



What You Should Know About the Basics of Trust Funds

By Chris Booth, General Counsel

Due to a recent increase in the number of trust fund issues, we thought it would be helpful to remind all licensees of the basic trust fund requirements. Your obligation regarding trust funds can be found in License Law Sections 34-27-36(a)(8)a., (8)b., and (8)c. and additionally in Administrative Rule 790-X-3-.03. Here is the breakdown for each of these sections.

■ **Section 34-27-36(a)(8)a.** states that a licensee can be subject to discipline if found to be, "Failing within a reasonable time to properly account for or remit money coming into his or her possession which belongs to others, or commingling money belonging to others with his or her own funds."

- This requires that licensees be able to properly determine the amount of trust funds they are holding and how much they should have in their possession.
- Additionally, licensees must pay over trust funds to the proper parties within a reasonable time when they are due to be disbursed.
- This section also prohibits licensees' own funds from being combined with funds belonging to parties in real estate transactions. The Commission does allow a small amount of personal funds in a trust account in situations where banks charge service charges or check fees.

■ **Section 34-27-36(a)(8)b.** states that it is a violation of license law for, "Failing to deposit and account for at all times funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama."

- This means that licensees must deposit trust funds and account for these funds by maintaining them in their account at all times.
- Funds must be deposited in a federally insured bank or credit union with at least one branch physically located in Alabama.

■ **Section 34-27-36(a)(8)c.** states that it is a violation of license law for "Failing to keep for at least three years a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information."

- Simply, this is a reiteration of Section 34-27-36(a)(31) in that qualifying brokers and companies must keep records pertinent to real estate transactions for a period of three years.

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BEWARE: Latest Scam Targets Email and Wire Transfers

By Mandy Lynn, Assistant General Counsel

In recent months, real estate licensees have been reporting a scam involving email and wire fraud. Simply put, this scam involves hacking into an email or impersonating the email of a person who is involved in a real estate transaction. Scammers obtain the targeted email password by phishing the person or getting it through other technological methods.

Scammers may also use an email address that appears similar to the targeted person's to obtain information. For example, the actual email address may be john.doe@realty.com and the scammer might create an email address such as johndoe@realty.com. By omitting the period between the first and last name, the scammer is then able to impersonate someone involved in the real estate transaction.

Once the scammers are able to impersonate someone who is involved in the transaction, then they will transmit false wiring information for the transfer of funds from the real estate transaction. The false wiring instructions will, of course, lead to the funds going into a scammer's bank account. Unless this fraud is discovered almost immediately after the money is wired into the scammer's bank account, the money is then wired out of the country. At which point the recovery of the funds then becomes almost impossible. Furthermore, according to other reports, the monies wired to an improper account will not be reimbursed by either the scammer's or the victim's bank.

Licensees, parties to transactions, and real estate settlement agents in Alabama and all across the country have been falling victim to this scam. So what can you do to protect yourself? Consumers and licensees can use these eight tips to help protect against email and wire transfer scams.

1. Never send wire transfer information or other sensitive information, including bank information or routing numbers, by email.
2. Include statements in your email that wiring instructions will not be sent by email.
3. Inform parties with whom you are working of the possibility of this scam and ask that they inform you of any requests involving funds transfers.
4. If you have to wire funds, contact the intended recipient on the phone and inform them of the intended transfer.
5. Do not open suspicious emails or click on suspicious links.
6. Be wary of callers requesting username or password verification.
7. Change passwords on a regular basis and use passwords that are not easy to guess.
8. Keep your firewall and antivirus software up to date.

Commission's Legislation for Federal Background Checks on Applicants Passes

The Commission's legislation to allow for federal background checks for license applicants passed the Legislature on April 28. The Governor signed Act 2016-322 into law on May 13, 2016. In addition to Alabama State background checks currently being done through ALEA, the Alabama Law Enforcement Agency, the Commission will begin obtaining FBI checks on all temporary and original sales applicants, original broker applicants and reciprocal sales and broker applicants. Additional information will be sent to instructors for pre-license course students. The Act becomes effective on the first day of the third month following approval by the Governor, which will be August 1, 2016.

The Alabama Real Estate Commission would like to thank bill sponsors, SB354 by Senator **Rusty Glover**, R-Semmes and co-

sponsors Senators **Gerald Allen**, R-Tuscaloosa; **Shay Shelnett**, R-Trussville; **Clay Scofield**, R-Guntersville and **Greg Albritton**, R-Bay Minette and HB422 by Representative **Paul Lee**, R-Dothan; and co-sponsors **Joe Faust**, R-Fairhope; **Steve McMillan**, R-Bay Minette; **Kerry Rich**, R-Guntersville; **Jack D. Williams**, R-Birmingham; **Mike Ball**, R-Madison and **Mac McCutcheon**, R-Huntsville. We also thank Chair **Phil Williams**, R-Gadsden and members of the Senate Fiscal Responsibility and Economic Development Committee and Chair **Howard Sanderford**, R-Huntsville and members of the House Boards and Commissions Committee. The Commission's bill was placed on Regular and Special Order Calendars thanks to Senate Rules Chair, Senator **Jabo Waggoner**, R-Vestavia Hills and House Rules Chair, Representative **Mac McCutcheon**, R-Huntsville.



Don't Miss Important Communication: ADDRESSES ADDRESSED



The Commission sometimes receives requests from active licensees to list their company address as their mailing address. If you choose to do this, it is important to realize the consequences of making this request. This means that all of your correspondence from the Commission will be mailed to your company address, which could result in a greater possibility that you may not receive it. Additionally, you must remember to change your contact address in order to receive correspondence if you transfer your license to another company or your license is placed on inactive status. However, if you choose your residence address as your contact address, this may reduce these communication problems.

The same is true with email addresses. If your company-specific email address is your contact email with the Commission and you

transfer your license or it is placed on inactive status, it will be necessary for you to promptly update your email address. Since the Commission may send important information and reminders regarding your license by email, it is important to keep a current accessible email address on record at all times. Also, if you ever have a need to reset your online services password you should first check that your current email address is the correct one on file with the Commission because the instructions for resetting your password will be sent to this address.

You can update your address, email address and other contact information by providing signed written notice to the Commission or you can update any of your contact information yourself from the Commission's website under "Online Services."

Having Trouble Logging into the Commission's Online Services?

In order to log in to Online Services you must have first created a valid username and password. If you have never done this, click on *Online Services Login* from the main page and enter your license number in the username field. When you enter your license number make sure you enter it without the dash zero or number which follows the nine-digit number. For example, if your license number is 000045555-2 then you should enter it as 000045555 or 45555. You will then be directed to a registration page where a username and password can be created. Once your username and password have been created you can immediately log in to the available services.

If you have already created a username and password and cannot remember your login credentials, you can reset your password by selecting the option at the bottom of the login application. Begin by entering your username; however, if you have forgotten your username, you can enter your license number or email address and proceed. You should receive an email within thirty minutes of submitting your request with instructions on completing the resetting of your password. If you do not find the email in your inbox, check to make sure that it is not in your spam or junk mail folder. If you do not receive an email after completing these steps, then you should contact the Commission for assistance.

Appendix in License Law Book Moved Online

If you have the *License Law, 24th Edition Revised 2015* book you have probably noticed that something is missing — the Appendix. But don't worry because this information is still available on the Commission's website. To access the Appendix, go to the License Law section under Laws on the website's main menu. You will find the "Appendix" link at the bottom of the list. Select the "Appendix" to see the list of the documents that are available for viewing in this section, including:

- A-1 Receipt of Funds Policy Revision
- A-2 Audit Checklist
- A-3 Office Inspection Suggestions/Rental Property Bookkeeping Suggestions
- A-4 Advertising Advisory Opinion
- A-5 Advisory Trust Account Guidelines
- A-6 ARELLO Best Practices Internet Guidelines



4 Ways to Improve Your CE Experience!

We are approaching the period of time when a large number of licensees will be taking continuing education (CE) courses in order to renew a broker or salesperson license on active status. It is a known fact that there are some licensees who do not like taking CE courses. It is also a known fact that there are some licensees who enjoy learning from CE courses and intentionally take more than 15 hours every two years. For those licensees who are not fans of CE, here are four ways to make your CE experience work for you instead of being considered a waste of time.

1. Plan ahead. Look for courses that are topics of interest to you and plan on attending because the subject matter is appealing. Know those dates in advance and plan for them instead of waiting until the last minute and taking whatever courses are available.

2. Clear your calendar for courses. The best time to take CE courses is when you are not distracted by other obligations. The potential commission from the sale of a multi-million dollar house can be very distracting and definitely should not be avoided and ignored. However, there are other items that can be scheduled for another day in order to allow time for a CE course to be taken without distractions.

3. Try new instructors and courses. Some licensees know specific instructors who teach in a way to make the course enjoyable. If you have not found the right instructor for you to enjoy CE courses, try different instructors to broaden your knowledge. Don't simply retake the same courses every year repeating the same information you already know because they are the only courses offered the week before the deadline.

4. Ask fellow licensees about good CE. Once again, there are some licensees who take many CE courses because of the good information that is shared. There are many licensees who will recommend a real estate designation such as ABR, CRS or GRI that can supply great courses. Ask fellow licensees about enjoyable and beneficial CE courses that they have taken and enjoyed.

Look at CE courses as an opportunity to improve your ability to be successful in real estate. Don't view them simply as a License Law requirement that has to be completed. The mindset of a licensee when attending a CE course can make a huge difference in the benefits enjoyed after completing the course.

Commission Education Director Recognized by DREI Leadership Council



Congratulations to Education Director **Ryan Adair** for being the first recipient of the *Larry Outlaw Education Excellence* award. The award was presented by the Distinguished Real Estate Instructors (DREI) Leadership Council and is named for the North Carolina Real Estate Commission's long-time education director, Larry Outlaw, who passed away in 2015.

The DREI is a designation that recognizes excellence among real estate instructors. It is awarded only to members of the Real Estate Educators Association (REEA) who demonstrate outstanding knowledge of their profession, experience, and classroom performance. The *Larry Outlaw Education Excellence* award will be presented annually to a non-DREI in a regulatory or education role who has most supported and encouraged the principles and commitment to the elevation of real estate education.



HELLO — No, Microsoft Is Not Calling You

Getting an unexpected or cold call from Microsoft, Windows, Apple, HP, or other well-known tech companies could mean someone is trying to get your money, your credit information, your data, or even access to your network. Scammers have perfected their script and techniques to make you think they are legitimate. Usually they start out by saying something like, “This is Windows Tech Support, we have been notified that your computer is malfunctioning.”

Sometimes scammers don’t even call you, you call them. These scammers are able to use security holes and malware to pop up a message on your computer while you are looking at sites like Facebook. The pop up looks official and you can’t get it to go away or click on anything else. The pop up will include a number for you to call to unlock your computer. The scammers on the phone will sound so polite, and if you let them, they will walk you through

doing things on your computer that make you believe they are the real tech support. They will show you things on your computer that to the less savvy computer user looks really bad.

They won’t hit you up for money right away, they continue to have you do things that make it appear you have serious issues on your computer. Then they ask for your credit card and for \$299 you will get a years’ worth of protection. They may ask you to go to a website and download some software like join.me, ShowMyPC, or TeamViewer. These are well-known and useful programs, but what scammers want you to do with them is give them control of your computer while they install their protection. This is where you are now at the mercy of the scammers. If they are able to get control of your computer, there is so much of your valuable information that can get out. Scammers can hold your computer hostage until you pay them even more money.

Bottom line is, no legitimate company will call you out of the blue about your computer, tablet, or phone. So tell your family and friends to just hang up on these callers. If enough people do this, and don’t become victims, the thieves will soon have to try something else because this method will no longer be profitable.

Briefly Legal *Continued from page 1*

■ **Administrative Rule 790-X-3-.03** further explains the requirements of the sections discussed above. The entire Rule can be accessed on our website under License Law.

- This Rule requires the qualifying broker to be a signatory on the trust account and have the authority to deposit and withdraw funds being held in trust. Salespersons and associate brokers are obligated to turn over trust funds to their qualifying broker under paragraph (2).
- Paragraph (3) requires qualifying brokers to deposit and account for all trust funds unless “expressly relieved of such responsibility in writing.” This means that brokers can have someone else hold earnest money as long as the parties to whom the money may belong (owners/tenants or buyers/sellers) agree to this in writing. In addition, this requires that

earnest money that is cash be deposited immediately and if it is a check, it is to be deposited upon formation of the contract unless another time frame is stated by buyer and seller.

- Paragraph (4) deals with distributing trust funds in a failed transaction. In this scenario, trust funds can only be disbursed by a written agreement of the two parties or a court order. Either party may initiate a lawsuit for the distribution of trust funds or the qualifying broker may file an interpleader action. Feel free to contact us if you need more information on this.

Finally, **please remember to be extremely careful when dealing with other people’s money.** Trust funds cannot be used to advance repair expenses or for other owners’ property. If you have any questions regarding proper handling of trust funds, please call the legal division so that we may assist you — before it becomes an issue.



DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(16) for 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.

James Larry Lawson Jr.

License No. 000099647

Salesperson; Tuscaloosa, Alabama

Date of Hearing: January 21, 2016

Fined \$250



DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the trust account.

Marl M. Cummings III

License No. 000008418

Qualifying Broker; Mobile, Alabama

Date of Hearing: February 25, 2016

Fined \$1,000

Cummings Realty Corporation

License No. 000008416

Company; Mobile, Alabama

Date of Hearing: February 25, 2016

Fined \$1,000

Cummings and Associates Inc.

License No. 000043768

Company; Mobile, Alabama

Date of Hearing: February 25, 2016

Fined \$1,000

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the trust account and

guilty of violating Section 34-27-36(a)(19) by failing to comply with Rule 790-X-3-.03(1) in that she was not a signatory on the trust account with authority to write or make checks as necessary on the trust account.

Erica Lynn Philippou

License No. 000094841

Qualifying Broker; Montgomery, Alabama

Date of Hearing: January 21, 2016

Fined \$2,500 and required to complete Level I Risk Management: Avoiding Violations and Level II Risk Management for Brokers courses within 90 days of the ruling.

Action Property Management LLC dba Montgomery Homes, Branch Office

License No. 000101756

Company; Montgomery, Alabama

Date of Hearing: January 21, 2016

Fined \$2,500

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the trust account and guilty of violating Section 34-27-36(a)(8)a.

for commingling funds belonging to others with their own funds by using the company's funds to pay a company American Express account.

Ashley Keith Davis

License No. 000074380

Qualifying Broker; Birmingham, Alabama

Date of Hearing: February 25, 2016

Fined \$5,000 and required to complete Level I Risk Management: Avoiding Violations and Level II Risk Management for Brokers courses within 90 days of the ruling.

H2 Real Estate LLC

License No. 000096151

Company; Birmingham, Alabama

Date of Hearing: February 25, 2016

Fined \$5,000

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)a. for commingling funds belonging to others with their own funds by depositing amounts connected personally with his and his son's auto racing and a closing of a sale unrelated to rent for property owners into the trust account and guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the rental trust account

Hugh T. Praytor III

License No. 000009211-2

Qualifying Broker; Mobile, Alabama

Date of Hearing: January 21, 2016

Fined \$2500 and required to complete Code of Ethics, License Law, Level I Risk Management: Avoiding Violations and Level II Risk Management for Brokers courses within six months or less of the ruling.

Praytor Realty Company Inc.

License No. 000009190

Company; Mobile, Alabama

Date of Hearing: January 21, 2016

Fined \$2500 and license suspended pending qualifying broker Hugh T. Praytor III's completion of Code of Ethics, License Law, Level I Risk Management: Avoiding Violations and Level II Risk Management for Brokers courses within six months or less of the ruling.

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by expending trust funds for owners of real property to which those funds did not belong.

Thomas N. Carruthers III

License No. 000035621

Qualifying Broker; Birmingham, Alabama

Date of Hearing: January 21, 2016

Fined \$2,500

Red Rock Realty Group Inc.

License No. 000003796

Company; Birmingham, Alabama

Date of Hearing: January 21, 2016

Fined \$2,500

DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by expending trust funds for owners of real property to which those funds did not belong and guilty of violating Section 34-27-36(a)(8)a. for commingling his funds with those belonging to others by expending trust funds belonging to others for properties in which he had an ownership interest.

Charles Lee Robinson Jr.

License No. 000087137

Salesperson; Birmingham, Alabama

Date of Hearing: January 21, 2016

Fined \$2,500 and required to complete Level I Risk Management: Avoiding

Violations and Level II Risk Management for Brokers courses within 90 days of the ruling.

DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(23)a. for having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude; guilty of violating Section 34-27-31(k) for failing to notify the Commission in writing within 10 days after he received notice that a criminal verdict had been rendered against him or that a criminal action pending against him had been dismissed; guilty of violating Section 34-27-36(a)(1) for procuring or attempting to procure a license for himself or another by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license in that he failed to adequately report his convictions from Madison County, Alabama and for failing to properly respond to questions regarding his arrest, indictment, conviction, fine and probation in a Colbert County, Alabama criminal case.

James Franklin (Jimmy) Agnew

License No. 000105179

Temporary Salesperson; Huntsville, Alabama

Date of Hearing: October 22, 2015

License Revoked

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the escrow accounts.

Steve Hodge

License No. 000078743

Qualifying Broker; Dothan, Alabama

Date of Hearing: July 19, 2013

License revoked

Hodge and Associates Inc.

License No. 000088200

Company; Dothan, Alabama

Date of Hearing: July 19, 2013

License revoked

DISPOSITION

The respondents below surrendered their licenses for alleged license law violations in lieu of a formal complaint and hearing.

Lonnie Hacker

License No. 000009189

Qualifying Broker; Bay Minette, Alabama

Date of Hearing: March 24, 2016

G. B. Miller

License No. 000048753

Qualifying Broker; Gulf Shores, Alabama

Date of Hearing: March 24, 2016

Shelby Schenck

License No. 000094273

Salesperson; Huntsville, Alabama

Date of Hearing: March 24, 2016

OTHER ADMINISTRATIVE ACTIONS

DECEMBER 2015 - MARCH 2016

COMMISSION ACTIONS ON APPLICATION FOR LICENSURE

These numbers do not include standard applicants that do not require Commission action prior to licensure.

Approved	3
Denied	0

DETERMINATION OF ELIGIBILITY

These numbers represent applicants with prior criminal conviction(s) and/or professional licensure disciplinary actions. Applicants have had a hearing regarding the matter and the Commission has either granted or denied the application for licensure.

Approved	2
Denied	0

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees	1176
From Public	689
Anonymous/Commission	47

THE UPDATE

ALABAMA REAL ESTATE

COMMISSION

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CONNECT Connecting the real estate professional and consumer to the resources they need.



EDUCATE Educating the real estate professional and the consumer.

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ALABAMA REAL ESTATE COMMISSION

Patricia Anderson, Executive Director
Teresa D. Hoffman, Asst. Executive Director
Vernita Oliver-Lane, Editor
Lori Moneyham, Associate Editor

1201 Carmichael Way
Montgomery, Alabama 36106
Phone: 334.242.5544
Fax: 334.270.9118

arec.alabama.gov
arec@arec.alabama.gov



THE UPDATE

is published for the benefit of the Alabama Real Estate Industry by the Alabama Real Estate Commission.

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 website at arec.alabama.gov.

REAL ESTATE LICENSES EXPIRE SEPTEMBER 30, 2016

Remember to renew all broker, salesperson, and company licenses in every even-numbered year.

Presort Standard
U.S. Postage
PAID
Montgomery, AL
Permit 286

ALABAMA STATE CAPITOL
600 DEXTER AVENUE
SUITE S-105
MONTGOMERY, AL 36130



(334) 242-7200
FAX (334) 242-4993
WWW.SOS.ALABAMA.GOV
JOHN.MERRILL@SOS.ALABAMA.GOV

JOHN H. MERRILL SECRETARY OF STATE

PRESS RELEASE

April 18, 2016

Secretary Merrill Announces Information Relating to Alabama Homeowners' Association Act

Montgomery – On Monday, the Office of the Secretary of State announced the activation of an electronic database relating to the Alabama Homeowners' Association Act.

During the 2015 Regular Session, the Alabama Legislature and Governor Robert Bentley approved Act 2015-292, the Alabama Homeowners' Association Act. This act requires all Homeowners' Associations formed on or after January 1, 2016, to file organizational documents as a nonprofit corporation. The Act was passed on June 2, 2015, became effective January 1, 2016, and is codified in Code of Alabama Title 35, Chapter 20. The Secretary of State implemented administrative rules to carry out certain aspects of Act No. 2015-292. **The rules became effective on April 18, 2016.**

"Following the legislature's passage of Act 2015-292, this new electronic database will allow Alabama citizens to access certain documents related to Homeowners' Associations," said Secretary Merrill. "By providing a searchable database the public will have the capability to retrieve documents relating to association filings. I want to commend Representative McCutcheon for his leadership in the passage of this bill."

The link to access the database can be found here: www.sos.alabama.gov.

For more information or to be added to the distribution lists, please contact the Secretary of State's Office at **334-242-7200** or visit our website at <http://www.sos.alabama.gov/>.