Ministerial or Not? News from the GREC

From the Georgia Real Estate Commission's May 2021 newsletter·

Typically a real estate licensee represents either the seller or the buyer (or the landlord or the tenant) in a real estate transaction· By entering into a brokerage agreement, the licensee establishes an agency relationship with that party as a client· However, a licensee can participate in a transaction without representing anyone by acting as a transaction broker· When acting as a transaction broker, a licensee can only perform ministerial acts·

The Georgia Real Estate License Law 43-40-1 (5·1) defines "Ministerial acts" as those acts related to real estate brokerage activities which a licensee or a licensee's employee performs and which do not require discretion or the exercise of the licensee's own judgment·" This means that a licensee cannot provide opinions or advice to a customer· If a licensee does provide an opinion or give advice, he/she could unintentionally create an agency relationship·

BRRETA, The Brokerage Relationships in Real Estate Transactions Act, also includes Definitions in Section 10-6A-3 as follows:

(12) "Ministerial acts" means those acts described in Code Section 10-6A-14 *(see page 2) and such other acts which do not require the exercise of the broker's or the broker's affiliated licensee's professional judgment or skill·

(14) "Transaction broker" means a broker who has not entered into a client relationship with any of the parties to a particular real estate transaction and who performs only ministerial acts on behalf of one or more of the parties, but who is paid valuable consideration by one or more parties to the transaction pursuant to a verbal or written agreement for performing brokerage services·

BRRETA Examples of Ministerial Acts

1. *Identifying property for sale, lease, or exchange;*
2. *Providing real estate statistics and information on property;*
3. *Providing pre-printed real estate form contracts, leases, and related exhibits and addenda;*
4. *Acting as a scribe in the preparation of real estate form contracts, leases, and related exhibits and addenda;*
5. *Locating architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and*
6. *Identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of any of the parties in a real estate transaction.*

(b) A broker acting as a transaction broker shall do the following:

1. *Timely present all offers to and from the parties involving the sale, lease, and exchange of property;*
2. *Timely account for all money and property received by the broker on behalf of a party in a real estate transaction; and*
3. *Timely disclose the following to all buyers and tenants with whom the broker is working:*

1. *(A) All adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and*
2. *(B) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation*

maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions.

Focus on Terminology:

Rule 520-1-.02 Definitions.

There is an agency relationship with the client, and there is a non-agency relationship with the customer. The transaction broker has a non-agency relationship.

"Customer" means a person who has not entered into a brokerage engagement with a broker but for whom a broker may perform ministerial acts in a real estate transaction.

"Client" means a person who has entered into a brokerage engagement with a real estate broker.

Discretion & Judgment

Discretion & Judgment are not objective but involve opinions and counsel. Therefore, if a licensee gives his/her opinion or advice to a party, he/she is not acting as a transaction broker. Providing opinions and advice may create an agency relationship.

- *Discretion is defined as "individual choice or judgment; the quality of having or showing discernment or good judgment."*
- *Judgment is defined as "the process of forming an opinion or evaluation by discerning and comparing; an opinion or estimate so formed."*

https://law.justia.com/codes/georgia/2020/title-10/chapter-6a/section-10-6a-14/

2020 Georgia Code
Title 10 - Commerce and Trade
Chapter 6A - Brokerage Relationships in Real Estate Transactions
§ 10-6A-14. Ministerial Acts Explained; Required Actions of Transaction Brokers; False Information

Universal Citation: GA Code § 10-6A-14 (2020)

a. A broker acting as a transaction broker may provide assistance to buyers, sellers, tenants, and landlords by performing ministerial acts. Examples of ministerial acts which can be performed by the transaction broker on behalf of any of the parties in a real estate transaction include without limitation the following:
    1. Identifying property for sale, lease, or exchange;
    2. Providing real estate statistics and information on property;
    3. Providing preprinted real estate form contracts, leases, and related exhibits and addenda;
    4. Acting as a scribe in the preparation of real estate form contracts, leases, and related exhibits and addenda;
    5. Locating architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and
    6. Identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of any of the parties in a real estate transaction.

b. A broker acting as a transaction broker shall do the following:
    1. Timely present all offers to and from the parties involving the sale, lease, and exchange of property;
    2. Timely account for all money and property received by the broker on behalf of a party in a real estate transaction; and
    3. Timely disclose the following to all buyers and tenants with whom the broker is working:
        A. All adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and
        B. All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents,

records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions.

c. Transaction brokers shall not knowingly give any party in a real estate transaction false information; provided, however, that a broker shall not be liable to a party for providing false information to the party if broker did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located thereon, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.

(Code 1981, §10-6A-14, enacted by Ga. L. 2000, p. 929, § 1; Ga. L. 2017, p. 774, § 10/HB 323.)