scope/depth the PM's authority to contract out for:
  - Maintenance
  - Repairs
  - Improvements
  - Paying bills for owner

#### **-PM compensation**

Note that;

The PM must complete with the owner, a **detailed fee schedule** for the PM with the duties and services to be performed by the PM.

Note that;

The PM may charge separate fees in addition to property management fee, with owner consent for:

- New leases
- Lease renewals
- Supervision of major repairs/alterations
- Project feasibility analysis
- Prepares budgets





- Anything not included in the PM agreement

Note that;

The PM fees may vary and are negotiable with principal/owner from 1% on large structures/buildings with many units; to 10% on smaller buildings and up to 20% in resort areas with high tenant turnover.

Note that;

If the PM will receive a “leasing commission-a percentage of the first month’s rent for each new tenant and a management fee, as compensation.

Note that;

The management fee can be a flat fee or a percentage of the gross rent collection each month.

Note that;

The PM may with the owner’s consent, charge an override and/or percentage for overseeing repairs of the owner’s property.

Note that;

It is critical that the PM itemize everything that will be required of the PM in the initial management agreement and **specify if management expenses are to be paid out of the management fee or if those expenses will be reimbursed by the owner** for such things as:

- Manager’s telephone
- Advertising cost
- Office rent
- Etc.

#### **-REPORTS**

Note that;

The PM should/or is required to provide monthly reports to owner for the state the PM is operating in. however, while employed with All Real Estate Consultants, Inc., at a minimum, the PM is required to provide monthly reports to principal and is/are to check with the laws in the state that they are operating in for requirements for/of reporting.



## SETTING UP A PM OFFICE

### -Form of ownership

Note that;

The first consideration of the professional PM in setting up a PM office is to determine the type/form of ownership of the professional property management company/firm; All branches/locations of All Real Estate Consultants, Inc. will operate under the corporate office form of ownership which is: Incorporated; therefore, the following information about forms of ownership is for informational purposes only.

### -Major ramifications

Note that;

There are two major ramifications in choosing a form of ownership:

- Legal
- Taxes

Note that;

There are four forms of ownership:

- Sole proprietorship
- Corporation
  - C-corp.
  - S-corp.
- Limited liability company
- Partnership
  - General partnership
  - Limited partnership

### -Sole proprietorship

Note that;

“Sole proprietorship”; a one owner company, has a major disadvantage of exposing the owner to **UNLIMITED LIABILITY** for both the properties they manage and employees that work for the company.



Note that;

Income from this type of ownership should be reported on schedule C of the 1040 tax return; all PM/agent should consult with their tax/accountant for direction/advice with any tax question/advise.

#### **-Partnership**

Note that;

"Partnership"; two or more owners and has two types of partnership:

- **General partnership**- the controller and/or general partner accepts the majority of the liability exposure; a general partner IS exposed to UNLIMITED LIABILITY, just like a sole proprietorship; will participate in the day to day operations/decisions; income should be reported on schedule E of the 1040 tax returns.
- **Limited partnership**- differs in the amount of liability and exposure and is often limited up to, the initial investment; generally, will not participate in the day to day operations/decisions.

Note that;

Income should be reported on schedule E of the 1040 tax returns; all PM/agent should consult with their tax/accountant for direction/advice with any tax question/advise.

#### **-Corporation**

Note that;

"Corporation"; one or more owners and has two types of corporations:

- **C-corporation**- personal liability is limited and profits are taxed at both the shareholders and the corporate levels, twice.
- **S-corporation**- personal liability is limited just like/as in a C-corporation however profits are taxed ONLY once, at the shareholders level.

#### **-Limited Liability Company; LLC**

"limited liability company; LLC", a LLC allows for an unlimited number of owners/members, however, if the LLC only has one owner/member, it will be taxed as a sole proprietorship and maybe subject to the same liability as sole proprietorship; all



PM's/agents should get advice from: attorney/tax/accountant for advice with any tax consideration/advice.

Note that;

All owners of a LLC are called:

- Members

Note that;

The day to day operation of a LLC is the same as:

- Sole proprietorship
- Partnership-general

Note that;

All members have LIMITED LIABILITY and may participate in the management and operations WITHOUT incurring personal liability.

Note that;

With a LLC, personal liability and corporate income taxes are avoided, as taxes are taxed at the shareholder level.

Note that;

With a LLC, the restriction placed on a limited partnership and/or S-corporations, personal liability is avoided.

## **LOCATION OF PM OFFICE**

Note that;

The PM should consider many factors for the location of the PM office; some of the factors to consider are:

- Type of clients
- The nature and level of services offered and/or required by owner
- The geographic focus of the PM company

**-working from home**



Note that;

Working from a home office as a PM may have a major drawback with professional image; however, All Real Estate Consultants agent's/PM's will be allowed to work from a home office, as long as all professional services are preformed for client (s).

#### **-Space near subject property**

Note that;

The PM may consider leasing/renting & negotiation office space in a location near and is currently being managed by the PM at a reduced rate; the owner should benefit from this arrangement because of the close proximity to the managed property.

#### **-Types of clients considerations**

Note that;

The type of clients that the PM will be serving should be a serious consideration when determining an office location; for example:

- If the PM clients are professional client's offices, such as:
  - Doctor
  - dentist

the suitable location should portray the proper image.

- If the PM client is an owner with an apartment building and/or residential in nature and the owner allows for tenants to bring rent into the office, the office location should be
  - Centrally located
  - Easy to access
  - Located on ground floor
  - Have plenty of parking
  - Security considerations
  - Disability considerations

#### **-Grow in place**

Note that;

The ability to grow in place should be a serious consideration because the office location is both expensive and confusing to clients



## LAYOUT OF PM OFFICE

Note that

The PM should set up/layout the PM office so that the day to day activities are together and/or near each other, activities such as:

- Management
- Accounting
- Maintenance

### **-Management**

Note that;

The management side of the office should consist of:

- Waiting area
- Receptionist-to give the office a professional image/appearance and control traffic; as you don't want tenants moving through office looking at other tenants personal/private information.
- Administrative and clerical staff

### **-Accounting**

Note that;

The accounting side of the PM office should be convenient and near the management side of the office with easy access to:

- Copy machines
- Computer printers
- File cabinets
- Office files

### **-Maintenance**



Note that;

The maintenance department of the PM office should be kept/located in a separate location because of the physical appearance of the maintenance staff coming and going from the office.

Note that;

The PM should set up a dress code standard for maintenance staff visiting the management/main office and if possible, have alternative entrance/exit other than the main lobby for maintenance staff.

#### **OFFICE EQUIPMENT**

Note that;

The equipment that is typically in a PM office should include but not limited to:

- Copy machine
- Computers
- Phone system
- Fax machine
- Word processor
- Letter folder
- Shredder
- Letter opener
- Postage machine
- Computer hardware and software/with security

#### **-Software**

Note that;

When selecting a software program for the PM office, the PM should consider these major points:

- Does the software produce information and reports as required by the state in which the PM is operating in
- Does the software produce the required state agency regulations that regulate the activities of the PM
- Does the software meet the typical and/or minimum standards as established by one of the nationally recognized management organization, such as:



- The institute of real estate management (IREM)

Note that;

When you purchase a PM software program, you have two costs:

- The original purchase or licensing agreement.
- The annual maintenance agreement fee, each year you use the software there after.

Note that;

Both of these costs MUST be paid at EACH location in which the software program is installed and used.

## INSURANCE

Note that;

The PM is to insure the physical asset of the owner, the property/unit/building AND the customers, the tenants are protected/covered with proper insurance.

Note that;

When thinking about insurance, the PM should consider the golden rules of Risk Management/Evaluation:

- **Retain Risk**- Insurance with higher deductibles or/and self-insurance.
- **Transfer risk**- the PM should transfer as much risk to the insurance company as possible and where applicable/appropriate, to the tenants with/through hold harmless agreements.
- **Avoid risk**- be extremely selective of the type of equipment purchased or the property or/and get rid of existing swimming pool; play ground equipment that needs constant repairs; thereby reducing the amount of insurance needed
- **Control risk**-
  - Install smoke alarms
  - Assist on safety equipment
  - Provide ongoing employee training





- Install flood lights on property
- Install security system
- Etc.

### -Types of insurance

Note that;

There are many different types of insurance that will cover the property, tenant, owners and the PM themselves and the PM should investigate the cost and coverage for the property and themselves.

Some examples of insurance coverage available are:

- **Open-peril** or “**All-risk**”- This type of insurance is a comprehensive type of coverage and should include fire and extended coverage but **doesn't include**:
  - Flood
  - Earthquakes
- **Rent loss** coverage- Covers a portion of owner's rent lost when a rental unit is destroyed or is uninhabitable; the portion may be up to 80% of the market rent for a 3-6 months period, depending on the type of policy.
- **Fidelity bond** coverage- covers monetary losses due to employee dishonesty; note that some policies only pay with the conviction of the person; attention should be paid to policy to see if this is the case.
- **Non-owned auto** coverage- covers the employer's for damages & injury caused by employee who drive.
- **Umbrella** policies- should add additional coverage, with not much more cost.
- **Errors and omissions** coverage; note that errors and omission coverage **doesn't** cover:
  - Dishonest acts
  - Fraudulent acts



Does covers:

- Malpractice
  - Legal fees
  - Damages for liability, less the deductible
- **Liability insurance** coverage- covers **injury or property damage “on” the property**; note that the PM should be named as additional insured on the property’s owner’s policy for this type of insurance coverage.

## FILES AND RECORD RETENTION

### -Legal requirements

Note that;

The legal requirements for record retention will be dictated by the volume of records to be stored AND their storage location. All PM of All Real Estate Consultants, Inc. are to check with the state in which they operate in for the current requirements for record retention.

### -organizing the filing system

Note that;

The PM should set up a filing system with separate information/concentration of interest, such as:

- **General project** files- these files should have/include written “COMMUNICATIONS” regarding *the property with the owner*; these files should be reviewed and purged annually.
- **Permanent** files- these files should have/include important documents meant to be kept forever and should be stored in a fireproof cabinet, files such as:
  - Mortgage files
  - Insurance files
  - Taxes files



- Budget files; including operating budgets with the notation/back-up paperwork for the budget.
  
- **Tenant** files- these files should/include:
  - Lease contracts/rental agreements
  - Addendums to contracts/agreements
  - Complaints from tenants
  - Actions against tenants
  
- **Accounting** files- these files should/include:
  - Account payable files
  - Monthly reports to owner
  
- **Personnel** files- these files should/include:
  - Applications
  - Sensitive employee info
  
- **Audit** files- these files should/include:
  - Copies of audits by PM
  - Copies of audits by outside firm
  
- **Vendor** files- these files should/include:
  - Business license
  - Proof of liability insurance
  - Vendors tax info number

## OPERATION MANUAL

Note that;

All PM's of All Real Estate Consultants, Inc. are required to follow all items/notations/procedures in this policy and procedure/notation manual for the set up and operation of a PM office except if it conflict with the statue/laws in the state that the PM is currently operating in; any exceptions to any part of this manual must be approved in writing from the corporate office.

Note that;

The goal of this section in this manual is:

- Continuity



- Efficiency

## PURCHASING A PM COMPANY

### -Value

Note that;

The majority of the value in the purchase of a PM company that is already set-up comes from the clients/tenants accounts.

Note that;

There are different ways to value a PM company; listed below are three of the most common:

- Income capitalization
- Percentage of annual gross management fees for a period of years
- Lump sum payment with an annual incentive for a period of years

Example: lump sum payment with an annual incentive

Note that;

The seller may negotiate with the buyer of the PM company an initial down payment up to 3-6 months of “present management fees” PLUS an “annual incentive” at the end of each year, based on gross management fees performance for up to a number of years, let’s use (1) one month of gross management fees as an incentive for 5 years plus the initial down payment as an example:

- Down payment: 4 months of current gross management fees @ \$15,000/month = \$60,000.00/down payment
- End of year incentive, year 1 \$10,000.00  
 Year 2 \$ 8,000.00  
 Year 3 \$ 7,000.00  
 Year 4 \$ 6,000.00  
 Year 5 \$ 5,000.00

Total purchase price of PM co. \$96,000.00



Note that;

If a branch location of All Real Estate Consultants, Inc. that wishes to consider the purchase a PM company that is already established, they/the PM must first get written approval from the corporate office of All Real Estate Consultants and consider/document the feasibility of such a purchase.

### **MARKETING**

Note that;

Before launching a marketing campaign, the PM should study and get a basic understanding of:

- The market the property is in; the region/neighborhood
- Development of a marketing plan
- The customers in the area
- Advertising
- Professional marketing staff, if they/the PM decide to use outside resources
- Leasing activities in the area
- Resident retention

Note that;

The PM should concentrate a marketing campaign that is designed around resident retention, which is **CUSTOMER SERVICE**.

Note that;

The PM should also “market and take advantage” of the **BENEFITS OF THE SUBJECT PROPERTY**

### **THE REGION**

Note that;

The PM should study and have a good working knowledge of the CONDITIONS that effect the soundness of the economy within a region and/or neighborhood, particularly the subject property neighborhood.

Note that;

The conditions of the region/neighborhood would most likely drive both the long and short-term performance of most/any rental properties.



Note that;

Some of the conditions that the PM will study and become familiar with are:

- Overall soundness of the local economy/region
- Transportation issues
- Population growth
- Climate for the region/neighborhood
- Demographics, the study of population trends and characteristics:

Age

Sex

Race

Marital status

Education

Income

Household size

Household composition

Note that;

The analysis of these factors helps to draw useful assumptions about the regional growth and demographic characteristic of the region/neighborhood.

Note that;

If the PM examination of the region/neighborhood reflects a trend or an increase in the number of “older Singles” individuals or “empty nesters”, the PM may conclude marketing for 6 bedrooms, 4 bath large home would not be a good project for a developer in this region/neighborhood; therefore, should suggest to the developer to consider marketing for ranch style homes with a limited number of bedrooms/baths, as an example.

#### **MEASUREMENTS**

Note that;

The measurements the PM should use in the evaluation of a neighborhood are:

- Available supply
- The demand for housing/space
- Adsorption rate; rate of which the supply is absorbed
- Vacancy rate



### SUPPLY

Note that;

The PM must first obtain data on the “supply” for their measurements.

Note that;

Supply is total units minus rented units = supply or available supply

Note that;

The supply of rental property/space/housing is expressed as the vacancy rate

### VACANCY RATE

Note that;

Vacancy rate is a representation of the total number of vacant rental units available as a percentage of the total supply of rental units: total units minus rented units = available units divided by total units = vacancy rate.

Example:            545 total units  
                         - 398 rented units  
                         = 147 available units  
                         147/545 = 26.97%/vacancy rate

### DEMAND

Note that;

The higher demand, the more quickly the supply is reduced; which impacts value and rental rate, pushing the rates upward

Note that;

On the reverse side of demand is no demand and an oversupply of units/space which tends to push rental rates and value downward.



## VACANCY

Note that;

Vacancy should be broken down into:

- Physical vacancy
- Economic vacancy
- Absorption rate

## PHYSICAL VACANCY

Note that;

Physical vacancy is the units/spaces that are available to rent/lease

## ECONOMIC VACANCY

Note that;

Economic vacancy is **all units NOT PRODUCING INCOME:**

- Physical vacancies
- Model units
- Employee units

## ABSORPTION RATE

Note that;

Absorption rate is the number of leased/rented units compared to the total number of units available for lease.

## **NEIGHBORHOODS**

Note that;

The marketplace for real estate is by nature very local, which produces neighborhoods and is occasionally referred to as a sub-market because the supply of housing and the households that inhabit them are somewhat similar in:

- Nature
- Specific value
- Rent rates





### BOUNDARIES

Note that;

The initial step in a neighborhood examination is to set the boundaries.

### COMPETITON

Note that;

A widespread technique used to create neighborhood boundaries is competition (units/space available for rent/lease) around the area of interest to the tenant.

### SHOPPING AREA

Note that;

An appropriate way to establish physical neighborhood boundaries is to recognize the prospective tenant "**shopping area**" because location is an important part in the decision-making process

### PRICE LIMIT

Note that;

After the PM sets the boundaries, the next step in locating a property/unit/space for a tenant is to identify the tenant's price limit/budget

### TYPE OF UNIT

Note that;

The next step in locating a property/unit/space for a tenant is to identify the type of property the tenant is interested in because some tenants may prefer to live in a particular type of building, such as garden-style or high-rise condo apartment, office park, warehouse, ranch, two-story home, etc.

Note that;

The tenant may determine that layout and/or building materials are a major consideration in the decision-making process.



### DECISION TO RENT

Note that;

Almost all of the new tenants will base their decision to rent on three factors:

- The quality of the marketing presentation
- The quality of the property/building
- Their budget

### FIRST IMPRESSION

Note that;

The first impression a property a property makes either in marketing presentation or it's curb appeal will either motivate the prospective tenant to enter/go see the property or look further.

### RENT READY

Note that;

Rental property and/or space should be "rent ready" (freshly painted, repairs completed, carpet cleaned, etc.) before it is shown/marketed.

Note that;

Not being "rent ready" could be a fiasco and/or a debacle to the PM and may have serious consequences for the PM, such as:

- Negatively impacts the property/space salability
- Reflects poorly on the image of the property
- Might represent a low professional caliber of the PM and its staff
- Prospective tenants may bad mouth the property/space to friends and/or family

### **DEVELOPING A MARKETING PLAN**

Note that;

There seems to be a direct connection between marketing planning and a successful marketing program.



Note that;

It seems that marketing planning allows the PM to somewhat regulate the outcome of the marketing efforts.

Note that;

The marketing plan itself should concentrate on:

- Persuading the behavior of potential tenants
- Growing or maintaining resident/tenant preservation/retention

Note that;

The PM have to consider these items serious or the foundation in the marketing plan:

- The investment goals and/or objectives of the owner
- The direct and indirect costs of the owner's budget related to marketing the property/space
- Tenant preservation and/or retention
- The demographic of the target market

#### WELL-THOUGHT-OUT MARKETING PLAN

Note that;

The PM must have a well-thought-out marketing plan which addresses:

- Objective to be accomplished by owner
- How many units to be rented
- The rental rate for the units
- The time frame for the marketing plan
- The advertising media to be used
- The subject matter of the advertising
- The budget for the marketing plan
- Jobs and tasks of the staff
- Selection requirements for new tenants
- Markdowns or rent concessions to be used
- Who and how the marketing plan will be monitored
- Suitable substitution to the original plan



### THE CUSTOMER/TENANT

Note that;

The PM have to think of marketing as a business (or) process of moving goods and/or services to the prospective tenant/customer, since it is crucial that the PM recognize and identifies the tenants/customers buy points.

### MARKET RESEARCH

Note that;

The PM can do or should do “market research” before they market their product/property/building/space and/or services

### GATHERING INFORMATION

Note that;

The PM might think about using two methods in gathering information:

- Focus groups
- Questionnaires

#### -FOCUS GROUPS

Note that;

The PM might think about bringing people together in a group interview setting/focus group and use a mediator that is well skilled in group subtleties and is absolutely unbiased in the outcome of the focus group.

Note that;

Focus groups have a tendency to be personal and/or intense in character, because of this, the PM might consider as an alternative to a focus group, the use of a questionnaire

#### -QUESTIONNAIRES

Note that;

A well-created questionnaire ought to bring the PM important information about the prospective tenants buy points and it is recommended that the PM use a questionnaire



instead of a focus group because a well-structured questionnaire is less personal and/or intense and permit anyone who chooses to respond to give their input and/or response.

Note that;

The PM should provide the tenants other questionnaires three times during their tenancy:

- Just after move-in
- Anytime during residency or mid-term
- Before/upon move-out

#### **MARKETING GRID**

Note that;

The PM is creating a neighborhood examination on the “competition” in the “shopping area”, the PM is going to **gauge** the competition in the shopping area/neighborhood; using a marketing grid, which becomes extremely helpful for this process and/or purpose.

Note that;

The use of a marketing grid is to ascertain and/or establish the uppermost rent level and to capture the current state of the rental market

Note that;

Another benefit of using a marketing grid is to help the PM form an awareness of the subject property feature and its competitive advantages within a neighborhood

Note that;

By approach the grid is objective nevertheless the results are subjective because of the choices of features selected/listed/included (buy factors important to the tenant) on the grid and the value assigned to those features

Note that;

The PM is endeavoring to determine how much those factors/features are worth to the prospective tenant/renter by placing a value on those features/factors

Note that;

The aim of the PM in making price adjustments on the grid is to estimate a value that a tenant would assign to a particular feature/factor.



Note that;

When making adjustments to the grid and in doubt about a particular value for a feature, use smaller rather than larger value adjustments

MARKETING GRID FORMAT

Date of analysis:

Type of unit (subject):

Property	Subject	Comp 1	Comp 2	Comp 3
Monthly rent				
Concession				
Address				
	Description	Descpt/adjmt	Descpt/adjmt	Descpt/adjmt
Location/city				
Age				
Curb appeal				
Square feet				
# of baths				
Patio/balcony				
View				
Fireplace				
Wall paper				
Carpet/hardwood				
Drapes/blinds				
Washer/dryer				
Microwave				
Dishwasher				
Garbage disposal				
Air conditioning				
Cable TV				
Elevator				
Pool				
Sauna				
Exercise room				
Tennis court				
Party room				
Security				
Garage				
Parking fee				



Tenant pays heat				
Rental rate				
Less monthly discount				
Effective rent				
Adjustments (total net)				
Adjusted comp rent				
Adjusted rent/sqft				

Note that;

The PM grid format does not have to include all of the features listed in the above grid or may include other features not listed like: number of bedrooms, etc.

### **ADVERTISING**

Note that;

The PM ought to have a familiarity with the development, implementation and monitoring of advertising; not based on personal preferences or personal experiences instead of a well-developed advertising plan

### **ADVERTISING PLAN**

Note that;

The PM ought to include and/or consider in an effective and successful advertising plan:

- Deciding advertising objectives that increases the property owner's confidence that spending is focused on achieving specific goals
- Generating targeted advertisement
- The advertising budget and/or advertising costs
- An advertising organization (or) do-it-yourself system
- Choice of media advertising suppliers



#### PERFORMANCE EXPECTATIONS

Note that;

The PM had better recognize the owner's performance expectations by thinking about and/or asking questions like:

- The type of media that is thought to produce the highest results
- What are the anticipated conversion ratios
- Do the expectations entail of an anticipation of a certain volume of traffic?
- What is the owner's image and is it credible by future tenants?
- Does the owner want to project a specific image?
- Is the stream of traffic expected to be seasonal or to be steady throughout the year?

Note that;

It is tremendously significant to begin the process by writing down on paper all of the core opinions of the people involved in the success of the advertising campaign.

Note that;

When you have formed a list of expectation, you will be ready to set specific objectives to create the strategy for achieving them using advertising.

#### -GOAL SETTING AND OBJECTIVES

Note that;

The PM must establish reasonable goals and objectives for the current market conditions.

Note that;

The specific objectives of the advertising campaign will be dependent on the size of the property and its turnover rate.

Note that;

The objective of advertising and the PM will be to produce signed leases/rental agreements by a set time; for example:

- To achieve 90% physical tenancy within several months, such as 6 months from the opening date of the initial advertising date.





Note that;

To achieve occupancy goals, the PM should promote the property's best features and benefits with a list of what the PM/owner believes to be the best features and most prominent benefits offered by the property.

#### -CONCESSIONS

The PM should consider concessions to improve declining occupancy.

Note that;

concessions often become destructive as months of rental income are sacrificed.

Note that;

Concessions that reduce the NOI/net operating income correspondingly impact the bottom-line value of the property.

Note that;

Concessions that attract only unqualified traffic would waste: time, money and energy of the leasing staff therefore the PM need to ensure that their concessions/advertising is attracting only qualified applicants because.

Note that;

The challenge for the PM is to design an advertising complain program that will appeal to the ideal prospects for any specific property.

#### EFFECTIVE ADVERTISING

##### - DESCRIPTION

Note that;

The PM had better consider in an effective advertising campaign for residential properties:

- Description of apartment/property/house and/or space for lease
- Price
- Number of baths
- Special rooms



- Family rooms
- Dens
- Natural light

Note that;

The PM should consider in an effective advertising campaign for commercial properties:

- Square feet
- Build to suit tenant
- Price
- Security
- Tenant able to make improvements
- Restrictions

Note that;

For both residential and/or commercial, the PM should list special features:

- Built-in microwave
- Fireplace
- Amenities
- Parking
- Recreational feature
- Views
- Location of schools
- Location of shopping
- Etc.

Note that;

The PM should identify property location:

- Neighborhood name
- Address
- SW, SE, NE, NW, etc.
- Cross street
- If at all possible, a map of location

- PRICE OR SPECIALS

Note that;

The PM should include the price or specials, because:



- The PM needs to eliminate those that will not qualify for the rent level
- If property/apartment has diverse unit sizes, the PM would list the range from lowest to highest
- Place extraordinary significance on any rent specials and/or concessions

#### -CONTACT INFORMATION

Note that;

The PM should provide contact information:

- Phone number
- Fax number
- Email address
- Hours of business operation

#### ADVERTISING BUDGETS AND COSTS

Note that;

The furthestmost factor the PM should have upfront for ANY marketing/advertising program is the budget; for the reason that the amount of any advertising will be based on the budget.

Note that;

MEDIA will be the most expensive factor in advertising to convey the PM message to the public; broadcast media, time is the usual measurement, in seconds or minutes.

Note that;

Other cost factors include:

- THE SIZE OF THE ADVERTISEMENT: usually for printed media/advertising, an ad is priced by the line (or) by column size: width & depth (or) by whole page versus fraction of a page. For broadcast media, usually time is the customary measurement in: seconds and/or minutes.
- FREQUENCY OF AD APPEARANCE: the number of times the advertisement appears in the printed media is a cost factor; Sunday advertising is commonly more expensive than weekday



ads. As a rule of thumb, the more often the ad runs, the lower the cost per insertion.

- THE TARGET AUDIENCE/THE NUMBER OF COPIES IN CIRCULATION: as the well-defined target market narrow down, you can expect higher cost per potential tenant due mainly to the exclusivity of the media being used
- THE USE OF CREATIVE ELEMENTS: drawings, pictures and broadcast script add to advertising cost. Lots of the expenses are the result of work contracted out to advertising organizations

Note that;

The production of advertising is a multifaceted process that incorporates:

- Ideas
- Design
- Images/pictures
- Writing copy
- Typesetting
- Preparing the finished product

Note that;

That advertising agencies will bill/charge for both the cost of specific ad production and their general time. The PM must/should be sure they understand all of the cost and have the agency address the issue of cost containment as part of their proposal.

#### ADVERTISING AGENCY (OR) ON YOUR OWN/IN-HOUSE ADVERTISING

Note that;

The PM and/or owner will have to decide to employ an agency (or) handle the advertising in-house and this requires investigation to understand the “cost” and “benefits” of each approach

-ADVERTISING AGENCY



Note that;

An advertising organization and their capacity to create a successful advertising campaign will be based on their familiarity and understanding of the rental market and space or apartment to be marketed/advertised.

Note that;

The organization/agency ought to be capable of handling all of the technical features of the advertising campaign.

Note that;

After the PM has reached the point of choosing an advertising agency, the PM may consider a test assignment for the agency. Asking the agency to create a couple of smaller advertising programs for a community. The PM may even ask if this information can be ready for the interview.

Note that;

The advertising agency staff should feel comfortable about taking risks; this means the PM/owner have to be open to methods that may differ from the PM/owner fixed ideas.

Note that;

Some benefits of the use of an agency is their ability to be more objective as a third party and to save the PM/owner time & energy.

Note that;

If the benefits outweigh the costs, then the use of such an agency is highly suggested.

Note that;

The advertising agency have to be supervised by the PM through:

- Review of the copy of the proposed ad
- Physical appearance of proposed ads
- Media selection
- Schedule of the ad/broadcast

-IN-HOUSE ADVERTISING



Note that;

The PM might think about using a staff member with a marketing background (or) who has produced profitable marketing programs

Note that;

If the PM use an employee that can create the type of media production or advertisement that meets the PM/owner marketing objectives, the total savings compared to using an advertising agency can be considerable.

Note that;

Every marketing/advertising campaign is looking for a measurement of the success of each ad with signed leases and the lowest cost, this can often be accomplished more economically in-house with an employee that is experienced in marketing/advertisement.

#### SELECTION OF MEDIA SOURCES

Note that;

The particular selection of which advertising media to use is contingent on several factors, as well as the general market area and the demographics of the area.

Note that;

After the PM has gained a general understanding of the market/area characteristics, the PM will be ready to select the media best suited to reach potential residents.

Note that;

A number of general things the PM should consider when making the selection:

- What is the size and make-up of the audience
- Is the circulation paid or unpaid?
- What is the rate of recurrence of the advertising

Note that;

Additionally, the PM can increase the effectiveness of the advertisings campaign with the understanding that:



- An ad needs to be viewed three (3) times before a sale is made, on the average.
- Frequency is important, the creativity and power of the ad itself are equally important
- Color in an ad make a distinction
- The use of inserted flyers increases exposure
- Include the price, it is an automatic qualifier
- A picture is worth a thousand words
- A large ad is better
- A second ad in the same magazine/newspaper increases readership by an average of 15%
- Location in the magazine/newspaper is important. The order of preferred position:
  - Front cover
  - Back cover
  - Inside front cover
  - Inside back cover

#### RESIDENT RETENTION

Note that;

Resident retention begins and ends with marketing to current tenants.

-Customer service

Note that;

“customer service” is one of the most important and often over looked stimulus for ongoing or repeat tenant business.

Note that;

Customer service can be just as significant as price or location when it comes to inspiring tenants to renew.



CORPORATE POLICY AND PROCEDURE/NOTATION/GUIDELINE MANUAL

**"BEFORE" ENTERING INTO AN AFFILIATION/EMPLOYMENT AGREEMENT"**

I have reviewed and have been given access to the official copy of the corporate: policy and procedure/notation/guideline manual of: ALL REAL ESTATE CONSULTANTS, INC. The official copy can be obtained on their website [www.areciga.com](http://www.areciga.com) with a passcode of: success1

Signature of licensee/employee

\_\_\_\_\_  
(License #) \_\_\_\_\_

Date \_\_\_\_\_

Signature of Qualifying broker/branch manager

\_\_\_\_\_  
(License #) \_\_\_\_\_

Date \_\_\_\_\_