


Understanding Georgia License Law

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QUESTION
Why are we here?

ANSWER
1925
1973
1996
2016

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QUESTION
Why are we here?
1925

ANSWER
Real Estate License Law
Title 43 – Broker, Salesperson, CAM
Chapter 40 - Statutory Law
Chapter 520 - Commission Rules
Title 44 – Property
Article 3 – Condominium Act (1975)
Article 4 – POAA (1994)

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QUESTION
Why are we here?
1973

ANSWER
Community Associations Institute

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QUESTION
Why are we here?
1996

ANSWER
GA Regulation of CAM Industry
Definition of Broker
Added CAM License

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QUESTION
Why are we here?
2016

ANSWER
Rule 520-1-.05
Three hours of CE on the topic of license law

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QUESTION
Why is this Class required?


ANSWER

- During the FY17, the Commission opened 1,995 new investigative cases
- Largest number since 2010

Source: GREC

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Total Licensees as of 6/30/19
Just individuals, not other entities

	Active	Inactive	Total	
Broker	17,711	2,905	20,616	25%
Salesperson	51,766	12,318	64,084	74%
CAM	467	162	629	1%
	69,944	15,385	85,329	
Source: GREC				

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CAM Licensing Exceptions 43-40-29

- Any person employed on a full-time basis by a community association for providing community association management services (**direct employee**)
- Any person who is a member of a community association and who provides community association management services only to one community association of which such person is a member (**full-time not required**)
- Any person employed on a full-time basis by the owner of property for providing community association management services (**non-licensed employee of declarant/development company**)



Top CAM Complaints Filed with GREC

- Manager is unresponsive to our requests
- Manager will not provide requested documentation regarding expenses
- Previous manager will not turn over the association records to our new manager



Top CAM Complaints Filed with GREC

- Person currently managing our association is not licensed
 - Usually an unlicensed assistant under a broker is managing the association and is conducting brokerage activity that a licensee should be doing
- Money is missing and we suspect our previous manager misappropriated funds
 - Not common, but it does happen



Previous Law Change

- Effective July 1, 2015: Senate Bill 95 expanded the number of financial institutions at which trust accounts may be held by a real estate broker from "federally insured banks" to "federally insured financial institutions"
- A "financial institution" under Georgia law includes a "bank" but also a trust company, a building and loan association, and a credit union
- Additionally, a trust account may now be held in accounts other than "checking accounts" as long as the account is federally insured
- Related Rules were updated July 1, 2016



Previous Rule Changes

- Effective **July 1, 2016**: 3 of the continuing education (CE) hours must be on the topic of license law from a license law course approved by GREC
- Effective **July 1, 2015**: CE hours increased from 24 to 36 hours over the four-year renewal period (law requires a minimum of 24 hours)

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Review GREC Authority

- Grant / deny licenses (43-40-14)
- Set licensing fees (43-40-3)
- Pass rules and regulations (43-40-3.1)
 - Right to pass rules regarding professional conduct of licensees
 - Rules must be based on some provision of the License Law
 - Rules and regulations cannot be inconsistent with the License Law

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Review GREC Authority

- Disciplinary Action (43-40-25)(a)
 - Right to revoke and suspend licenses
 - Right to reprimand and issue warning letters
 - Right to fine \$1,000 per violation
 - \$5,000 limit for multiple violations in any one disciplinary proceeding
 - Require additional education

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Prohibited Conduct (43-40-15)



- Grounds for refusal or any sanction including revocation or suspension of license
 - Federal Fair Housing Act
 - Georgia Fair Housing Act

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Prohibited Conduct (43-40-15)

- Grounds for refusal or suspension of license
 - Not in compliance with a court order for child support
 - Borrower in default (not in a satisfactory repayment status)
- Any licensee convicted of a felony or any crime involving moral turpitude shall immediately notify GREC

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Change of Place of Business (43-40-19)

- Broker shall notify GREC within 30 days of any change of address
- When a licensee leaves a broker, the broker shall immediately forward the licensee's license to GREC or the new broker
- Licensee shall not engage in activities of a real estate licensee until a new broker is secured

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Change of Place of Business (43-40-19)

- Change Application
 - Activate
 - Inactivate
 - Transfer
- Online Options
- Releasing Broker
- Affiliate Broker

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Change of Place of Business (43-40-19)

A salesperson or community association manager may not act as a licensee for any broker other than the one holding the license except as provided by 43-40-19 (c)

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Change of Place of Business (43-40-19) (c)

- Licensee transferring to new broker may continue to work for former broker with transactions begun prior to transfer, provided
 - Both brokers agree in writing
 - The transactions are documented in the written agreement
 - Former broker assumes full responsibility activities
 - Written agreement expresses the compensation terms

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Purpose of Trust Accounts

To keep other people's money completely separated from the broker's funds

- What if broker dies?
- What if there is a judgment against the broker?
- What if broker files for bankruptcy?

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Purpose of Trust Accounts

- What if broker dies?
 - Money goes into broker's estate
- What if there is a judgment against the broker?
 - Potential garnishment
- What if broker files for bankruptcy?
 - Creditors may receive the funds

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Trust Accounts for Management Companies

- Rarely use trust accounts
- Name and Federal Tax ID on Association accounts
- Endorse over improperly paid funds



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Trust Accounts (43-40-20 & 520-1-.08)

- Properly opened and maintained trust accounts cannot be seized for the broker's debts
- If broker uses any part of trust funds for any reason, or simply mixes the funds with his/her own, the broker is commingling
- Commingling is a direct violation of the license law and may result in disciplinary action against the broker's license

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Managing Trust Accounts (520-1-.08)

- Brokers may maintain more than one trust account – each one should be registered with GREC within one month of opening
- Place funds in trust account as soon as practically possible
- Unless otherwise agreed to in writing, trust account should be in a federally insured financial institution
 - If its an interest bearing account, all parties must agree who will earned the interest

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Managing Trust Accounts (520-1-.08)

- Broker must provide GREC with the name of the financial institution and the account number
- Provide GREC, or its representative, the authority to investigate and examine the records of that account at any time

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Managing Trust Accounts (520-1-.08)

- The qualifying broker must have signatory power on all the trust accounts
- A monthly written reconciliation must be maintained in broker's files for at least 3 years
- If maintaining a trust account take the GREC free online course "Avoiding Trust Account Trouble"

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Managing Trust Accounts (520-1-.08)

- A licensee who manages rental property which the licensee owns must maintain any security deposits collected in a designated trust account
- Non-broker licensee may open a trust account for the deposit of trust funds received on properties *owned* by the non-broker licensee
 - Broker must approve
 - Licensee provides regular reports accounting for the funds



Managing Trust Accounts (520-1-.08)

- Property "owned by a licensee"
 - Only the name of the non-broker licensee or
 - Only the name of a business entity of which the non-broker licensee is the sole owner, member, or stockholder
 - In sum, the non-broker licensee must own 100%
- Otherwise, trust funds must be deposited into a trust account of a firm licensed by GREC



Non-Broker Licensees Managing Rental Property

	<u>100% Owned</u>	<u><100% Owned</u>
Security Deposit	Personal trust acct.	Firm's trust acct.
Property Mgmt.	Manage personally	Firm must manage



Ethics and Duties of CAMs as to Trust Funds

- Broker responsible for establishing written policy and instructing licensees on how receipt of trust funds will be acknowledged
- Broker should have written procedure for handling cash deposits and other items of personal property, if the designated person is not available to process them



Violations (43-40-25)

- Commission's enforcement authority (a)
- Unfair Trade Practices (b) (36 in total)
 - Discrimination (1) (*think fair housing laws*)
 - Misleading advertising (2)
 - Failing to account for other's funds (3)
 - Commingling money or property (4)

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Violations (43-40-25)

- Failing to disclose in writing to a client (6)
 - The receipt of a fee, rebate or other thing of value on expenditures made on behalf of the client for which the client is reimbursing the broker (a)
 - The commission payment to another broker for the referral of the principal (b)
 - The receipt of anything of value for the referral of any service or product in a real estate transaction to a client (c)

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Violations (43-40-25) (7)

- Representing more than one broker without consent of each broker
 - Can obtain written permission from broker to also work as an active licensee practicing real estate with another real estate firm
 - Broker must voluntarily agree in writing for the affiliated licensee to do so
 - Practical business perspective - it may not be desirable for brokers to be competing with each other with the same licensee

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Inducement to Break Contract 43-40-25 (13)

- Informally referred to as the "No Solicitation Rule"
- **Clear Violation**
 - I know you under a brokerage agreement with Firm A
 - If you terminate their services and let my company manage your Association I will charge you 10% less than you are currently paying Firm A.

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Inducement to Break Contract 43-40-25 (13)

- **No Violation**
 - Contacting Associations with general information about your services when they are under a contract with another management firm asking them to consider you next time they are contracting for services
 - Best to include general verbiage that you are not seeking to solicit their business while they are currently under a contact with another firm

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Violations (43-40-25)

- Failing to place (as soon after receipt as is practicably possible) any trust funds in the custody of the broker (23)
- Attempting to sell, lease or exchange the property of any member of a community association to which a licensee is providing CAM Service without the express written consent of that association to do so (32)
 - Practical solution: include authorization in management agreement

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Violations (43-40-25)

- Obtain a brokerage agreement knowing or having reason to believe that another broker already has an exclusive agreement with the owner (26)
 - Unless the licensee has written permission from the broker;
 - However, a broker shall be permitted to present a proposal / bid for CAM if requested to do so in writing from a community association
- Failing to retain copy of contracts for 3 yrs. (27)

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Violations (43-40-25)

- Failure to deliver to a community association terminating a management contract within 30 days of the termination or within such other time period as the management contract shall provide: (33)
 - A complete and accurate record of all transactions handled during the period of the contract and not previously accounted for
 - All records and documents received from the community association or received on the association's behalf
 - Any funds held on behalf of the community association

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Brokerage Engagements 520-1-06

- Each brokerage engagement must include all terms and have a definite expiration date
 - Automatic renewal is okay as long as terms of renewal are very clear
- Licensee must furnish each person signing it a true copy

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Brokerage Engagements 520-1-06

- Management agreement requirements
 - Identify the property (*or association*)
 - Contain all terms and conditions
 - Provide periodic (at least annually) written statement of income (*revenue*) and expense
 - State the amount of the fee and when it will be paid
 - Contain the effective date of the agreement and its termination date

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Brokerage Engagements 520-1-06

- Management agreement requirements (continued)
 - Provide the terms and conditions for termination of the agreement
 - Contain signatures of broker and owner (*board*) or authorized agent
 - Provide a copy of the agreement to the owner
- Add brokerage firm license # to management agreement

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Fidelity Insurance (520-1-.06)

- Broker who provides CAM Services and collects, maintains, controls, has access to or disburses community association funds shall be covered at all times under a fidelity insurance policy
- Unless such broker at no time collects, maintains, controls, has access to, or disburses community association funds totaling more than \$60,000
- What if the total is less than the minimum requirement?

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Policy Requirements (520-1-.06)

- Coverage must be written by insurance company authorized to write policies in GA
- Must cover the broker and all partners, officers, licensed affiliates, and employees of the broker and may cover other persons collecting, maintaining, controlling, having access to, or disbursing association funds

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Policy Requirements (520-1-.06)

- Broker shall maintain a separate policy for each community association managed...*or such alternate fidelity coverage as is acceptable to the Commission*
- Broker shall maintain copy of policy and provide copy to community association

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Policy Requirements (520-1-.06)

- Must cover the maximum amount of funds broker collects, maintains, controls, has access to, or disburses at any time the bond or insurance policy is in effect, BUT ***shall never be less than an amount equal to the sum of three month's assessments due from all the members of the association plus the amount of reserve funds***

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Fidelity Insurance Example

- HOA has 200 SFH's
- Annual assessment is \$700, billed quarterly
- Association has \$30K in reserves
- What amount of fidelity insurance required?

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Fidelity Insurance Example

- 200 owners x \$700 = \$140,000 annually, billed quarterly
- $\$140,000 / 12 \text{ months} \times 3 \text{ months} = \$35,000$
- $\$140,000 / 4 = \$35,000$
- $\$35,000$ (3 mos. assessment) + $30,000$ (reserves)
- = $\$65,000$ Fidelity Coverage
- Maximum coverage = minimum coverage

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Fidelity Insurance Example

- Same as original example, but what if the association also had \$10,000 in an operating account?
- Same as original example, but what if the assessment was billed annually instead of quarterly?

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QUESTION

What if the association also had \$10K in an operating account?

ANSWER

The policy should cover the maximum amount of funds the broker collects, in this case \$75,000. The \$35,000 quarterly assessment plus \$30,000 reserve fund plus \$10,000 operating fund.

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QUESTION

What if the association billed annually instead of quarterly?

ANSWER

The policy should cover the maximum amount of funds the broker collects, in this case \$170,000. \$140,000 annual assessment plus \$30K reserve fund.

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Management of Firm (520-1.07)

Broker shall not conduct business under any name other than the one in which the license is issued

- Entity Legal Name
- GA Secretary of State
- GREC Registration
- Local business license

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Management of Firm (520-1.07)

Broker-Affiliate Agreement Requirements

- Written agreement & terms of compensation
- Departing licensee return (in person) all plats of property, keys and other property which the releasing broker owns or for which the releasing broker is responsible
- Licensee terminating an affiliation with the firm shall not have any contact with any of the firm's clients that the licensee is serving under a listing, a management agreement, or other brokerage engagement

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Management of Firm (520-1.07)

- Support staff may perform only ministerial duties, *(those that do not require discretion or the exercise of the licensee's own judgment)*
- An individual actively licensed with one firm (or license is inactive) may work as support personnel for a different firm with written consent from both brokers and may perform only ministerial duties at the second firm

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QUESTION

No licensee shall be permitted to list, sell, buy, exchange, rent, lease or option real estate owned by the licensee without first advising, in writing, the broker –

Why is that?

ANSWER

- Will any brokerage fees be paid
- How will trust funds be handled
- Any marketing / advertising
- What contract forms will be used

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Licensees Acting as Principals (520-1-.11)

- Licensees advertising to buy, sell or exchange real property for their own account must comply with the advertising requirements of 520-1-.09
- May hire a 3rd party broker to represent them as a buyer, seller, tenant or landlord

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Advertising (520-1-.09)

Licensees Advertising as Principals

- CAM Licensees are prohibited from advertising under the licensee's own name to buy, sell or lease property, unless:
 - Property is owned by the licensee
 - Property is not under a brokerage engagement with a broker
 - Licensee's broker was notified in writing of the specific property to be advertised for sale, rent or lease
 - If the licensee's license is affiliated with a broker, the broker must give written consent to advertising the specific property and the advertisement itself

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Advertising (520-1-.09)

- For this rule, *Advertising* means any manner by which a licensee makes known to the general public real estate for sale, rent, lease or exchange
- Any advertising that is misleading or inaccurate in any material fact or in any way misrepresents any real estate is prohibited
- All advertising by licensees, including CAMs must be under the direct supervision of broker and in the name of their firm

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Advertising (520-1-.09)

Licensees Advertising as Principals

- Licensees are prohibited from advertising to sell, buy, rent, or lease property in a manner indicating that the offer to sell, buy, rent or lease is made by a private party not licensed by the GREC

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Advertising (520-1-.09)

Regardless of whether the licensee's license is affiliated with a broker or on inactive status, any advertisement must include either

- The legend "seller, buyer, landlord, tenant (select one) holds a real estate license"
- Or "Georgia Real Estate License # _____"
- Or "GA R. E. Lic. # _____"
- Usually made in the disclosure section of a contact

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Handling Real Estate Transactions (520-1-.10)

- Presenting Offers
- License # in Offers
- Responsibility to Distribute Copies
- Retention of Copies (3 years)
- Falsification of Transaction Documents
- Disclosure of Commissions, Fees and Rebates

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The Federal Fair Housing Act

- Enforced by Dept. of Housing and Urban Development (HUD)
- Applies to residential real estate only
- Don't confuse: Fair Housing Act with the commonly discussed "FHA" which stands for Federal Housing Administration also part of HUD
- Don't confuse: Fair Housing Act with Americans with Disabilities Act (ADA) enacted in 1992

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The Federal Fair Housing Act

- Civil Rights Act of 1866
- Fair Housing Act of 1968 (Title VIII)
- Housing & Community Development Act of 1974
- Fair Housing Amendment Act of 1988

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The Federal Fair Housing Act

- Race
- Color
- National Origin
- Religion
- Sex
- **Familial Status**
- **Disability**



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The Federal Fair Housing Act

Protected Class	Year Added
-----------------	------------

- | | |
|--------------------------------|--------|
| ▪ Race | ▪ 1866 |
| ▪ Color | ▪ 1968 |
| ▪ National Origin | ▪ 1968 |
| ▪ Religion | ▪ 1968 |
| ▪ Sex | ▪ 1974 |
| ▪ Familial Status | ▪ 1988 |
| ▪ Handicap (Disability) | ▪ 1988 |

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The Federal Fair Housing Act

Blockbusting

- Inducing owners to list or sell their homes because a protected class will be moving into the community

Steering

- Channeling prospective buyers toward or away from communities

Redlining

- Refusing to make loans

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Familial Status

May not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of a child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission



Note: Does not override local laws limiting the # of occupants in a dwelling / permits reasonable restrictions regarding Max. # of occupants to occupy a dwelling – cannot distinguish by relationship

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Familial Status

- Also applies to pregnant women, and
- Anyone securing legal custody of a child under 18
- No discrimination permitted in the community's rules and regulations
- FHA mandates that all restrictions be "facially neutral", meaning any law, rule or regulation must not, as written, discriminate against a particular group
- Rules against behavior is okay!

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Discrimination Examples

- Rules regulating "adults-only" times
- Rules that specifically target children may violate the FHA
- Restrictions should not give special privileges to any age group

Not okay: Children shall not bring skateboards or bicycles into the gated pool area

Okay: Skateboards or bicycles are prohibited within the gated pool area

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Facially Neutral

FHA requires that all restrictions be "facially neutral", meaning the law or rule does not, as written, discriminate against a particular group

Rules against behavior is okay

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Familial Status Exemption

Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older

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Disability

The Fair Housing Act defines “disability” as:

- A physical or mental impairment which substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability



Disability – Examples of Major Life Activities

- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Performing manual tasks
- Caring for oneself
- Working
- Sitting
- Standing
- Lifting
- Reading



Disability (also includes)

- Chronic Alcoholism
- Chronic Mental Illness
- AIDS, AIDS Related Complex
- Mental Retardation
- Represents a complex topic – always seek legal advice



Disability

Must make “Reasonable Accommodations”





Common Fair Housing Complaints Against CAMs

- Refusal to allow use of amenities based on age (pool restrictions)
- Refusal to accommodate a required emotional support dog because of a disability (pet restrictions)
- Refusal to accommodate someone an assigned parking space because of a disability (parking space restrictions)

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Enforcement and Penalties

- GREC License Law and Rules

Also

- The FHA is enforceable by private citizens and the Attorney General
- Court may impose a fine of \$50,000 for the first offense and up to \$100,000 for any subsequent violations

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Parking Lot: Question Review

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Thank You

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