



Consumer Guide Introduced

By D. Philip Lasater, Executive Director

tion that would help prepare consumers to be assisted by a real estate licensee. Commissioners hope and believe that by members of the public having a better idea about what to expect and what their own responsibility for understanding is will both serve them and the role of licensees in the transaction process.

Clearly Commissioners know and understand that not everyone reads or understands all there is to read and know. But this basic information will be available to those who are willing to take the time to make themselves better prepared to engage the services of a real estate licensee. A large percentage of the matters our investigative staff screen and sort through involve consumers' misunderstandings about reasonable expectations and knowing what they need to be knowledgeable about as well as how to factor reliance upon other sources.

The contents of the Guide includes information on brokerage arrangements, listing agreements, offers to purchase and the final closing on both the selling and buying side. Also included is financing information specifically about mortgage basics, payment, costs and important mortgage clauses. Additional information includes insurance, discrimination and fair housing, home purchase assistance programs and the Alabama Real Estate Commission's role. The Guide concludes with a glossary of terms that all licensees

are familiar with but most consumers likely are not. It is in no way intended to supplant the use or need of the services of a licensee but to make consumers better prepared to benefit from the services a real estate professional can offer.

A draft was presented to Alabama Real Estate Research and Education Center Trustees and Commissioners in July. Additional reviewing and editing has been completed by specific information spe-

(Continued on page 7)

Alabama Real Estate Commissioners authorized and directed that a Consumer Information Guide be developed for use by licensees and distributed to the general public. Having reviewed what other real estate jurisdictions had done with similar publications, the Commission requested that the University of Alabama Real Estate Research and Education Center assist in developing and formatting the text for the Guide.

Commissioners were interested in seeing that basic information related to and involved in a real estate transaction become available to consumers. Their intent was to provide the kind of informa-

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EDUCATION CORNER

Amendments to Alabama License Law- Act No. 2003-298

By Pat Anderson, Education Director

On June 18, 2003 Act No. 2003-298 was signed by Governor Bob Riley. It was effective upon passage and was implemented immediately except for the licensing of sole proprietorships as explained in item four below. Act No. 2003-298 contained four main changes to License Law:

1. The Repeal of Errors and Omissions Insurance as a Mandatory Requirement

Section 34-27-35.1. The Alabama Real Estate Commission will no longer require E&O insurance for issuance, activation or renewal of a real estate license. As you are aware, the Commission has been unable to secure a group carrier for the last two license periods and there was little hope of securing one in the future. Therefore, Section 34-27-35-.1 was repealed.

2. The Allowance of Unlicensed Business Organizations Owned by Salespersons or Associate Brokers to Receive Commission Payments for Tax Benefit Purposes

Section 34-27-36(a)(11). Before this act was passed, a qualifying broker could only make a commission payment to a salesperson or associate broker as an individual. This prevented salespersons and associate brokers from enjoying certain tax advantages available if payment was made to a business organization they owned. This amendment allows a salesperson or associate broker to own a "lawfully constituted business organization", which does not require a real estate license, as long as it only receives commission payments and does not engage in any other activity that would require a real estate license. Further details can be found in the "Briefly Legal" section of this newsletter.

3. Continuing Education Offered in September of License Renewal Years

Section 34-27-35(g) and Section 34-27-35(j)(1). This law now permits continuing education to be taught and credit to be earned during September of the final year of the license period (even years). This has been made possible

through CE compliance audits versus Commission tracking CE hours for licensees. License renewal must continue to be accomplished on or before August 31 of the even years to avoid penalty. The licensee's signature will serve as verification that all CE requirements for renewal will have been met by September 30. Should a licensee believe he/she will meet CE requirements by September 30 and then is unable to do that, the new license sent by the Commission on October 1 must be returned and placed inactive. After requirements are met, the license can be re-activated. Failure to have the license placed on inactive status in this case will result in a formal complaint and subsequent hearing if the licensee is audited.

4. Licensing of Sole Proprietorships- Implementation Effective August 1, 2003

Section 34-27-2(4). Sole proprietorships were added to the definition of a company resulting in them being required to obtain a company license. Previously, sole proprietorships operated under the qualifying broker's license. Since this is the second year of the license period, the fee is \$65 for a company license. Only new sole proprietorships are subject to the requirement to obtain a company license at this time. When licenses are renewed, all sole proprietorships will be required to obtain a company license to comply with this section of License Law.

There are now two applications to accomplish licensing of the four different company structures. One is a "company application" which is used by all new corporations, partnerships and sole proprietorships. The second is a "branch office application." Since there are some nuances regarding branch offices which are not present in other company structures, it was decided it would be clearer to put them on a separate application. Both applications may be found on the Commission's Web site at www.arec.state.al.us under "Forms and Applications."

When activating an existing sole proprietorship, you must submit a \$25 fee to activate the company license along with any fees to transfer or activate the qualifying broker. ■

How Long Must Licensees Keep CE Certificates

Commission Rule 790-X-1-.12(8) states, "Each licensee shall be responsible for keeping a file of their original certificates of completion of approved courses as evidence of fulfilling continuing education requirements for a period of two years after signing a statement on the license renewal form that the credit has been earned. Licensees shall maintain continuing education records in the company office where their real estate license is registered or at their home if the license is inactive. Continuing education records shall be made available to the Commission upon request." An explanation follows.

For the 2003-2004 License: The certificates now being audited by the Commission are courses taken October 1, 2000 through August 31, 2002. These are the courses licensees took to meet requirements for the issuance of the 2003-2004 license. Licensees must keep the original certificates on file through September 30, 2004 in the event of Commission audit. On October 1, 2004, these certificates may be safely discarded.

For the 2005-2006 License: Certificates for courses which have or will be completed October 1, 2002 through September 30, 2004 must be kept on file in your office (or at home if inactive) until September 30, 2006. These are the courses you will take to meet requirements for the issuance of the 2005-2006 license. On October 1, 2004, the Commission will begin auditing certificates for courses taken October 1, 2002 through September 30, 2004. The Commission can continue to audit for CE compliance throughout the entire license period which ends September 30, 2006. On October 1, 2006 these certificates can be safely discarded.

The Safe Way: If you always want to be safe and not have to think so much about dates, just keep certificates for four years. That will take care of any possible scenario. After four years from the completion date of the course, you can safely discard it.

Commission Audit: If you receive a letter that you are being audited for CE compliance, you must send the original certificates of completion, not copies, to the Commission. Keep yourself a copy but send the originals to the Commission. Your cooperation is greatly appreciated. ■

Mark Your Calendar Today!

The Alabama Real Estate Commission
announces its

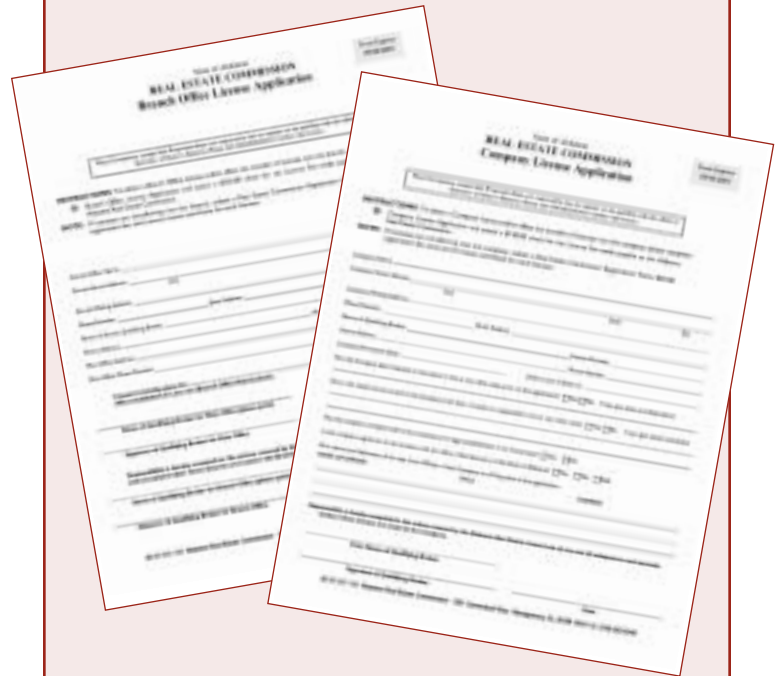
Annual Instructors' Seminar

October 22, 2004

Auburn University Hotel
and Conference Center

Auburn, Alabama

Are You Using the Correct Real Estate Form or Application?



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forms and applications today at

www.arec.state.al.us

BRIEFLY LEGAL**New Law Change—
SAVE ON
YOUR TAXES***By Charles R. Sowell, General Counsel*

Governor Riley signed Act 2003-298 into law on June 18, 2003. Among other things the act changed Section 34-27-36(a)(11) of the Alabama Code. The change is very narrow. It is also very simple. I am going to try to explain it as simply as possible. Here is the underlined text of the change so the amendment is easy to see.

The Commission shall revoke or suspend the license or impose a fine...or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts: (11) Paying any profit, compensation, commission, or fee to, or dividing any profit, compensation, commission, or fee with, anyone other than a licensee or multiple listing service. This provision shall not prevent an associate broker or salesperson from owning any lawfully constituted business organization, including but not limited to, a corporation or limited liability company or limited liability corporation, for the purpose of receiving payments contemplated in this subsection. The business organization shall not be required to be licensed under this chapter, and shall not engage in any other activity requiring a real estate license.

Before this change was made a qualifying broker could only make a commission check payable to the salesperson or associate broker as a person. The problem was that there are certain tax advantages salespersons or associate brokers can derive, if their commission check could be made payable to a business organization they own. Under the old law this could not be done, unless that business organization had a real estate license. Most salespersons and associate brokers did not have the luxury of having a licensed company that could receive their commission payments. This is because a licensed company must have a qualifying broker, a place of business, a RECAD office policy, local privilege licenses, and all the other requirements placed on licensed real estate companies.

As you can see the new law is designed to take care of this dilemma for salespersons and associate brokers. It also makes crystal clear that this business organization has no authority to do anything with in the license law, except to receive commission payments.

Qualifying brokers do not have this problem. They are free under the law to license any business organization they chose to own, and could receive their commissions by way of the business organization to save on taxes. Many qualifying brokers strongly felt that their hard working salespersons and associate brokers should be able to have this tax advantage. The Alabama Association of REALTORS® asked the Commission to support this change in the legislature. The Commission was happy to do it.

We encourage salespersons and associate brokers to see their attorney and/or CPA for tax and business organization advice. Take advantage of this opportunity to potentially save money on your tax return. Qualifying brokers must verify that the business organization has been formed before disbursing any commissions to it. We recommend that a copy of the organization paperwork or a certificate of it be provided to the qualifying broker. ■

ATTENTION:

The Internal Revenue Code Requires Transferees (Buyers) to Withhold Tax on the Amount Realized from Sales or Other Dispositions by Foreign Persons of U.S. Real Property Interests

*By Ronald P. Rivelli, For Chief, Policies, Procedures and Guidance Branch
Department Of The Treasury Internal Revenue Service, Washington, DC*

The Internal Revenue Service would like to take this opportunity to bring your attention to Treasury Decision (TD) 9082, which promulgates final regulations on the use of taxpayer identifying numbers for submissions under sections 897 and 1445 of the Internal Revenue Code.

The Internal Revenue Code requires transferees (buyers) to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests, and to remit the withholding to the Internal Revenue Service on Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interest*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*, or to request a withholding certificate on Form 8288-B, *Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property Interests*.

Treasury Decision 9082 requires that all foreign transferors (sellers) of U.S. real property interests provide their Taxpayer Identifying Number (TIN) on withholding tax returns, applications for a withholding certificate, and other notices or elections under sections 897 and 1445. TINs are required so that the IRS can identify foreign taxpayers, and more easily match applications, withholdings tax returns, notices, and elections with the foreign transferors' income tax return. **This TIN requirement is effective on November 4, 2003** which is 90 days from the issuance of TD 9082, to allow foreign transferors time to obtain TINs.

If an application for a withholding certificate, notice, or election is submitted to the IRS without a TIN, then it will be considered incomplete and generally not processed. The TIN of the transferee and foreign transferor must be provided to the IRS for the application or election to be considered complete. Because an application for a withholding certificate generally takes 90 days to process, these applications will not be rejected if a copy of an application for a TIN on Form SS-5 or Form W-7 is submitted with the withholding certificate application. However, other notices and elections must contain the taxpayer's TIN.

Amounts withheld under section 1445 must still be timely filed and paid to the IRS on Forms 8288 and 8288-A, even if the appropriate TINs are not provided. However, even though the tax has been paid, the IRS will not date stamp, nor mail out, the receipt (Form 8288-A) to the foreign transferor, because such a Form

8288-A cannot be used by the foreign transferor on its U.S. tax return to establish the available credit amount.

It is important to disseminate to all real estate licensees the importance of obtaining their client's residency status and TIN as early in the process as possible. If during this process you discover that the foreign transferor or even the transferee does not have a TIN number, then instruct them to begin the process of obtaining a TIN as soon as possible, so that they can have it prior to settlement day. Remember, the foreign transferor must have a TIN in order to file their U.S. income tax return for the year of the disposition of the U.S. real property interest to obtain a refund, if any is due to them.

For U.S. individuals, the TIN is a social security number (SSN). For all other entities, it is an employer identification number (EIN). If you are a nonresident alien individual who is not eligible to obtain an SSN, you must apply for an IRS individual taxpayer identification number (ITIN).

Individuals can obtain a SSN by filing Form SS-5 with the Social Security Administration or an ITIN by filing Form W-7 or W-7SP with the IRS. To request an EIN, call the Tele-TIN Unit at 215.516.6999 (not toll free), between the hours of 9:00 a.m. and 5:30 p.m. Eastern Standard Time. ■

If you have any questions regarding this matter, you can contact Juan Santiago, Monday through Friday from 7:00 a.m.-3:30 p.m. EST, at 215.516.7648. This is not a toll free number.

IMPORTANT:

If you are paying a referral fee to a real estate company located in any state in the United States or any province of Canada, it is your responsibility to check with the licensing authority for that company. You must satisfy yourself that the company is properly licensed in its home jurisdiction. You should document your file. Paying a referral fee to an unlicensed company or person is a violation of the license law. It is your job to check them out.

DISCIPLINARY ACTIONS TAKEN

June through August 2003

Disposition: The below were found guilty for violation of Rule 790-X-1-.12(8) and Rule 790-X-1-.12(9) via Section 34-27-36(a)(19) by failing to provide to the Commission, upon request, original certificates of completion of approved continuing education courses.

Name: George Schimmer, Salesperson, Montrose, Alabama

Date of Hearing: June 20, 2003, Fined \$1000 and license suspended through September 30, 2004 or until he supplies documentation of completion of required continuing education.

Name: Rufus J. Walker, Salesperson, Rockford, Alabama

Date of Hearing: June 20, 2003, Fined \$1000 and License suspended for 30 days

Name: James A. Blankenship, Qualifying Broker, Cullman, Alabama

Date of Hearing: June 20, 2003, Fined \$1000 and License suspended for 30 days

Name: Hugh T. Praytor III, Qualifying Broker, Mobile, Alabama

Date of Hearing: June 20, 2003, Fined \$1000 and License suspended for 90 days

Name: Lynne Bush, Salesperson, Birmingham, Alabama

Date of Hearing: July 18, 2003, License suspended for 6 months

Name: James A. Head, III, Salesperson, Birmingham, Alabama

Date of Hearing: August 22, 2003, Fined \$1000 and License suspended for 30 days

Disposition: The below were found guilty for violation of Section 34-27-36(a)(16) by presenting to the Alabama Real Estate Commission, as payment for a fee or fine, a check which was returned unpaid by the bank upon which it was drawn.

Name: Edward R. Gilbert, Salesperson, Huntsville, Alabama

Date of Hearing: June 20, 2003, Fined \$250

Name: Tracy L. Crayton, Salesperson, Montgomery, Alabama



Date of Hearing: August 22, 2003, Fined \$100

Name: Edward W. Wood, Salesperson, Nauvoo, Alabama

Date of Hearing: August 22, 2003, Fined \$250

Disposition: The below was found guilty for violation of Rule 790-X-3-.01 via Section 34-27-36(a)(19) for changing his or her place of business as set out on his or her numbered license certificate, and failing to notify the commission in writing within 30 days after the change.

Name: Stephen Francis Burton, Sr., Qualifying Broker, Quitman, Georgia

Date of Hearing: August 22, 2003, Fined \$250

Disposition: The below were found guilty for violation of Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for a broker to fail to deposit and account for funds to be held in trust for others at all times by having a shortage of trust funds.

Name: Gloria L. Lewis, Qualifying Broker, Mobile, Alabama

Date of Hearing: June 20, 2003, Fined \$500 and Reprimanded

Name: Brenda D. J. Garrett, Qualifying Broker, Tuscaloosa, Alabama

Date of Hearing: July 18, 2003, Fined \$500 and Reprimanded

Disposition: The below was found guilty for violation of Section 34-27-36(a)(21) for failing to disclose the true terms of a sale of real estate to all interested parties, particularly that there was no earnest money as shown on the contract.

Name: Tab Bisignani, Qualifying Broker, Birmingham, Alabama.

Date of Hearing: March 28, 2002, Fined \$1,000. Mr. Bisignani appealed to the Circuit Court of Shelby County. On January 15, 2003, the Circuit Court of Shelby County entered an order affirming the Commission's order in this case. Mr. Bisignani then appealed to the Alabama Court of Civil Appeals and on July 25, 2003, that court entered an order affirming the Commission's order.

Disposition: The below was found guilty for violation of Section 34-27-36(a)(1) for a real estate licensee to make a misrepresentation or a material misstatement of fact in an application for a license.

Name: Velma Jean Remington, Temporary Salesperson, Tuscaloosa, Alabama

Date of Hearing: July 18, 2003, License Revoked

Disposition: The below voluntarily surrendered license.

Name: Jordan P. Olshan, Qualifying Broker, Birmingham, Alabama

Date: June 20, 2003, License Revoked

OTHER ADMINISTRATIVE ACTIONS

Determination for Licensure

Approved 4
 Denied 1

Determination of Eligibility

Approved 2
 Denied 1

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees 809
 From Public 476
 Anonymous 23

LICENSING TIDBITS

Important Reminders About Change of Address

By Annie Hall, Licensing Supervisor

■ New Home Address

Section 34-27-35(h) of Real Estate License Law requires that each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change. There is no fee to change a licensee's residence address. All correspondence returned to the Commission by the US Postal Service marked "Undeliverable" or "Forwarding Order Expired" will be indicated on the licensee's record. No further correspondence will be mailed or transactions processed until the licensee notifies the Commission of an address change. Changes can be sent by mail, fax or email and should include your license or social security number as well as telephone and email address if applicable.

■ New Business Address

Qualifying Brokers-The Commission has experienced the return of numerous correspondence to companies that has been marked by the US Postal Service as "Non Deliverable as Addressed" or "Moved-No Forwarding Address." Rule 790-X-3-.01 of the Alabama Real Estate License Law requires licensees to change the address of his or her place of business as set out on his or her numbered license certificate and to notify the Commission in writing within thirty (30) days after such change has been made. To effect a change of business address, the qualifying broker must return to the Commission the company license plus all broker and salesperson licenses. A \$25 transfer fee must be included for each license issued to that company. ■

Consumer Guide Introduced...

Continued from page 1

cialists and Counsel and the Guide is now ready for widespread distribution. Copies will be available in both English and Spanish.

The Real Estate Commission will provide one copy to each qualifying broker for review. Additional copies may be obtained from the Alabama Real Estate Research and Education Center. The cost per unit will be disclosed in the upcoming mailing to qualifying brokers. The Commission plans to make copies available to other consumer information outlets. The Attorney General's Office Division of Consumer Affairs will be distributing the Guide from its booth at County fairs this fall.

Commissioners encourage licensees to utilize this tool in their work with consumers and to feel free to personalize or customize it for individual or company use. ■



Chester Mallory (left) and Gordon Henderson (right) were appointed by Gov. Riley to serve again on the Alabama Real Estate Commission.

Governor Appoints Two Commissioners To Serve Second Term

Chester Mallory and **Gordon Henderson** have been reappointed by Governor Riley and confirmed by the Senate to serve a second five-year term on the Alabama Real Estate Commission. The Commission is composed of nine members.

Commissioner Mallory serves as the Commission's Member At Large. He is president and owner of Mallory Realty Company, Inc. located in Montgomery, Alabama.

Commissioner Henderson serves from the Fourth Congressional District and is working with Henderson and Spurlin, Inc. located in Albertville, Alabama. ■



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**Commission Meetings
Open to the Public**

All Commission meetings are open to the public and that includes real estate licensees. Commissioners welcome and encourage attendance and observation by any licensee in any location. Locations, dates and times can be found on the Commission's Web site at www.arec.state.al.us.

License Renewal Dates

Real Estate licenses expire September 30, 2004. Remember to renew all broker, salesperson and company licenses in every even year.

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