



1201 Carmichael Way / Montgomery, Alabama 36106
Phone: 334.242.5544 / Fax: 334.270.9118
arec.alabama.gov / arec@arec.alabama.gov

Patricia Anderson, Executive Director
Teresa D. Hoffman, Assistant Executive Director

September 2, 2016

Notice of Public Hearing on Proposed Rule Amendments

Proposed Changes to Rules (To view the rule amendments, click on the links below.)

Rule 790-X-3-.03

Rule 790-X-3-.04

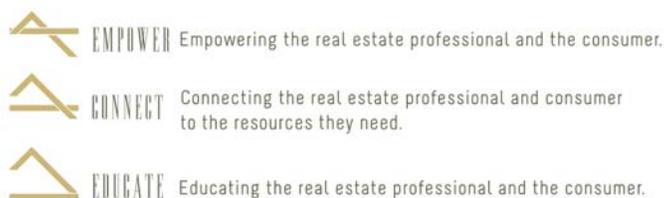
Rule 790-X-3-.06

Location: Alabama Real Estate Commission
1201 Carmichael Way
Montgomery, AL 36106

Date: Thursday, September 29, 2016

Time: 9:00 a.m.

Notice of Public Hearing or Submitting Written Comments: Comments can be presented at the public hearing scheduled at 9:00 a.m. on September 29, 2016 at the Alabama Real Estate Commission located at 1201 Carmichael Way, Montgomery, Alabama. Additionally, written comments may be addressed to Patricia Anderson, Executive Director, Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama 36106. Written comments must be received in the Commission office no later than 4:30 p.m. on October 7, 2016.



Rule 790-X-3-.03 Deposit of Funds

(1) The deposit and accounting for at all times of all funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama shall require that the qualifying broker be a customer of the financial institution holding all such accounts and the qualifying broker shall be one of the persons with authority to deposit and withdraw funds and to write or make checks as necessary on all such accounts.

(2) Each real estate salesman or associate broker shall pay over to his or her qualifying broker all funds coming into his or her possession in trust for other parties immediately upon receipt of same.

(3) Each qualifying broker is responsible for deposit of all funds belonging to others coming into his or her possession or of a salesperson or associate broker licensed under him or her where such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing. In cases where the funds are U. S. currency, i.e. cash as opposed to a check or note, these funds shall be deposited immediately. In cases where a check is received as earnest money and the contract form states that the check is to be held for a specific length of time or until the occurrence of a specific event, then the check shall be deposited when the contract form states, or if no time for deposit is specified in the contract form, then the check shall be deposited when the offer becomes a contract.

(4) Funds to be held in trust under a contract for sale involving more than one qualifying broker shall be held and deposited by any of the qualifying brokers involved in the sale. All funds to be held in trust, whether by contract for sale, or by lease or property management agreement, shall be held and deposited by the qualifying broker who is providing these services to the owner. In cases where a successor qualifying broker is to provide these services, the first broker shall provide a complete accounting of the funds and shall transfer the funds to the successor broker. The qualifying broker who is currently providing services to the owner shall be responsible to the public and to the commission for all funds. Upon request by the Commission or its authorized representative, each qualifying broker shall promptly account for any trust funds being held by that qualifying broker.

(5) Disbursement of funds held in trust under a contract for sale: Each qualifying broker shall promptly disburse to the appropriate party or parties any trust funds within 7 days of the consummation of the transaction for which the funds were deposited. If for any reason the transaction is not consummated, or if for any reason there is a disagreement involving to whom trust funds should be disbursed, the qualifying broker shall not disburse any trust funds except pursuant to a written agreement signed by all parties or pursuant to a court order.

(6) Disbursement of security deposits held in trust under a lease agreement:

(a) Residential leases security deposits: Refer to Alabama Code Section 35-9A-201 Security Deposits; Prepaid Rent, and 35-9A-205 Limitation of Liability. This law has priority and qualifying brokers shall comply with its instruction.

(b) Commercial leases security deposits:

Upon termination of the tenancy, money held for the landlord by a qualifying broker as security may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance of the lease all as itemized by the qualifying broker in a written notice delivered to the tenant together with the amount due within 60 days after termination of the tenancy and delivery of possession.

If the qualifying broker does not refund the entire deposit, the qualifying broker, within the 60-day period, shall provide the tenant an itemized list of amounts withheld.

Upon vacating the premises, the tenant shall provide to the qualifying broker a valid forwarding address, in writing, to which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the qualifying broker shall mail, by first class mail, the deposit or itemized accounting, or both, to the last known address of the tenant or, if none, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 90 days.

The qualifying broker's mailing, by first class mail, to the address provided in writing by the tenant, within 60 days of the refund or itemized accounting, or both, is sufficient compliance with this chapter.

(c) Security Deposits and trust funds subject to a management termination by a landlord or the qualifying broker: If a landlord and/or qualifying broker terminates a management agreement for leased properties, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the landlord or new manager of the property, within seven (7) working days of the management termination effective date, along with payment of funds. A qualifying broker, who is the manager of leased properties, whose leases include security deposits, is relieved of liability under the lease agreements and this chapter as to events occurring after written notice to the tenant of the termination of management and name of the new management.

(d) Security Deposits subject to a sale of the property: If a landlord conveys property subject to a rental agreement in a good faith sale to a bona fide purchaser, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the purchaser of the property, within seven working days (7) of the closing of the sale, along with payment of funds, if such funds are not already transferred via sale closing documents. Upon the date of accounting and payment, the qualifying broker is relieved of trust funds liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the sale and name of the new management.

~~—(6) (7)~~ This Rule shall not prohibit a broker from depositing with the appropriate court any trust funds which are the subject of disagreement among or between parties under the rules of interpleader or other lawful procedure.

Author: ~~Charles Sowell~~ Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, § 34-27-8, 34-27-36(a).

History: Filed September 30, 1982. Amended: Filed November 21, 1983; August 15, 1985; August 15, 1988. Amended: Filed November 17, 1995, effective December 22, 1995. Amended: Filed January 25, 1996, effective February 29, 1996. Amended: Filed August 25, 2006; effective September 28, 2006.

Rule 790-X-3-.04. Estimated Closing Statement

(1) The licensee who procures a written offer from a buyer in a single family residential transaction shall prepare and furnish to the buyer a complete estimated closing statement at the time the offer is signed by the purchaser. This statement must contain the licensee's best estimates of all costs the buyer is expected to have at closing and the approximate amounts of those costs. ~~The licensee shall also furnish to the buyer an actual, detailed closing statement showing all receipts and disbursements at the time the sale is closed.~~ The buyer must acknowledge receipt of the estimated ~~and the actual closing statements~~ statement by signature on the form.

(2) The licensee who presents a written offer to a seller in a single family residential transaction shall prepare and furnish to the seller a complete estimated closing statement at the time the offer is presented to the seller. This statement must contain the licensee's best estimates of all costs the seller is expected to have at closing and the approximate amounts of those costs. ~~The licensee shall also furnish to the seller an actual, detailed closing statement showing all receipts and disbursements at the time the sale is closed.~~ The seller must acknowledge receipt of the estimated ~~and the actual closing statements~~ statement by signature on the form.

(3) For purposes of records retention, it is sufficient that each licensee retain in his or her qualifying broker's file the statements required of him or her under this rule. It is not necessary that cooperating brokers maintain both buyer's and seller's statements.

Author: ~~Charles R. Sowell~~ Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, § § 34§ 27§ 8, 34§ 27§ 36(a)(22).

History: Filed September 30, 1982. **Amended:** Filed August 7, 1992.

Rule 790-X-3-.06. Probable Cause Determination

The investigator to whom a particular matter is assigned, in consultation with the Attorney General or his representative and the Executive Director, shall determine whether probable cause exists regarding that matter for filing a formal complaint and/or holding a hearing for the refusal, suspension or revocation of a license or the fining or reprimanding of a licensee.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, § § 34-27-8, 34-27-36.

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983.