

House Bill 399 (AS PASSED HOUSE AND SENATE)

By: Representatives Oliver of the 84th, Olaleye of the 59th, Burnough of the 77th, Blackmon of the 146th, Frye of the 122nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 74 of Title 36 of the Official Code of Georgia Annotated,
2 relating to local enforcement boards created on or after January 1, 2003, so as to require that
3 certain information regarding the property managers of certain properties is provided upon
4 request of a code enforcement officer; to amend Article 1 of Chapter 7 of Title 44 of the
5 Official Code of Georgia Annotated, relating to landlords and tenants in general, so as to
6 require certain residential landlords to have in-state staff to manage tenant communications
7 related to such properties; to amend Chapter 40 of Title 43 of the Official Code of Georgia
8 Annotated, relating to real estate brokers and salespersons, so as to revise provisions related
9 to persons exempted from such chapter; to provide for related matters; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 2 of Chapter 74 of Title 36 of the Official Code of Georgia Annotated, relating to
14 local enforcement boards created on or after January 1, 2003, is amended in Code
15 Section 36-74-30, relating to other enforcement methods and probable cause for investigation
16 required, by revising subsection (b) as follows:

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17 "(b) No local government is authorized to perform investigations or inspections of
18 residential rental property unless there is probable cause to believe there is or has been a
19 violation or violations of applicable codes, and in no event may a local government require
20 the registration of residential rental property. Conditions which appear to be code
21 violations which are in plain view may form the basis for probable cause. If there is
22 probable cause to believe that there is or has been a violation or violations of applicable
23 codes on such a property managed by a person licensed pursuant to Chapter 40 of Title 43,
24 upon request of a code enforcement officer, the tenant of such property shall provide the
25 name, license number, and contact information for the property manger."

26

SECTION 2.

27 Article 1 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
28 landlords and tenants in general, is amended by adding a new Code section to read as
29 follows:

30 "44-7-25.

31 (a) Any landlord that is not a resident of this state that owns or operates single-family or
32 duplex residential rental properties in this state shall employ a broker licensed pursuant to
33 Chapter 40 of Title 43, that may or may not reside within this state. If the broker does not
34 reside within this state, the broker shall employ at least one person, to be located within this
35 state, who shall be responsible for receiving, coordinating, managing, and responding to
36 communications from tenants of such landlord related to maintenance and other issues
37 related to such properties.

38 (b) The exemptions set forth in paragraphs (7) and (8) of subsection (a) of Code
39 Section 43-40-29 shall not apply to any landlord that is not a resident of this state that owns
40 or operates single-family or duplex residential rental properties as provided for in
41 subsection (a) of this Code section."

SECTION 3.

42
43 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate
44 brokers and salespersons, is amended in Code Section 43-40-29, relating to exceptions to
45 operation of chapter, by revising subsection (a) as follows:

46 "(a) Except as otherwise provided, this chapter shall not apply to:

47 (1) Any person who, as owner, as the spouse of an owner, as the family member of an
48 owner, as that term is defined in rules promulgated by the Commission, as general partner
49 of a limited partnership as an officer of a limited liability company, as lessor, or as
50 prospective purchaser or their regular employees, performs any act with reference to
51 property owned, leased, or to be acquired by such owner, limited partnership, lessor, or
52 prospective purchaser where such acts are performed in the regular course of, or as
53 incident to, the management of such property and the investment therein or any person
54 who manages residential apartment complexes under a contract approved by any federal
55 agency for an organization which is exempt from federal taxes pursuant to Section
56 501(c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, provided that
57 such person was engaged in managing such property under such type contract prior to
58 January 1, 1989;

59 (2) An attorney in fact under a duly executed power of attorney to convey real estate
60 from the owner or lessor;

61 (3) A licensed practicing attorney acting solely as an incident to the practice of law;

62 (4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or
63 guardian or acting under a court order or under the authority of a will or of a trust
64 instrument;

65 (5) Any officer or employee of a government agency in the conduct of official duties;

66 (6) Any person employed by a public or private utility who performs any act with
67 reference to property owned, leased, or to be acquired by the utility employing that

68 person, where such acts are performed in the regular course of, or as incident to, the
69 management of such property and the investment therein;

70 ~~(7) Any person who, as owner or through another person engaged by such owner on a~~
71 ~~full-time basis or as owner of a management company whose principals hold a~~
72 ~~controlling ownership of such property, provides property management services or~~
73 ~~community association management services, buys, sells, leases, manages, auctions, or~~
74 ~~otherwise deals with property owned by such person;~~

75 ~~(8) Any person employed on a full-time basis by the owner of property for the purpose~~
76 ~~of providing property management services or community association management~~
77 ~~services, selling, buying, leasing, managing, auctioning, or otherwise dealing with such~~
78 ~~property;~~

79 ~~(8.1) Any person employed on a full-time basis by a community association for the~~
80 ~~purpose of providing community association management services;~~

81 (9) Any person acting as a referral agent who is not involved in the actual negotiations,
82 execution of documents, collection of rent, management of property, or other related
83 activity which involves more than the mere referral of one person to another and who:

84 (A) Does not receive a fee for such referral from the party being referred;

85 (B) Does not charge an advance fee; and

86 (C) Does not act as a referral agent in more than three transactions per year;

87 (10) Any individual employed by a broker to assist in property management services on
88 property on which the broker has a written management agreement that the broker
89 procured from and negotiated with the owner, provided that such individual's activities
90 are explicitly authorized by the broker in a written agreement between the broker and the
91 employee and provided that such activities are limited to one or more of the following:

92 (A) Delivering a lease application, a lease, or any amendment thereto to any person;

- 93 (B) Receiving a lease application, a lease, or any amendment thereto, a security
94 deposit, rental payment, or any related payment for delivery to and made payable to the
95 broker or the owner;
- 96 (C) Showing a rental unit to any person, provided that the employee is acting under the
97 direct instructions of the broker, and executing leases or rental agreements;
- 98 (D) Providing information authorized by the broker about a rental unit, a lease
99 application, or a lease;
- 100 (E) Providing information to a tenant about the status of such tenant's security deposit
101 or rent payments or to an owner about the owner's financial accounts and payments
102 from the owner's tenants; and
- 103 (F) Performing any ministerial acts that are explicitly authorized by the broker in a
104 written agreement between the broker and the employee.

105 Any broker utilizing the services of such an employee shall be held responsible under this
106 chapter for the activities of that individual;

107 (11) Any person who provides property management services on properties available for
108 less than 90 days' occupancy by guests or occupants and meets all of the following
109 conditions:

- 110 (A) The property manager enters into a written agreement with the owner specifying
111 all terms and conditions under which the property is to be managed, the reporting of
112 income and expenses, and the remitting of income to the owner;
- 113 (B) The management agreement between the property manager and the owner does not
114 allow the property manager to rent or lease the property and any agreement between the
115 property manager and the guest or occupant is not a lease or rental agreement;
- 116 (C) Any applicable zoning laws do not prohibit short-term occupancy uses of the
117 property;
- 118 (D) The guest's or occupant's occupancy is for less than 90 days;
- 119 (E) No deposit exceeds the cost of the rental required for the minimum rental period;

- 120 (F) The guest or occupant pays any required state or local sales taxes or excise taxes
121 on rooms, lodgings, and accommodations and the property manager has any required
122 state or local business licenses or permits;
- 123 (G) The property manager has the authority to specify rooms or units that the guest or
124 occupant will occupy;
- 125 (H) No extra charge is made for basic utilities;
- 126 (I) Notice is not required for a guest or occupant to terminate occupancy of the room
127 or unit, except as provided under the provisions of Article 1 of Chapter 21 of this title;
128 and
- 129 (J) The room or unit is not the permanent residence of the guest or occupant;
- 130 (12) Any person who is a member of a community association and who provides
131 community association management services only to one community association of
132 which such person is a member;
- 133 (13) Any person who performs only physical maintenance on a property; or
- 134 (14) A licensed certified public accountant acting solely as an incident to the practice of
135 public accounting."

136 **SECTION 4.**

137 All laws and parts of laws in conflict with this Act are repealed.