



THE UPDATE

ALABAMA REAL ESTATE
COMMISSION
 EMPOWER, CONNECT, AND EDUCATE



BRIEFLY LEGAL

ESTIMATED CLOSING STATEMENTS a.k.a. Net Sheets

By Chris Booth, General Counsel

Here at the Commission we are hearing more questions about estimated closing statements, sometimes called net sheets. There is a previous article regarding net sheets that was published in *The Update* Spring 2003 newsletter. However, there have been changes to the real estate laws and administrative rules that have caused questions to be raised. To explain this topic, we first need to point out these two sources of regulations regarding net sheets.

The key regulation is found in the Commission's statutes. The requirement to inform consumers of expected closing costs is in Section 34-27-36(a)(22) *Code of Alabama, 1975*. This section makes it a license law violation by "failing to inform the buyer or seller at the time an offer is presented that he or she will be expected to pay certain closing costs and the approximate amount of those costs." The second source of regulation on this topic is found in the Commission's Administrative Rule 790-X-3-.04. The rule states:

(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 buyer must acknowledge receipt of the estimated closing 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 seller must acknowledge receipt of the estimated closing statement by signature on the form.

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Commission’s Legislation Clarifying Rule-Making Authority Passes Legislature

The Commission’s legislation clarifying its rule-making authority regarding federal antitrust laws passed the Legislature on May 18. The Governor signed Act 2017-396 into law on May 18, 2017.

The new legislation adds Section 34-27-8.1 to the *Code of Alabama 1975* to clarify the Commission’s rule-making authority regarding federal antitrust laws. It authorizes the adoption of rules that prioritize consumer protection, even if the rules are anti-competitive.

The Alabama Real Estate Commission would like to thank bill sponsors,

SB100 by Senate Rules Committee Chair **Sen. Jabo Waggoner**, R-Vestavia Hills and HB281 by **Rep. Steve McMillan**, R-Bay Minette. It was the House bill that gained final passage. We also thank Chair **Sen. Phil Williams**, R-Gadsden and members of the Senate Fiscal Responsibility and Economic Development Committee; Chair **Rep. Howard Sanderford**, R-Huntsville and members of the House Boards, Agencies and Commissions Committee; and Chair **Sen. Jimmy Holley**, R-Elba and members of the Senate Governmental Affairs Committee. The Commission’s bill was placed on House Regular and Special Order Calendars thanks to House Rules Chair **Rep. Alan Boothe**, R-Troy and special thanks to Sen. Waggoner who passed both his Senate Bill and the House bill.

Estimated Closing Statements a.k.a. Net Sheets

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(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.

This rule no longer requires licensees to prepare or provide an actual closing statement since this was removed last year by the Commissioners through Alabama’s Administrative Procedure Act.

The biggest change that has occurred in the real estate business is the combining of the Truth in Lending Act and Real Estate Settlement Procedures Act, now called TRID (TILA-RESPA Integrated Disclosure). The Consumer Finance Protection Bureau (CFPB), as part of their enforcement, has put variance testing into required disclosures under TRID. This

means that costs stated in the loan disclosure cannot vary by a certain amount on the closing disclosure. This is being explained because many licensees have questions about their estimated settlement statement varying from the amounts in the final settlement document. The answer is that we do not have a specific variance testing on licensee-produced estimated settlement statements. Rule 790-X-3-.04 explains that the Commission expects licensees to use their best estimates when drafting a net sheet. If a licensee is aware of specific expenses that will be paid by a party in a real estate transaction, then we would expect that cost to appear on the licensee-drafted estimated settlement statement. Additionally, if significant changes in expenses occur during negotiating a purchase agreement, then these changed expenses should be reflected on an amended estimated settlement statement.

The other issue that we will mention is something that has been discovered over the last year. We have seen several estimated closing statements that include information regard-

ing a buyer’s mortgage payment. This is not a requirement of Alabama Real Estate License Law. The statute and rule clearly state that only closing costs are required to be disclosed. The buyer’s monthly mortgage payment is not an expected closing cost which would be required to be disclosed under Section 34-27-36(a)(22). Of course, if you have adequate information about the loan amount, interest rate, loan term, and other expenses that may be included in a monthly mortgage payment and you choose to provide this information to a buyer—then you may do so. If your qualifying broker and/or your brokerage firm requires you to calculate a buyer’s mortgage payments, then you need to follow their requirements which are greater than license law requirements.

As my illustrious predecessor stated in his BRIEFLY LEGAL article in *The Update* Spring 2003 newsletter, net sheets are not just a technical requirement but a means to inform and protect consumers. Real estate closings may be difficult but having an informed and knowledgeable consumer can go a long way towards smoothing the process.



Temporary Salesperson Can Now Apply for Original Salesperson's License Online!

For those who have a Temporary Salesperson's License, you can now apply for your Original Salesperson's License on the Commission's website, arec.alabama.gov.

As addressed in Section 34-27-33, Rule 790-X-1-.06, and Rule 790-X-2-.03 of Alabama License Law, all licensees with a temporary salesperson license must complete the 30-hour post license course and apply for an original salesperson license, even if they plan to be on inactive status.

To get started click Online Services Login and complete the login procedure. Choose Salesperson Original Application from the list of available options. You will see your license number, status (active or inactive), your name as it appears on your license, and the name of the company you are currently licensed with — if you are active.

Next, you will see one of the following 3 options from which to choose:

1. Receive your Original Salesperson License and remain with your current company
 2. Issue your Original Salesperson License and have it held on inactive status
- OR
3. Receive your Original Salesperson License and transfer to another company

After selecting one of these options you can click NEXT to go to the payment screen to pay your license fee. Once you receive a confirmation that your payment has been successfully processed, your active license will be available for printing by your qualifying broker within 24 hours. If you have your license issued on inactive status, the Commission will hold your license until you decide to activate it.

Additionally, if you need to change your

name as it will appear on your license and/or transfer to another company, you can do so online while applying for your Original Salesperson's License without paying an additional fee.

This online application is one more way the Commission strives to provide greater service to licensees and consumers. If you have questions about applying for your Original Salesperson's License or other licensing questions, please contact our Licensing Division.

KEEP CURRENT WITH YOUR CONTACT INFORMATION

Have you moved?
Make sure your:

- Residence Address**
- Business Address**
- Email Address**
- Phone Number**

is correct with the Commission!

Update your information:
ONLINE SERVICES

[Online Services Login](#)

The Commission must be notified within **30 days** of the change.

Section 34-27-35(h)

To log in to Online Services, go to: arec.alabama.gov



Are You One of the 3,000 People With an Expired License? Read on...

By Anthony Griffin, Licensing Administrator

If you are one of the approximately 3,000 licensees whose license(s) **expired on September 30, 2016**, because you did not renew by the September 30, 2016 expiration deadline, then the Alabama Real Estate License Law provides a one-year grace period to renew your expired license. Therefore, if an expired license is not renewed by midnight September 30, 2017, it will lapse.



An **EXPIRED** license may be renewed between now and midnight **September 30, 2017**, by going to **arec.alabama.gov**, clicking on Online Services Login and following the instructions once logged in. If you wish to renew by mail, send your renewal form and fee to the Alabama Real Estate Commission at 1201 Carmichael Way, Montgomery, AL 36106. If you need assistance with either method of renewing, contact the Commission's Licensing Division.

- > Fee to renew an **EXPIRED** Salesperson's License is **\$335**
- > Fee to renew an **EXPIRED** Broker's License is **\$355**

Remember, should your license lapse it cannot be activated or renewed. This means that, in the future, should you decide to engage in activities that require a real estate license, you must start over completely and again meet all requirements to obtain a license including retaking the 60-hour salesperson's prelicense course and taking and passing the licensing examination. If you are currently a broker you would have to start over as a salesperson. The exception to this is those maintaining a broker's license in another state who qualify to obtain a broker's license in Alabama through reciprocity. In this case, the applicant would have to complete the 6-hour reciprocal broker's prelicense course and take and pass the reciprocal broker's exam.

If you are aware of any members of the real estate community who have an expired license and you think this information may be of importance to them, please pass it along.



IMPORTANT REMINDERS Regarding Your Home Address

You are required to provide your home address to the Commission. This home address must be the physical street address of your home and cannot be a post office box number or some other mail location. If you do not wish to receive mail from the Commission at your home, you can provide a separate mailing address which may be a PO box number or another address altogether.

Please periodically verify that the Commission has your correct address on record, particularly if you change your residence. Alabama License Law Section 34-27-35(h) requires licensees to notify the Commission within 30 days of an address change.

Address information, as well as all contact information, can be reviewed and updated from the Commission's website by logging in to your licensing record under Online Services. If you update your home address information online and do not have a separate mailing address, then you do not need to fill out the mailing address field as well. The mailing address field should only be completed if you have a mailing address that is different from your home address. You can also submit your current home address and contact information changes by mail, email or fax to the Commission's Licensing Division. These change requests must include your name, signature and license number.

A Reminder on Advertising Restrictions: Using Facebook and Twitter



By Chris Booth, General Counsel

The Alabama Real Estate Commission's restrictions on licensees' advertising are relatively simple. So what exactly are the advertising restrictions on licensees in their brokerage activities according to Alabama License Law?

- **Section 34-27-36(a)(6)** Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed broker or salesperson.
- **Section 34-27-36(a)(15)** If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing prominently on the advertising; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing prominently on the advertising.

Note that if you include the licensed company name in advertisements you kill two birds with one stone. First, including the company name will identify the advertisement as being placed for brokerage services. Second, if you are a salesperson or associate broker, then you fulfill the obligation to identify the company or qualifying broker under which you are operating. There is no longer a size or ratio requirement, only that the name be prominent.

How Does This Apply to Online Advertising?

We understand that technology is constantly changing; however, if you cause the online ad to be published, you must follow the advertising requirements of license law.

Other than personal websites, we most commonly see Facebook and Twitter used for advertising licensed activity. For Facebook, your company name or broker's name should appear prominently on your main page and in every post that is used for your brokerage activity. In order to have your company name on each post you will need to include your company in the name of your Facebook page or in the body of the post. For instance if my Facebook page is just named Chris Booth and I post a new listing then I will need to include my company name, Chris Booth Realty, in the body of my post. However, if my Facebook page is named Chris Booth — Chris Booth Realty, then every time I post a listing my company name will appear.

Twitter is a little bit different situation. Since Twitter has a restriction on the number of characters in a tweet, we take a slightly different view that is based on the reality of the situation. In order to include your company name you would have to use some of the 140 characters that you are limited to use in a tweet. For some companies this could be quite a substantial number of the limited characters. So the Commission will allow "one click" to get to the company name. This means that your company name will need to be on your main Twitter page that can be reached by clicking on the name of your account in the tweet. Remember that your company name will still need to be prominently displayed on your main page. If there are any other sites you use and want specific guidance on, please contact us.



PROTECT YOURSELF!

Don't Assume All CE Courses Are Approved

Licensees can find all scheduled Commission-approved CE courses in the easy-to-use Course Search program on the Commission's website. It is always good to confirm the approval of a CE course and the number of hours for which it is approved using the Commission's Course Search program prior to attendance.

The image shows a screenshot of the Alabama Real Estate Commission's Course Search form. At the top, the Commission's logo is displayed with the tagline "EMPOWER, CONNECT, AND EDUCATE". Below the logo, the form is titled "COURSE SEARCH". It features two radio buttons for "Classroom Courses" (selected) and "Distance Education". The form includes input fields for "Course Name", "Instructor's Last Name", and "Location". A "Course Type" dropdown menu is set to "None Selected". There are two radio buttons for "Contains" (selected) and "Exact". A "Search" button is located at the bottom of the form. Two notes are present: "Note: It is not necessary to enter information in all fields. You may enter information into one or all or any combination thereof." and "Note: A distance education course is an online course that you may start at any time."

Instructors and Administrators of schools must enter the course information into the Commission's CMap program at least one week prior to the offering. If a course does not appear in the search, there is a good chance it has not been approved for CE, which means CE credit will not be given to licensees who attend it.

Be particularly aware of a problem that could take place in October, November, and December of odd-numbered years which involves un-renewed courses being offered. If an instructor does not renew a CE course by the September 30 deadline

in an odd-numbered year, that course is automatically placed on inactive status and participants will not be given CE credit for completion of the course. The course must be renewed prior to being offered in order for CE credit to be earned.

Always use the Commission's Course Search to check course approval and credit hours before taking CE courses to make sure they are approved. If you take CE courses in the two or three months immediately following education renewals in odd-numbered years, confirm the course renewal with the instructor or school offering the course.



DISCIPLINARY ACTIONS



Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Update, a complete description of the facts cannot be reported below.

DISPOSITION

The below were 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.

Marcus Dwayne Aaron License No. 000113405

Temporary Salesperson; Montgomery, Alabama
Date of Hearing: May 25, 2017

Fined \$250

Stephanie Marie Benzaia License No. 000111914

Temporary Salesperson; Trussville, Alabama
Date of Hearing: May 25, 2017

Fined \$250

Kelli S. Gilmer License No. 000107276

Salesperson; Birmingham, Alabama
Date of Hearing: May 25, 2017

Fined \$250

Monica R. Hatcher License No. 000092103

Salesperson; Birmingham, Alabama
Date of Hearing: April 20, 2017

Fined \$250 to be payed along with \$335 renewal and penalty fee and \$30 bad check charge

DISPOSITION

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

Anthony Jerome Atkins License No. 000104402

Salesperson; Eufaula, Alabama
Date of Hearing: May 25, 2017



OTHER ADMINISTRATIVE ACTIONS

DECEMBER 2016 - MAY 2017

APPLICATION FOR LICENSURE

(Includes Applications for Temporary, Broker or Reciprocal licenses.)

These numbers represent persons who have come before the Commission requesting hardship extensions to renew licenses, complete exams or submit applications past the deadline. They also represent those who request applications for change in status (i.e. salesperson to broker).

APPROVED 3

DENIED 2

DETERMINATION OF ELIGIBILITY

(Applications for Licensing Eligibility Determination)

These numbers represent persons who come before the Commission requesting approval to be licensed, mainly persons who have criminal prosecutions show in their criminal background checks. They have an opportunity to explain to Commissioners the circumstances surrounding these incidences and be granted permission to proceed with the licensing process or not, based on the Commissioners' ruling.

APPROVED 9

DENIED 3

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

FROM LICENSEE 1,889

FROM PUBLIC 839

ANONYMOUS/COMMISSION 72

Are You Using a Company Address as Your Mailing Address?

Active licensees may list their company's address as the mailing address under their license profile if they prefer to receive their Commission mail at their company office rather than at their home address. If this is the case, it is important to remember to update your mailing address information if you transfer your license to another active company or inactivate your license. Failing to do so will result in important correspondence from the Commission not getting to you.

Also, if you use an email address issued by your real estate company and you transfer or inactivate your

license, remember to update your email address. It is important to have a current email address on record with the Commission since we send important information and deadline reminders regarding your license by email. Email addresses can also be updated online or by providing the information in writing to the Commission's Licensing Division. Please include your name, signature and license number with these requests.

Remember, it is your responsibility to periodically check the contact information we have on file for you and correct it within the limits of the law.



THE UPDATE

ALABAMA REAL ESTATE

COMMISSION

EMPOWER, CONNECT, AND EDUCATE



EMPOWER Empowering the real estate professional and the consumer.



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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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, 2018

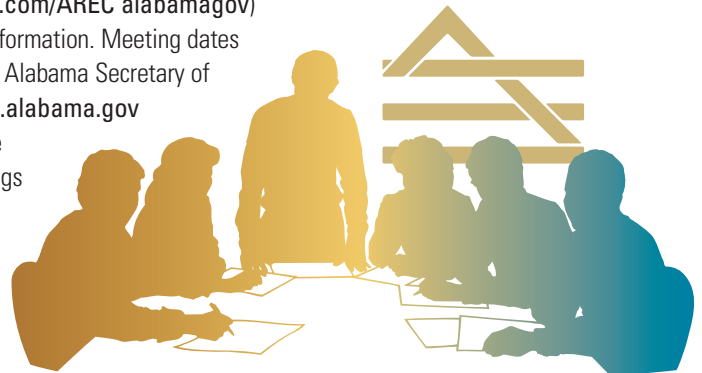
Remember to renew all broker, salesperson, and company licenses in every even-numbered year.

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Upcoming Commission Meetings

There are only four remaining Alabama Real Estate Commission meetings this year and they are scheduled for the following dates. The meeting dates and locations are subject to change. Please check the Commission's website (arec.alabama.gov); Facebook (facebook.com/ARECAlabamaGov); Twitter (twitter.com/ARECAlabamaGov) and Instagram (Instagram.com/ARECAlabamaGov)

for the most current information. Meeting dates are also posted on the Alabama Secretary of State's website at sos.alabama.gov in accordance with the Alabama Open Meetings Act. Commission meetings are always open to licensees and the public.



August 24	Commission Offices	Montgomery
September 28	Birmingham Association of REALTORS®	Birmingham
October 26	Commission Offices	Montgomery
November 30	Commission Offices	Montgomery