

Senate Bill 95

By: Senators Williams of the 27th, Martin of the 9th, Gooch of the 51st, Albers of the 56th, Mullis of the 53rd and others

**AS PASSED**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real  
2 estate brokers and salespersons, so as to provide for the acceptance of funds in a separate,  
3 federally insured account at a financial institution by such persons; to provide for unfair trade  
4 practices by real estate brokers and salespersons; to provide for related matters; to repeal  
5 conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

8 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate  
9 brokers and salespersons, is amended in Code Section 43-40-20, relating to trust or escrow  
10 checking account for real estate business, by revising subsection (a) as follows:

11 "(a) Each broker who accepts down payments, earnest money deposits, security deposits,  
12 rents, association fees, or other trust funds in a real estate brokerage transaction or whose  
13 affiliated licensees accept such trust funds shall maintain a separate, federally insured ~~bank~~  
14 ~~checking~~ account at a financial institution in this state which shall be designated a trust or  
15 escrow account wherein all down payments, earnest money deposits, or other trust funds  
16 received by the broker or the broker's affiliated licensees, on behalf of a principal or any  
17 other person, shall be deposited. An account so designated and registered with the  
18 commission shall not be subject to attachment or garnishment. A broker who does not  
19 accept trust funds in real estate brokerage transactions is not required to maintain a  
20 designated trust or escrow account; provided, however, that if a broker does not maintain  
21 such a trust or escrow account and later receives trust funds in a real estate brokerage  
22 transaction, such broker must open the designated trust or escrow account required by this  
23 subsection within one business day of the receipt of such trust funds."

24 **SECTION 2.**

25 Said chapter is further amended in Code Section 43-40-25, relating to unfair trade practices,  
26 by revising paragraphs (5) and (29) of subsection (b) as follows:

27 "(5) Failing to maintain and deposit in a separate, federally insured ~~checking~~ account at  
28 a financial institution all money received by ~~said such~~ broker acting in ~~said such~~ capacity,  
29 or as escrow agent or the temporary custodian of the funds of others, in a real estate  
30 transaction unless all parties having an interest in ~~said such~~ funds have agreed otherwise  
31 in writing;"

32 "(29) Failing to obtain the written agreement of the parties indicating to whom the broker  
33 shall pay any interest earned on trust funds deposited into an interest-bearing ~~checking~~  
34 account prior to depositing those funds into such account;"

35 **SECTION 3.**

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