



SPRING 2006

LETTER SIZIN' Alabama Real Estate Advertising Regulation

By D. Philip Lasater, Executive Director

In the summer of 2005, Commissioners agreed to review how the statute reads and how best to evenly enforce the requirement for all licensees. On March 17, 2006 in a regular meeting held in Birmingham the Commission voted to re-affirm its enforcement policy and approved the statement of policy for distribution as outlined here.

Excerpted from the *Alabama Real Estate License Law 34-27-36*

These two paragraphs detail violations that could result in a formal complaint, hearing and disciplinary action. It is paragraph (15) we are going to focus on in this article.

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.

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 on the advertising in letters at least as large as the name of the salesperson or associate broker; or if the licensee is a salesperson or associate broker, advertising himself



or herself as 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 on the advertising in letters at least as large as the name of the salesperson or associate broker.

This applies to newspaper, magazine, billboard, yard signs, car signs, letterhead, business cards, flyers, team name promotion, Web sites and any other medium advertising may be placed.

The Commission probably receives more reports of non-compliance and requests to review published advertising in violation of the above stated requirements than all other forms of advertising issues put together. There are two parts to the paragraph. The first part speaks to the responsibility and liability of the *qualifying broker*. The second part speaks to the

responsibility of the *associate broker or salesperson*.

A *qualifying broker* is required to see that the advertising published featuring an associate broker or salesperson contains also the name of the Company or the qualifying broker. Now here is the real issue! The letters of the Company and qualifying broker shall be at least as large as the letters of the associate broker or salespersons name.

The *associate broker or salesperson* is required to make sure any advertising that he or she places featuring their name contains either the qualifying brokers name or their Company name and that **the letters of the qualifying broker or Company be at least as large as the letters in their name.**

This paragraph has been previously reviewed by Commissioners and industry to determine whether consideration should be given to repeal. The concluding consensus was for it to remain and to be enforced. Commissioners prefer to keep the enforce-

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BRIEFLY LEGAL**SELLER DISCLOSURE IN ALABAMA**

By Charles R. Sowell, General Counsel

We have a good number of Alabama real estate companies utilizing seller disclosure in their listing procedures and practice on sales of existing homes. This is causing some confusion and problems, especially at closings. I am going to talk about this, but first we need to get refreshed on the basics of seller disclosure. This will be fairly painless. You will not even have to deal with any legal citations, because there is no law on point to cite.

Let's first have a clear understanding about what is meant by seller disclosure practice. Some brokers have decided that they should require owners of existing homes listing with their companies to complete a "seller disclosure" form. The use of a seller disclosure form is mandated by law on sales of existing homes in many states. Alabama has no law requiring use of a seller disclosure form. The form itself is usually very detailed, covering every physical aspect of a property. The seller is asked to reveal any defects or problems known about the property on this form. The broker then shares this information with potential buyers, so the buyers will know what the seller knows about the condition of the property. These disclosures are also commonly known as property condition disclosures. A property inspection is still recommended to the buyer.

There are many factors a broker has to consider in decid-

ing on seller disclosure practice. These considerations raise issues that are mostly beyond the scope of the license law, so I will not comment upon them. For the most part brokers choosing seller disclosure view it as a risk management tool. We have even gotten reports that some errors and omissions insurance carriers are strongly encouraging the use of seller disclosure forms.

This gets us back to the point. Here is the problem: Some Alabama real estate licensees believe that seller disclosure is required by law in Alabama. Some have reportedly disrupted closings by demanding that the listing agency representative produce a copy of the seller disclosure form. When this non-existent form is not produced the situation gets worse. The offending agents proceed to upset the consumers, buyers and sellers, by saying that the form is required by law, and that all manner of evil is going to rain down, if the form is not produced. The truth really is the offending agents believe that this form, missing from their files, will cause them not to be paid their commissions. The truth further seems to be that perhaps the brokers of these agents mistakenly believe that seller disclosure is the law in Alabama. Now, I am all for everybody having their files in order. I even like to see everybody paid, however, disrupting closings in front of consumers while misstating the law—I cannot go with that. Let us see if we can do better. ■

www.arec.alabama.gov

NEW COMMISSION WEB SITE AND EMAIL ADDRESSES EFFECTIVE NOW

The Alabama Real Estate Commission online news and resource of information is still just a click away; however, the Web site address has changed. The new Web address www.arec.alabama.gov is effective now.

Please change your Web browser URL (Favorites and Bookmarks) to reflect this address change.

Likewise, as a result of the State of Alabama's ACE (Alabama Centralized Email) project, all email addresses for the Commission have changed. The ACE project overall goal is providing the state with a secure, scalable and reliable messaging platform. The ACE system has tightened security and is ensuring that the State of Alabama has a dependable email system available at all times.

Please check the Commission's online staff directory for updated email addresses.

CMA, BPO OR APPRAISAL?

*DJ Dixon, Investigator,
Alabama Real Estate Appraisers Board*

Due to the number of complaints the Alabama Real Estate Appraisers Board receives about CMAs (Comparative Market Analysis) and BPOs (Broker's Price Opinion) for loan transactions, I have been requested to write this article. As a former real estate broker, I understand some of the problems real estate agents get into; sometimes just trying to do what you think is "right" or else just trying to be helpful.

Please pass this information on to other salespersons, brokers and owners of real estate companies. If someone is in violation of the law, then the liability is just that much greater. If you have been in the real estate business very long, you already have experienced or know someone who experienced what happens when something goes wrong and clients become unhappy. Hopefully this article will keep someone out of court, both civil and criminal.

Effective August of 2004, the Appraiser's Act amended the definition of an appraisal. An appraisal is the act or process of developing an opinion of value of real property; an opinion of the value of real property; of or pertaining to appraising real property and related functions such as appraisal practice or appraisal service.

Code of Alabama Section 34-27A-3(c) exempts a licensed real estate broker or salesperson, who in the ordinary course of business, may give an opinion to a **potential seller** or third party as to the recommended listing price of real estate or an opinion to a **potential purchaser** or third party as to the recommended purchase price of real estate.

Under this exemption, a real estate broker or salesperson is permitted to offer a CMA or BPO in the process of listing and selling a parcel of property. The law prohibits a real estate broker or salesperson from doing a CMA, BPO or appraisal for a lender, who is not a potential buyer or seller of the property.

Whenever a lender, who is not a potential purchaser or seller calls a real estate broker or salesperson for a CMA or BPO of a parcel of property and the real estate broker or salesperson gives an opinion of value or a range of value of the parcel of property to the lender, this is a violation of the Appraiser's license law.

Sometimes a lender will use the words "Not an appraisal" or similar language. The language **does not** mitigate the fact that you would be offering an opinion of value or a range of value. If you offer an opinion of value or a range of value, then you have violated the Law. ■

Licensing Tidbits

By Annie Hall, Licensing Supervisor

■ Enhanced Certification of Licensure

The online Certification of Licensure service has been enhanced. In addition to this service being provided on active company, broker and salesperson licenses, it has now been expanded to include the following:

- **Inactive individual license**
- **Lapsed individual license**

Also, the active and inactive dates of the license are now provided. There are definite advantages to utilizing this service—the certification is obtained instantly, you can print as many copies as you need for one price, and each copy is authentic.

■ Change of Qualifying Broker Form

There is now available on the Commission's Web site a form to change the qualifying broker of a company. To access this form, go to www.arec.alabama.gov. Once there, go to "Quick Links" and click on "Forms and Applications."

(See more Licensing Tidbits on page 7.)

REMINDER

RENEWAL YEAR!

- This is the year that licenses are renewed. Renewal notices will be mailed the latter part of July. Renewal fees are due in the Commission's office or **postmarked by August 31** to avoid paying the penalty fee of \$150. After August 31, renewal fees with penalty must be received in our office or postmarked by **September 30** in order for the license to be issued active on October 1 (CE requirements also must have been met and reported by September 30).
- **Online renewal** will be available by late June or early July.
- Check your continuing education credit online to ensure it is up to date. Contact your instructor if there are any discrepancies. Proper CE must be credited to a licensee in order for the license to be issued on active status on **October 1, 2006**.

DISCIPLINARY ACTIONS TAKEN

August 2005 through January 2006

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.

John J. Runnion

Qualifying Broker
Birmingham, Alabama
Date of Hearing: November 18, 2005

Fined \$100

DISPOSITION

The below was found guilty for violation of Rule 790-X-3-.01 via Section 34-27-36(a)(19) for changing his place of business and failing to notify the commission in writing within 30 days after the change; Section 34-27-36(a)(19) for failing to comply with Section 34-27-82 and Rule 790-X-3-.13 to provide consumers with a written brokerage services disclosure form; Rule 790-X-3-.04 via Section 34-27-36(a)(19) for failing to prepare and furnish estimated closing statements at the time an offer is prepared or presented on real estate transactions; and Section 34-27-36(a)(19) for failing to comply with Rule 790-X-3-.14 to adopt and maintain an agency disclosure office policy.

Christopher Allen Cummings

Qualifying Broker
Orange Beach, Alabama
Date of Hearing: January 19, 2006

Fined \$4000 and license suspended for six months; however the suspension is stayed for six months during which he must provide certification of six hours of CE to the Commission.



DISPOSITION

The below were found guilty of violating 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.

Brandi L. Horton

Temporary Salesperson
Grand Bay, Alabama
Date of Hearing: August 26, 2005

Fined \$250

Stephanie A. Key

Salesperson
Huntsville, Alabama
Date of Hearing: August 26, 2005

Fined \$250

Jennifer Mayfield Wolford

Salesperson
Gardendale, Alabama
Date of Hearing: November 18, 2005

Fined \$250

Herbert K. Orise

Salesperson
Pelham, Alabama
Date of Hearing: November 18, 2005

Fined \$250

Dorothy M. Guerrier

Qualifying Broker
Decatur, Alabama
Date of Hearing: November 18, 2005

Fined \$250

Chantal S. Walker

Salesperson
McCalla, Alabama
Date of Hearing: November 18, 2005

Fined \$250

Paula J. Gardner

Salesperson
Mobile, Alabama
Date of Hearing: December 9, 2005

Fined \$250

Crystal Berry

Salesperson
Birmingham, Alabama
Date of Hearing: January 19, 2006

Fined \$250

Ruth Anne Luker

Salesperson
Birmingham, Alabama
Date of Hearing: January 19, 2006

Fined \$250

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(19) by failing to comply with Rule 790-X-1-.12(8) and Rule 790-X-1-.12(9) by failing to provide to the Commission, upon request, original certificates of completion of all the requested hours of approved continuing education courses.

Scott L. Hendricks

Associate Broker
Troy, Alabama
Date of Hearing: August 26, 2005

Reprimanded

Eric S. Wishner

Qualifying Broker
Dania, Florida
Date of Hearing: November 18, 2005

Fined \$1000

Robert A. Conner

Qualifying Broker
Birmingham, Alabama
Date of Hearing: November 18, 2005

Fined \$1000

John Michael Bodnar

Salesperson
 Birmingham, Alabama
 Date of Hearing: December 9, 2005
Fined \$1000 and license suspended for 30 days.

Robert Davis

Qualifying Broker
 Fairhope, Alabama
 Date of Hearing: December 9, 2005
Fined \$500

Samuel E. Provitt, Sr.

Salesperson
 Montgomery, Alabama
 Date of Hearing: December 9, 2005
License is suspended, however, that suspension is stayed for 60 days during which he must provide certification of CE to the Commission.

Kristy L. Riley

Salesperson
 Birmingham, Alabama
 Date of Hearing: December 9, 2005
Fined \$1000 and license suspended for 30 days.

DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(27) for acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.

Martha C. Conner

Qualifying Broker
 Dothan, Alabama
 Date of Hearing: August 26, 2005
Fined \$1000 and license suspended for 90 days by the Commission. The Commission's order was upheld by the Houston County circuit court and amended to a \$100 fine and five day suspension.

DISPOSITION

The below qualifying broker was found guilty of violating Section 34-27-36(a)(19) via Section 34-27-32(g) for allowing a salesperson on inactive status to perform acts for which an active license is required in violation of Section 34-27-35(k), and violating Section 34-27-36(a)(19) and Section 34-27-34(a)(2) for failing to see that a license was activated and renewed in a timely manner. And it is a violation of Section 34-27-36(a)(19) and Section 34-27-35(k) for Ms. August while on inactive status to perform acts for which an active license is required.

Roderick E. McKinney

Qualifying Broker
 Birmingham, Alabama

Angel August

Salesperson
 Birmingham, Alabama
 Date of Hearing: November 18, 2005

Mr. McKinney Fined \$250 and Ms. August Fined \$100

DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(1) to procure or attempt to procure, a license by fraud, misrepresentation, or deceit, or by mak-

ing a material misstatement of fact in an application for a license and Section 34-27-36(a)(19) for failing to comply with the 34-27-31(j) requirement to notify the Commission of the institution of any criminal prosecution.

Robin D. Spence Vanderford

Qualifying Broker
 Tuscaloosa, Alabama
 Date of Hearing: November 18, 2005
Reprimanded

OTHER ADMINISTRATIVE ACTIONS

Determination for Licensure

Approved 6

Denied 9

Determination of Eligibility

Approved 9

Denied 13

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees 1759

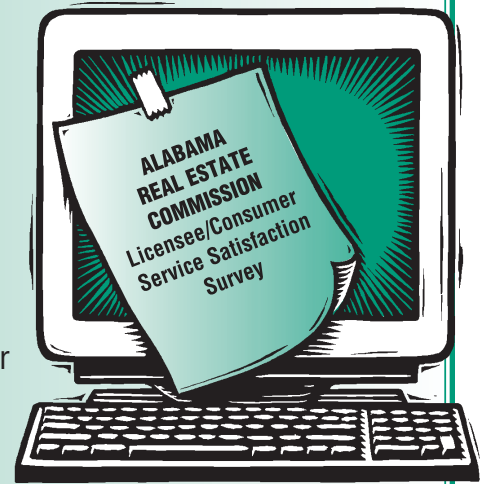
From Public 885

Anonymous 24

CUSTOMER SERVICE SURVEY

HOW ARE WE DOING?

We would like to hear from you. The Commission is interested in receiving feedback from the real estate licensee population and others who have contact with the Commission office. Go to www.arec.alabama.gov to complete our "Licensee/Consumer Service Satisfaction Survey." All comments are welcome.



EDUCATION CORNER

Look Up Your Course Credit Online with CMap!

By Ryan Adair, Education Director

■ LICENSEES

Go to the Commission's Web site at www.arec.alabama.gov and click on Online Services at the top of the homepage.

- Click Online Services in the gray box where it says "Click Link for Licensee Login."
- This will take you to the login screen where you enter your license number (without the leading zeros and the extension), the last four digits of your social security number, and your date of birth. If you are not sure what your license number is, you may use the license search feature under the Quick Links on the homepage.
- Once logged in, you will see a screen that will allow you to change your home address, home zip code, phone number, and email address if needed. After the information has been changed or confirmed, click "Next" at the bottom of the screen.
- The next screen will show the current contact information the Commission has on record for you and also a list of Available Services. Click on Licensee CE Credit to see a list of all courses taken for which credit has been submitted. (If you have completed a course and it is not identified in the list, you should contact the instructor or school and let them know.)
- Click on the course title and you will see specific course information.
- In the list of courses, you will also see an option to evaluate the course which will be available 30 days after the completion date of the course. If the 30 days have lapsed, you will see "N/A" signifying the evaluation is no longer applicable.

■ QUALIFYING BROKERS

- You may also check course credit for individuals licensed with your company.
- Select Licensee Login and enter the **company** license number, the last four digits of your social security number, and your date of birth.
- Once logged in, you will see a list of licensees who have had credit submitted into CMap. Click the license number of each individual to see a list of the courses taken.

ATTENTION!

■ OUT-OF-STATE COURSES

- If a course is taken in another state and is approved by any state, you may receive elective continuing education credit according to Rule 790-X-1-.12(15) of Alabama License Law.
- In order to receive credit for out of state courses, it is the responsibility of the licensee to submit to the Commission appropriate documentation for verification of successful completion of the course and the number of credit hours for which it was approved.
- Commission staff will enter your credit into CMap. You will not receive credit for courses taken in another state unless we receive documentation.

■ RECIPROCAL LICENSEES

- Definition: Licensees who received an Alabama real estate license based on licensure in another state. A person with a reciprocal license may live in another state or may live in Alabama. The word "reciprocal" appears on the license certificate. If you meet these two criteria, you have two options when it comes to meeting continuing education requirements.
- The first option is taking Alabama approved courses identified in Rule 790-X-1-.11(1) and (3).
- The second option is showing verification that you hold an active license in another state.
- Even if you do not hold an active license in another state, you may still receive elective continuing education credit for courses taken in another state based on Rule 790-X-1-.12(15) as mentioned above. However, the Risk Management course must be the Commission approved outline offered by a provider who is approved by the Alabama Real Estate Commission. ■

Continuing Education and Reciprocal Licensees

By Pat Anderson, Assistant Executive Director

The Commission receives a number of calls from reciprocal licensees who inquire about continuing education requirements. Here is what the law says:

“A person who holds a reciprocal license shall show proof of completion of continuing education either by meeting the requirements of Section 34-27-35 or by showing proof that his or her other state license remains active in that state.”

What this means for a person who holds a reciprocal license is that you must either complete the 15 hours of continuing education as do all other Alabama licensees; (3 hours in Risk Management and 12 hours of approved electives) or hold an active license in another state.

Furthermore, the law exempts all persons, including reciprocal licensees, who received their license in the second year of the license period. That means that if you first received an Alabama license October 1, 2005 or later, then you are exempt for the renewal of your license in 2006. In this case, you do not have to send in any documentation of either continuing education or active licensure in another state.

- **What kind of documentation is acceptable for proof of holding an active license in another state?** Acceptable proof is one of two things; either a copy of your active license from another state showing an expiration date later than September 30, 2006 or a certification of licensure (license history) from another state showing an active license and a license expiration date later than September 30, 2006. A reminder to obtain one of these items will be sent to reciprocal licensees in late spring. If you send a certification of licensure from another state to verify your active license in order to satisfy Alabama’s CE requirements, you must attach a cover letter stating it is for that purpose so that it will be directed to the Education Division for CE crediting. Most certification of licensure forms received by the Commission are for original licensing purposes rather than for license renewal purposes.
- **When can you send in your proof?** It may be sent to the Commission anytime prior to September 30, 2006. You may send it as soon as you have it and we will enter it into your records.
- **Will it show on the AREC Web site when you check for CE credit?** Yes. When you access your record on the Commission’s Web site under “CMap” it will show that your CE requirement has been fulfilled.
- **What will happen if you do not send in documentation by September 30, 2006 as described above in order to fulfill the CE requirement?** Your license will be issued to inactive status. It may be activated after October 1, 2006 by filing an activation form, a \$25 fee, and furnishing appropriate documentation of having met CE requirements.
- **Is it possible that I am exempt from meeting continuing education requirements?** Yes. The law exempts those who were 65 years of age on or before September 30, 2000 and who had ten years of continuous licensure in any state prior to that date. If you think you are exempt, please gather proof of age and continuous licensure from October 1, 1990 through September 30, 2000 and submit it to the Commission’s education division.

If you have any questions, please contact the Commission’s Education Division. ■

Licensing Tidbits...

Continued from page 3

■ New Online Service!

Transferring a license has become even easier with the addition of the “License Transfers” online service. With this feature, you are able to transfer a license from active to inactive and inactive to active. Also, associate brokers and salespersons are able to change their name online.

■ Routine Licensing

- **Qualifying brokers;** Please remember whenever submitting any license transactions to the Commission that the original licenses must be returned with the transaction. Failure to return the license will cause a delay in processing. If the licenses have been lost or misplaced, submit a notarized statement to that effect. Also, never return a license without a form or a letter stating why the license is being returned.
- **When activating a license,** please use the License Activation form instead of the Registration Form. By signing the Activation Form, the licensee certifies that he or she has met CE requirements prior to license activation.
- **Associate brokers and salespersons;** When transferring a license to another company and the current qualifying broker refuses to release the license, the licensee must give written notice to the Commission that he or she desires to change qualifying broker and send a copy of the notice to the qualifying broker. This notice must accompany the Registration/Transfer Form and transfer fee(s).
- **Services that can currently be performed online at no charge** are change of home address, home telephone, home email, company telephone and company email. ■



1201 Carmichael Way
Montgomery, Alabama 36106

Our Mission

To protect the public through the licensing and regulating of Real Estate licensees. (Code of AL, Title 34, Chapter 27, Article 1, General Provisions)

Commissioners

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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.alabama.gov

License Renewal Dates

Real Estate licenses expire September 30, 2006. Remember to renew all broker, salesperson and company licenses in every even year.

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

Letter Sizin'...

Continued from page 1

ment "rule of thumb" simple. To that end Commissioners request that licensees instruct anyone they retain to assist with graphics or ad placement help by choosing font size that is clear to the eye at first glance that the name of the company is obviously larger than that of the associate or salesperson. Absent the luxury of applying the common sense eyeball, our enforcement staff will actually measure. Commissioners have instructed and directed staff to measure by comparing the height of the letters of the entire Company name as it is officially licensed to the size of the letters in the name of the individual associate or salesperson.

The language of the statute is pretty direct and straightforward leaving essentially no room for interpreting what it means. That is why Commissioners have chosen and directed that it be applied and enforced as described above.

Periodically it becomes necessary to

refresh and review this regulation and how it is applied. Instances of violation are noted to qualifying brokers and an opportunity to correct and comply is provided. By and large ready cooperation is forthcoming when understanding is renewed. So, first time violations are being brought to the qualifying broker's attention and any subsequent violation will result in a formal complaint.

Enforcement staff may from time to time make reviews of publications across the state to monitor compliance but it can be generally expected that another licensee in your area will make sure we know and receive a copy of the ad. We again would call your attention to the requirement and request that it be made a part of new agent training. It is suggested that inclusion of a company policy statement citing a statutory requirement to public relations firms, consultants, newspapers or other publishers of real estate licensee advertising could go a long way in preventing some of these problems. ■