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## PROPERTY

### ***General Provisions: Provide Protection for Failing to Disclose Certain Information During a Real Estate Transaction***

CODE SECTION:	O.C.G.A. § 44-1-16 (amended)
BILL NUMBER:	SB 108
ACT NUMBER:	354
GEORGIA LAWS:	2001 Ga. Laws 1155
SUMMARY:	The Act protects brokers and licensees of brokers who fail to disclose that a property was occupied by a person with a virus or disease that is unlikely to be transmitted through occupancy of the dwelling place, or that the property was the site of a homicide, felony, suicide, or accidental death. The Act prohibits a cause of action against any broker or licensee of the broker for failure to reveal this information absent a finding of fraud.
EFFECTIVE DATE:	July 1, 2001

### ***History***

Stigmatized property is property that has been the site of a death or an accident, and although nothing is physically wrong with the property, some potential buyers have concerns about the property.<sup>1</sup> Within the last twenty years, jurisdictions differed about whether real estate agents incur liability for not disclosing that a property is stigmatized.<sup>2</sup> The Georgia General Assembly clarified the state law in 1989 by enacting O.C.G.A. § 44-1-6.<sup>3</sup> The original law, commonly known as the “ghost

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1. See Audio Recording of House Proceedings, Mar. 8, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio]. Stigmatized property is a national problem and often results in the property losing up to 20% of its market value. See Abe Aamidor, *Indianapolis Homes with Notorious Pasts Pose Disclosure Problems for Sellers*, INDIANAPOLIS STAR & NEWS, June 7, 2001.

2. See Telephone Interview with Keith Hatcher, Senior Political Consultant, Georgia Association of Realtors (Sept. 25, 2001) [hereinafter Hatcher Interview] (suggesting that the Georgia General Assembly passed stigmatized property laws, in part, after a California case held a real estate agent liable for failing to disclose that a property was stigmatized). See, e.g., *Reed v. King*, 145 Cal. App. 3d 261 (1983).

3. See 1989 Ga. Laws 1633, § 1, at 1633.

and goblin bill,” mandated that neither a real property owner nor his agent is required to reveal that a property was the home of a person infected with a disease or the site of a homicide or other felony.<sup>4</sup> When the law was originally passed, the typical agency relationship during a real estate transaction was that of the listing agent contracted to an owner.<sup>5</sup> Today, it is more common for a buyer to also contract with a broker of his own.<sup>6</sup> The Georgia Association of Realtors wanted the protection of the law to extend to all real estate agents, including buyers’ agents.<sup>7</sup> The rationale of the Georgia Association of Realtors is that the agent, regardless of whether they represent the buyer or seller, sells *the property*, not the history of the property.<sup>8</sup> Thus, SB 108 extends protection to all real estate brokers and their licensees.<sup>9</sup>

### *SB 108*

Senators Meyer von Bremen, Rene’ Kemp, Billy Ray, Greg Hecht, and Robert Brown of the 12th, 3rd, 48th, 34th, and 26th Districts, respectively, sponsored SB 108.<sup>10</sup> The bill was introduced to the Senate on February 5, 2001.<sup>11</sup>

Upon introduction, the Senate assigned the bill to its Finance and Public Utilities Committee, which favorably reported the bill on February 9, 2001.<sup>12</sup> A Senate floor amendment corrected a typographical error by changing the word “infermation” to “information.”<sup>13</sup> The Senate adopted and unanimously passed the bill on February 13, 2001.<sup>14</sup>

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4. See 1989 Ga. Laws 1633, § 1, at 1633; Hatcher Interview, *supra* note 2.

5. See Audio Recording of Senate Proceedings, Feb. 13, 2001 (remarks by Sen. Meyer von Bremen), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio]; Hatcher Interview, *supra* note 2.

6. See Senate Audio, *supra* note 5 (remarks by Sen. Meyer von Bremen); Hatcher Interview, *supra* note 2.

7. See House Audio, *supra* note 1; Hatcher Interview, *supra* note 2.

8. See Hatcher Interview, *supra* note 2.

9. See *id.*

10. See SB 108, as introduced, 2001 Ga. Gen. Assem.

11. See State of Georgia Final Composite Status Sheet, SB 108, Mar. 21, 2001.

12. See *id.*

13. Compare SB 108, as introduced, 2001 Ga. Gen. Assem., with SB 108 (SFA), 2001 Ga. Gen. Assem.

14. See Georgia Senate Voting Record, SB 108 (Feb. 13, 2001); State of Georgia Final Composite Status Sheet, SB 108, Mar. 21, 2001; see also Senate Audio, *supra* note 4 (vote on amendments).

The House Judiciary Committee favorably reported SB 108 on March 2, 2001.<sup>15</sup> The House adopted and unanimously passed the bill on March 8, 2001.<sup>16</sup> Governor Roy Barnes signed the bill into law on April 28, 2001.<sup>17</sup>

### *The Act*

The Act amends Code section 44-1-16 regarding information to be disclosed in a real estate transaction.<sup>18</sup> The Act changes the language of the Code section from only protecting owners and their agents to protecting any real estate broker or any affiliated licensee of a broker.<sup>19</sup> This change ensures that the real estate broker is protected regardless of the agency relationship.<sup>20</sup> The Act adds death by accidental or natural causes to the list of non-material defects agents are not required to disclose.<sup>21</sup> The Georgia Association of Realtors wanted the legislature to broaden the scope of non-material defects listed to further clarify the law.<sup>22</sup>

Additionally, the Act adds that no cause of action shall arise against a broker or their affiliated licensee for revealing the information listed in accordance with this Code section.<sup>23</sup> The Act also adds a "good faith" provision when brokers answer potential buyers' questions about the property.<sup>24</sup> Finally, the Act precludes civil liability without a finding of fraud.<sup>25</sup>

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15. See State of Georgia Final Composite Status Sheet, SB 108, Mar. 21, 2001.

16. See Georgia House of Representatives Voting Record, SB 108 (Mar. 8, 2001); State of Georgia Final Composite Status Sheet, SB 108, Mar. 21, 2001; see also House Audio, *supra* note 1 (vote).

17. See 2001 Ga. Laws. 1155, § 2, at 1156.

18. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).

19. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).

20. See Hatcher Interview, *supra* note 2.

21. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).

22. See Hatcher Interview, *supra* note 2 (suggesting that the new terms protect agents from buyers who want to sue after learning any type of death occurred on the property).

23. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).

24. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).

25. Compare 1989 Ga. Laws 1633, § 1, at 1633 (formerly found at O.C.G.A. § 44-1-16 (1991)), with O.C.G.A. § 44-1-16 (Supp. 2001).