

MINUTES

A Special Called meeting of the Alabama Real Estate Commission was held February 26, 2021 at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama. This meeting was also available by video teleconference (VTC).

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order by Chairman Carole Harrison at 9:00 a.m.

Chairman Harrison called the roll and the following Commissioners indicated their presence with a spoken "present": Commissioners Emmette Barran, Jimmie Ann Campbell, Reid Cummings, Joyce Harris, Terri May and Susan Smith. A quorum was declared. Commissioner Bill Watts joined the meeting at 9:17 a.m. The seat from the Seventh Congressional District is currently vacant.

Commission staff members in attendance or participating via VTC were Executive Director Vaughn Poe; Assistant Executive Director Teresa Hoffman; General Counsel Starla Van Steenis; Assistant General Counsel Zack Burr; Investigators Rickey Fennie and Marshall Simons; Communications and Public Relations Director Vernita Oliver-Lane; Communications and Public Relations Specialist Lori Moneyham; State Professional Trainee Jess Sparks; Communications and Public Relations Assistant La'Tanya Knight; Education Director Ryan Adair; Education Specialists David Bowen and Pam Oates; Senior Accountant Pam Garner; Information Technology Director Brett Scott; Information Technology Systems Specialist Steven Brown; Licensing Director Anthony Griffin; Licensing Assistants Pam Taylor, Amber Green and Edward Arrington; Building Custodian Jackie Jackson and Executive Assistant Barbi Lee.

Members of the public also attended via video teleconference.

Chairman Harrison explained the purpose of the Special Called meeting. She stated that over the last few months Jeremy Walker, CEO of AAR and Executive Director Vaughn Poe have discussed several legislative matters. At the Commission meeting on February 18, 2021, Mr. Walker outlined several legislative matters that AAR has an interest in and background information on their issues while Commissioners were able to ask questions. The meeting, today, is an opportunity to discuss and vote to support, not support, or table for additional information.

Executive Director Vaughn Poe reminded Commissioners the core purpose of the Commission is consumer protection. He shared with them The Consumer Federation of America's (CFA) just released report titled, *The Availability of Consumer Information From State Real Estate Commissions*. (Copy included) Information from this report stated that \$100 billion is spent each year by home buyers and sellers on real estate. Research was performed by the CFA on each of the 50 state commissions and the District of Columbia by googling each name. The established criteria for the research began with specific emphasis on how easily a consumer could access: (1) whether an agent is licensed, (2) whether an agent has been

disciplined by regulators and the infraction, (3) what roles an agent may play in relation to their customer – as a loyal representative, a dual agent, the agent for another party, or the agent for neither party, (4) how a consumer can complain if they feel they have been treated unfairly by an agent and (5) general information about consumer protections and the whole sales process, and advice about how consumers can receive good value from agent services. Each state was rated with a score of poor, fair or good for consumer information. The Alabama Real Estate Commission received a rating of good. Alabama was specifically identified in the findings, “Alabama’s website, for example, was one of the most informative and easiest for consumers to use.” Director Poe stated it was nice to be recognized on the national level.

Chairman Harrison stated that she has gotten to know many individuals from some of the other states through ARELLO® mentioned in the report and, while she would have liked everyone to do well, she was not surprised by the good ratings of others including Nebraska and North Carolina. Vice Chairman Cummings stated good does not mean we were not great. Good was the top level.

Chairman Harrison recognized Grayson Glaze, Executive Director of the Alabama Center for Real Estate (ACRE) and Dr. Sam Addy, Special Trustee on the ACRE Advisory Board of Trustees. Mr. Glaze asked to speak to Commissioners to provide background information regarding ACRE’s role in providing information to licensees. [ACRE was specifically mentioned by Mr. Walker during the February 18, 2021 meeting].

Mr. Glaze complimented Director Poe on the report he provided from the Consumer Federation of America. He stated he is a 32-year licensee in good standing with the Commission and that the Alabama Real Estate Commission is not just good, it is great. He referred to the Commission as the best Commission in the United States. He expressed his appreciation for the opportunity to talk about the Alabama Center for Real Estate. Mr. Glaze stated the Alabama Real Estate Commission and the Alabama Association of REALTORS® are the founding partners of ACRE.

The Alabama Center for Real Estate was established in 1995 by legislative act. Mr. Glaze presented to Commissioners a PowerPoint presentation discussing ACRE’s purpose to advance Alabama’s real estate industry by providing relevant resources in the areas of research, education and outreach that contribute to economic and workforce development. ACRE’s guiding principles include: 1. Dissemination and interpretation of new knowledge, 2. Real estate forecasting, 3. Real estate research, 4. Provision of data resources and publications and 5. Student support. ACRE’s Core Values include: 1. Relationship focused, 2. Adaptable, 3. Humility, 4. Passionate People and 5. Tireless Pursuit of Results. He focused on humility and stated that ACRE is a resource and not the voice of real estate. The voice of real estate is one of the best associations across the country as well, and that is the Alabama Association of REALTORS®.

Mr. Glaze addressed how ACRE is funded and provided an operating summary average for fiscal years 2015-2020. Funds received from the Alabama Real Estate Commission were \$243,161, based on three renewal cycles. Total fixed expenses totaled \$528,381. Additional

sources of variable income include research, education, outreach, miscellaneous, and endowment income that totaled \$297,530. The actual average FY Ending Reconciliation was \$12,310. Mr. Glaze also stated that their office space and utilities are provided at no cost by the University of Alabama. He further stated the average \$243,161 in license fees gets the benefits of \$528,381 in research, education and outreach service by ACRE that includes, but not limited to, market reports and analysis (20+ years of data), webinars, email digests (including *WIRE*), relevant articles, podcasts, education opportunities and workforce and economic development. The fee per licensee received by ACRE is 63 cents per month.

Commissioner Watts joined the meeting at 9:17 a.m.

Mr. Glaze discussed the ACRE DREAM Initiative, that is a ten-week certificate program for underrepresented groups to prepare participants for entry-level jobs in the real estate industry. The program will begin this summer and, with industry support, DREAM will be a driver of change on a national scale creating equity in educational and economic opportunities regardless of race or gender. He expressed appreciation to the Commission, who has always been at the table, for its guidance in this endeavor and to the Alabama Association of REALTORS®, who was a part of this initiative as well.

Mr. Glaze took the opportunity to explain the Lake Martin Retreat (ACRE Annual Leader's Retreat at Willow Point in Lake Martin, Alabama). [This topic was also discussed during Mr. Walker's presentation at the February 18, 2021 meeting]. He shared a letter with Commissioners from Steven D. Arnberg, Vice-President-Real Estate Sales, Russell Lands, Inc. Mr. Glaze informed Commissioners that this retreat is for one day only and is completely paid for by Russell Lands. He also stated that no licensee fees have ever been used for this purpose. Once again, Mr. Glaze expressed his appreciation for the time allowed to share information with Commissioners.

Vice Chairman Cummings stated he did not have any questions but would like to make a few comments. He explained as a Commissioner he has one of the most unique perspectives about this issue. He has been licensed in the state of Alabama since 1986 and joined the Alabama Association of REALTORS® at that time and is still licensed and a member of AAR today. For 35 years he has been involved with commercial real estate and property management. In 2008, he had an opportunity to join the Center for Real Estate Studies at the University of South Alabama's Advisory Board. He was offered another opportunity to teach a Principles of Real Estate class and jumped at the opportunity. Textbooks are great, but to be able to share real life applications with students is much more compelling and relatable that goes beyond the textbook. At age 50, he went back to school to get his doctorate in Finance. He was offered the opportunity to take over the Center for Real Estate Studies at the University of South Alabama. He admitted he had no idea how to run this program. He reached out to Grayson Glaze for guidance and began participating in ACRE's events. He stated each time he has reached out to for assistance, Mr. Glaze has always been very nice and helpful. Vice Chairman Cummings stated he continues to support ACRE's mission and, from the academic side, the Alabama Center for Real Estate is a voice that needs to continue to be heard. He also

stated for what the Alabama Center for Real Estate provides, it is critical as a real estate commission that we support and continue to foster relationships between the Alabama Real Estate Commission, the Alabama Center for Real Estate and the Alabama Association of REALTORS®.

Dr. Sam Addy expressed his appreciation to Chairman Harrison, Vice Chairman (Dr.) Cummings and to the Association of REALTORS® for their vision and involvement. He stated that real estate has become even more important in most economies in the United States and especially in Alabama.

Commissioner May asked to make a few comments. She explained she is not in the real estate industry, as she is a banker. Research provided by ACRE was an invaluable resource for regulatory purposes in her position. She thanked them for the research and the valuable services they provide.

Commissioner Harris expressed her appreciation as well. She stated she sees ACRE as the CDC (Centers for Disease Control) for real estate. She praised them for having humility in their mission statement.

Chairman Harrison thanked Mr. Glaze and Dr. Addy for being in attendance and sharing information about ACRE.

COMMISSIONER DISCUSSION

AAR's Near Term (immediately) Objectives/Initiatives:

1. Remove funding from ACRE (Alabama Center for Real Estate) to increase revenue for Commission. *Ala. Code §34-27-35(d)(2).*

Upon discussion to remove funding from ACRE, Vice Chairman Cummings made a motion to not support this initiative. Commissioner Watts seconded the motion and it passed unanimously 8-0.

2. Increase broker supervision requirements to enhance the competency of the profession. *Ala. Code §34-27-32(c)(1-4); §34-27-34(a)(1)(3); §34-27-35(j)(1).*

Upon discussion to increase broker supervision requirements to enhance the competency of the profession, Vice Chairman Cummings made a motion to support this initiative. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

3. Further define and clean up the scope of the Commission. *Ala. Code §34-27-7.*

Upon discussion to further define and clean up the scope of the Commission, Vice Chairman Cummings made a motion to table this initiative until additional

information is received. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

4. Change appointment of Commission seats to state at-large instead of based on Congressional districts. *Ala. Code §34-27-7(c) and (e).*

Upon discussion to change appointment of Commission seats to state at-large instead of based on Congressional districts, Commissioner Watts made a motion to not support this initiative. Vice Chairman Cummings seconded the motion and it passed unanimously 8-0.

5. Terms of Commissioners decreased to 3 or 4 years instead of 5. *Ala. Code §34-27-7(c).*

Upon discussion regarding terms of Commissioners decreased to three or four years instead of five, Vice Chairman Cummings made a motion to not support this initiative. Commissioner Harris seconded the motion and it passed unanimously 8-0.

6. Elimination of the Black member seat. *Ala. Code §34-27-7(d).*

Upon discussion to eliminate the Black member seat, Commissioner Watts made a motion to not support this initiative. Vice Chairman Cummings seconded the motion and it passed unanimously 8-0.

7. Synchronous Distance Continuing Education approved for licensee credit. This option is currently in license law if the course is ARELLO® certified. *Ala. Admin Code Rule 790-X-1-.21 via Ala. Code §34-27-8.*

Upon discussion of synchronous distance continuing education approved for licensee credit, no action was taken since this option is already available to licensees.

8. One-hour CE available instead of 3 hours. *Ala. Admin Code Rule 790-X-1-.12(3) via Ala. Code §34-27-8,* allows for one and one-half hours of training upon approval by the Commission.

Upon discussion to make one-hour CE available instead of three hours, Vice Chairman Cummings made a motion to not support this initiative. Commissioner Smith seconded the motion and it passed unanimously 8-0.

AAR's Near Term Non-Code Section Objectives/Initiatives

1. Disclosure Issues – report any ex parte communication immediately to staff.

Upon discussion regarding disclosure issues, Commissioner Campbell made a motion to not support this initiative as this topic is covered in Commissioner orientation. Vice Chairman Cummings seconded the motion and it passed unanimously 8-0.

2. Contract Lobbyist issue does not come up again; wants in statute.

Upon discussion of a contract lobbyist, Vice Chairman Cummings made a motion to support and codify this initiative. Commissioner Smith seconded the motion and it passed unanimously 8-0.

AAR's Medium Term (2-3 years) Objectives/Initiatives:

1. Increase prelicense requirements for licensees (agents). *Ala. Code §34-27-32(d)(1-3).*

Upon discussion to increase prelicense requirements for licensees (agents), Vice Chairman Cummings made a motion to table this initiative until additional information is received. Commissioner Barran seconded the motion and it passed unanimously 8-0.

2. Requiring Fair Housing education during renewal cycle. *Ala. Admin Code Rule 790-X-1-.12(1) (3) via Ala. Code §34-27-8.*

Upon discussion to require fair housing education during renewal cycle, Vice Chairman Cummings made a motion to table this initiative until additional information is received on how to address this requirement. Commissioner May seconded the motion and it passed unanimously 8-0.

3. RECAD Updates. Proposed legislative changes have been approved by RECAD Task Force. *Ala. Code §34-27-80 through 34-27-88.*

Upon discussion of RECAD updates, Vice Chairman Cummings made a motion to support this initiative with the legislative changes that have been previously approved by the Commission. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

4. Duty of licensee to convey all written offers. *Ala. Code §34-27-84(a)(5).*

Upon discussion of duty of licensee to convey all written offers, Vice Chairman Cummings made a motion to support this initiative by developing precise language for offers in writing with time frames. Commissioner Campbell seconded the motion and it passed unanimously 8-0.

5. Extend the required time period for revocations/suspensions. *Ala. Code §34-27-32(a)(3).*

Upon discussion to extend the required time period for revocations/suspensions, Vice Chairman Cummings made a motion to support this initiative, but also request

additional information. Commissioner Barran seconded the motion and it passed unanimously 8-0.

Commissioner Smith left the meeting at 11:23 a.m.

AAR's Medium Term Non-Code Section Objectives/Initiatives

1. Greater accountability for fair housing violations.

Upon discussion of greater accountability for fair housing violations, Vice Chairman Cummings made a motion to table this initiative until additional information is received. Commissioner May seconded the motion and it passed unanimously 7-0.

2. Define the scope of property management.

Upon discussion to define the scope of property management, Commissioner Campbell made a motion to table this initiative until additional information is received. Commissioner Harris seconded the motion and it passed unanimously 7-0.

3. Clarify licensee liability for good faith referral of vendors.

Upon discussion to clarify licensee liability for good faith referral of vendors, Vice Chairman Cummings made a motion to table this initiative until additional information is received. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

4. Broker Supervision – Employee vs. Independent Contractor.

Upon discussion of broker supervision – employee vs. independent contractor, Vice Chairman Cummings made a motion to table this initiative until additional information is received. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Long Term (time never specified) Objectives/Initiatives:

1. Move to annual licensing to encourage continuous education. *Ala. Code §34-27-35(j)*.

Upon discussion to move to annual licensing to encourage continuous education, Commissioner Watts made a motion to not support this initiative. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

2. Remove the requirement for company licensing. *Ala. Code §34-27-32(6)(e)*.

Upon discussion to remove the requirement for company licensing, Commissioner Watts made a motion to table this initiative until additional information is received. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

3. Estimated Closing Costs (Net Sheets). *Ala. Code §34-27-36(a)(22)* and *Ala. Admin Code Rule 790-X-3-.04* via *Ala. Code §34-27-8*.

Upon discussion of estimated closing costs (net sheets), Commissioner Barran made a motion to table this initiative for clarification and additional information. Commissioner Harris seconded the motion and it passed unanimously 7-0.

4. Stale Earnest Money. *Ala. Admin Code Rule 790-X-3-.03(5)* via *Ala. Code §34-27-8*.

Upon discussion of stale earnest money, Commissioner Watts made a motion to table this initiative for further discussion and additional information. Commissioner Harris seconded the motion and it passed unanimously 7-0.

Long Term Non-Code Section Objectives/Initiatives

1. Disclosure Caveat Emptor.

Upon discussion of disclosure caveat emptor, Vice Chairman Cummings made a motion to table this initiative for further discussion and additional information. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

AREC's Initiative

1. Remove from the list of disciplinary violations the act of presenting to the commission, as payment for a fee or fine, a check that is returned unpaid. Add language to authorize the inactivation of licenses for this reason.

This would allow the Commission staff to inactivate the license of any licensee who presents any form of payment to the commission that is declined or rejected by a financial institution or merchant service company until the licensee submits full and valid payment for the initial fee or fine and an additional fee for submitting the faulty payment.

Upon discussion to add language to license law to authorize the inactivation of licenses upon notification who presents any form of payment to the Commission that is declined or rejected by a financial institution or merchant service company until the licensee submits full and valid payment for the initial fee or fine and an additional fee for submitting the faulty payment and remove from the list of disciplinary violations the act of presenting to the commission, as payment for a fee or fine, a check that is returned unpaid, Vice Chairman Cummings made a motion to

support this initiative and ask the Alabama Association of REALTORS® to join us in this effort. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

At the request of Commissioners from the February 18, 2021 meeting, Executive Director Poe addressed the need of additional staff as discussed by Mr. Walker. Director Poe briefed Commissioners on a specific question addressed to Commissioners and included in the Examiners of Public Accounts report in 2020 regarding Commission staffing. The question asked of Commissioners, "Is the Commission adequately staffed?" Four responses indicated an answer of "No" with the following responses: 1. "No, I believe the legal department needs additional staff." 2. "No. We need an attorney, investigators, desk auditors, and IT folks." 3. "No. We need another attorney on staff. The one we have is great, but she is overburdened with the amount of work she has." 4. "No. AREC is in need of an assistant legal counsel and could also use additional investigators." Director Poe reminded Commissioners this survey was prepared in 2019 and at that time, there was only one attorney. Currently, the Commission has two attorneys on staff, a General Counsel and Assistant General Counsel. Director Poe stated the Commission is adequately staffed across the board.

The following calendar year 2020 statistics were explained by Director Poe for the Legal Division: Total incoming phone calls received was 5,876 and broken down in the following categories: From Licensees- 4,103; From Consumers - 1,674; From Anonymous - 69; From Attorneys – 30. There were approximately 2,100 total web inquiries. A total of 280 investigative files were opened and 20 formal complaints filed against licensees. Director Poe also indicated that most calls are licensee on licensee calls.

The following information regarding the auditing team was presented at the request of Commissioner May. The Commission currently audits approximately 3,800 companies. The average percentage of efficiency is 15 to 16 percent. Audits are performed on a three-year cycle. License law requires a company to retain only three years of information for auditing purposes.

Director Poe explained to Commissioners the old way of doing audits, especially with COVID-19, was no longer efficient and the team has moved to performing desk audits. He explained that when the governor issued the Emergency Declaration in March of 2020, the Commission was one of the exempted agencies that had to continue to work. The staff continued to get the job done with greater efficiency, while protecting our team members and licensees. In fiscal year 2019, the auditors conducted 559 audits and 625 audits were performed in fiscal year 2020.

Director Poe discussed how the auditors in the education division have also had to change their way of auditing instructors and schools due to COVID-19.

Director Poe expressed that he is extremely proud of the entire staff. Team members are still working hard and getting things done above and beyond even during this time of COVID-19.

Vice Chairman Cummings explained how the State of Alabama Banking Department would charge a flat fee of \$100 per hour to perform an audit of his company. He proposed to incentivize the Commission's audits of companies. Director Poe stated he would need to talk to the legal staff regarding implementing this type of change. Assistant Executive Director Hoffman reminded Commissioners that any revenue funds received by the Commission would have to have statutory authority. Vice Chairman Cummings suggested getting support from the Alabama Association of REALTORS® as this would move in the direction of more accountability of licensees, including AAR's members, and provide additional funding to the Commission for staff that support those functions.

Commissioner May expressed her appreciation for the information. She requested that going forward formal complaints relating to an audit finding of a company include the date of the previous audit performed by the Commission staff on that company and the results or findings, if any, during that particular audit be mandatory information included in the packet for Commissioners to review. She also commented she would prefer to see actual on-premise audits at some point and not perpetual desk audits. She indicated there is value to in-person audits.

Chairman Harrison asked if there were additional comments from Commissioners. Commissioner May stated she would entertain having these presentations from AAR on a more frequent basis.

Vice Chairman Cummings expressed his appreciation to the Alabama Association of REALTORS® for their time and thought and for coming back to continue to work together.

There being no further business, Vice Chairman Cummings made a motion to adjourn the meeting at 12:11 p.m. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

Done this 26th day of February 2021.

Carole Harrison, Chairman

Barbi Lee, Recording Secretary