



The Future Of MANDATORY ERRORS & OMISSIONS Is In Question

By D. Philip Lasater, Executive Director

SYNOPSIS: In the last two renewal cycles the Real Estate Commission has sent Request for Proposals to all potential insurance vendors nationwide. Both times there has been only one respondent. The Commission awarded contracts to Rice Insurance Services. Rice Insurance Company Services submitted with Frontier in 2000 and with Medmarc in 2002. Group participation either time did not exceed nine percent of active licensees. Both times the program was terminated before the license period began.

A BRIEF HISTORY: The statutory requirement. E&O Insurance has been a divisive issue in Alabama; essentially from the time efforts to mandate the requirement were undertaken by industry and the Commission. In the late 80's and early 90's the insurance market was not offering coverage or coverage considered affordable by most real estate practitioners. Mandating maintenance of insurance coverage and establishing a state group policy appeared to be a good solution for all concerned. The enabling statute permitted licensees to certify alternative coverage to the group to maintain an active license.

THE GROUP HISTORY: St. Paul became the group carrier in 1993. There was a premium cap of \$100 per year. The initial premium was \$73 per year. Claims mounted in number and defense cost rose accordingly. The program cost St. Paul incurred after eight years resulted in a pay-

out of \$1.62 for every dollar it collected in premiums. St. Paul declined to exercise a contract renewal option and exited the state group mandatory market nationwide. The premium cap was increased to \$250 per year, but for the last two renewal cycles, only one respondent has been lured into Alabama for Commissioners to consider awarding a contract.

REALITY: The factors and reasons may for many be arguable or debatable but what can not be refuted is that the market has out performed the best a group could put up against it two times in a row.

Nine out of every ten licensees chose an alternative to the Group policy that had been competitively bid and that guaranteed issue to any licensee without an option to cancel except for non-payment of premium. Licensees have voted, if you will, with the payment of their premium and have decided the question of whether the open insurance market is adequate to provide the means for good business decisions and remuneration options for consumers.

WHAT NOW? Commissioners have undertaken a review of the entire mandatory errors and omissions insurance concept including the enabling legislation and administrative rules. Chairman Bill Poole appointed Commissioner Roy Bragg to conduct a thorough and incisive probe enlisting those others necessary to help ascertain whether any legislative or policy

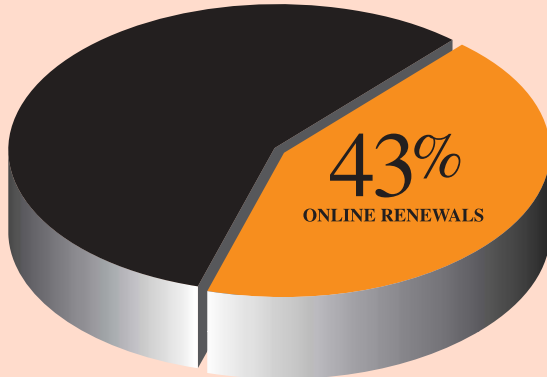
alterations could prospectively produce a viable ongoing state group program. The key question that Commissioners hope to find a reasonably reliable answer to for future direction is: *What will it take for an insurance company to submit a proposal for a program that is market competitive and will stick with the state group for two years if awarded the contract?* So while the future of mandatory E&O is uncertain, Commissioners plan on knowing if there is hope for the state group's future direction in the next few months. ■

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License Renewals ONLINE

The Alabama Real Estate Commission is pleased to provide online license renewal service to its twenty-seven thousand licensees. On June 18, 2002, the Commission launched this new Internet feature for the first time. The online renewal service affords licensees instant confirmation of license renewal that eliminates the hassle and uncertainty of mailing forms and checks.



As of October 1, 2002, approximately **19462** real estate licenses had been renewed. Out of those licensees eligible to renew their licenses online, **43%** actually did it!

The Real Estate Commission's license renewal was featured at www.Alabama.gov, the state of Alabama's official Web site, as the first online service in the state that can be paid by credit card. All state online credit card transactions are processed and managed through Alabama Interactive.

Alabama Interactive is the official eGovernment solutions provider for the state of Alabama. The company builds and manages interactive government services on behalf of the state and is a wholly owned subsidiary of eGovernment firm NIC.

NIC delivers more Web-enabled government services than any other provider in the world. The company is helping to simplify how government and its constituents communicate by providing convenient online government services that make life easier for businesses and citizens. Through partnerships at all levels of government, NIC manages transactions for over 1,400 state and local agencies that serve more than 67 million people in the United States.

The Commission is excited about this positive innovation and is continuing the quest for improved and convenient real estate licensee and consumer services. Look for additional online services that will become available soon. Projected implementation dates are as follows:

- Certification Of Licensure** Projected November 2002
- Change Of Business Address** Projected February 2003
- Change Of Home Address** Projected April 2003
- License Transfer** Projected Summer 2003
- Instructor Renewals** Projected July 2003



Thomas Hays Confirmed As New Commissioner

Thomas L. Hays (Birmingham) was appointed by the Governor and confirmed by the Alabama Senate to serve as a consumer member on the Alabama Real Estate Commission. His term with the Commission commenced recently and is effective through September 30, 2006.

In 1973 Hays graduated from Athens College and in 1975 he obtained a masters degree from the University of Alabama at Birmingham. Additional academic credits include C.A.S.E. (Certificate of Advance Study in Educational Psychology) from the University of Alabama at Birmingham in 1977; masters of business administration from Samford University in 1981; and 1985 School of Banking of the South, Bank Graduate School, at Louisiana State University in Baton Rouge, Louisiana.

Hays is currently working as a financial advisor and registered securities representative with Raymond James Financial Services in Birmingham, Alabama. His other professional experience includes being vice president-registered securities representative for Morgan Keegan and Company, Incorporated from 1995-2001; personnel office (1978), assistant vice president (1980), and vice president (1982) for AmSouth Bank in Birmingham, Alabama; and Commissioner for the Housing Authority of the Birmingham District.

Hays is a member of the Registered Securities Representative, National Association of Security Dealers, and Lebanon United Methodist Church. He is married to Dr. Sarah J. Hays, M.D. and they have two children.

DISCIPLINARY ACTIONS TAKEN

June through September 2002



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

Name: Diedre Dawn Mosley, Temporary Salesperson, Cullman, Alabama
Date of Hearing: June 28, 2002, Fined \$250

Name: Erica L. Thomas, Salesperson, Daphne, Alabama
Date of Hearing: June 28, 2002, Fined \$250

Name: Levy Calvin Turner, Reciprocal Broker, Gadsden, Alabama
Date of Hearing: August 23, 2002, Fined \$250

Name: Barbara E. Lawson, Salesperson, Fairhope, Alabama
Date of Hearing: September 27, 2002, Fined \$250

Name: Paula E. Yoe, Salesperson, Birmingham, Alabama
Date of Hearing: September 27, 2002, Fined \$250

Name: Juanita H. Muirhead, Qualifying Broker, Bessemer, Alabama
Date of Hearing: September 27, 2002, Fined \$250

Name: Karen J. Burns, Temporary Salesperson, Pelham, Alabama
Date of Hearing: September 27, 2002, Fined \$250

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

Name: Robert A. Cates, Qualifying Broker, Troy, Alabama
Date of Hearing: June 28, 2002, Fined \$250

Name: Larry V. Harvill, Qualifying Broker, Pike Road, Alabama
Date of Hearing: August 23, 2002, Fined \$250

Name: Robert A. Cates, Qualifying Broker and David L. Adams, Salesperson, Troy, Alabama
Date of Hearing: July 26, 2002, Mr. Cates was fined \$1000 and \$250. Mr. Adams was fined \$1000 and his license suspended for 90 days.

Disposition: In lieu of filing a formal complaint and having a hearing, the below

Name: Jeffrey D. Brooks, Qualifying Broker, Pelham, Alabama
Date of Hearing: September 27, 2002, Fined \$250

Name: Charles M. Sisco, Jr., Qualifying Broker, New Market, Alabama
Date of Hearing: September 27, 2002, Fined \$250

Name: Maxwell G. Horkins, Jr., Qualifying Broker, Nashville, Tennessee
Date of Hearing: September 27, 2002, Fined \$250

Disposition: The below were found guilty for violation of Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds to be held in trust for other parties and 34-27-32(e) via 34-27-36(a)(19) for a qualifying broker to fail to make application for a real estate corporation license for a corporation conducting business pursuant to the Alabama Real Estate License Law.

Name: Robert A. Cates, Qualifying Broker and David L. Adams, Salesperson, Troy, Alabama
Date of Hearing: July 26, 2002, Mr. Cates was fined \$1000 and \$250. Mr. Adams was fined \$1000 and his license suspended for 90 days.

Disposition: The below were found guilty for violation of Section 34-27-36(a)(29) for a broker to fail, within a reasonable amount of time, to provide information requested by the Commission during an investigation; Section 34-27-36(a)(8)a. for a broker to fail within a reasonable time, to properly account for money coming into his possession which belongs to others and Section 34-27-36(a)(19) for a broker to violate or disregard the place of business requirements of Section 34-27-2(11) or to violate or disregard the provisions of Alabama Real Estate Commission Rule 790-X-3-.01 concerning notification to the Commission of a change of business address.

Name: Fred H. Hawkins, Qualifying Broker, Montgomery, Alabama
Date of Hearing: July 26, 2002, License Revoked

surrendered the license for alleged license law violations.

Name: Brian A. Hardie, Qualifying Broker, Gainesville, Georgia
Date of Hearing: June 28, 2002, License Revoked

Name: Renee L. Jarrell, Salesperson, Ozark, Alabama
Date of Hearing: September 27, 2002, License Revoked

Disposition: The below was found guilty for violation of Section 34-27-36(a)(29) for a broker to fail, within a reasonable amount of time, to provide information requested by the Commission during an investigation; Section 34-27-36(a)(8)a. for a broker to fail within a reasonable time, to properly account for money coming into his possession which belongs to others and Section 34-27-36(a)(19) for a broker to violate or disregard the place of business requirements of Section 34-27-2(11) or to violate or disregard the provisions of Alabama Real Estate Commission Rule 790-X-3-.01 concerning notification to the Commission of a change of business address.

Name: Fred H. Hawkins, Qualifying Broker, Montgomery, Alabama
Date of Hearing: July 26, 2002, License Revoked

Disposition: The below were found guilty for violation of Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. for failing to deposit and account for at all times all funds to be held in trust for other parties and 34-27-32(e) via 34-27-36(a)(19) for a qualifying broker to fail to make application for a real estate corporation license for a corporation conducting business pursuant to the Alabama Real Estate License Law.

Name: Robert A. Cates, Qualifying Broker and David L. Adams, Salesperson, Troy, Alabama
Date of Hearing: July 26, 2002, Mr. Cates was fined \$1000 and \$250. Mr. Adams was fined \$1000 and his license suspended for 90 days.

Disposition: In lieu of filing a formal complaint and having a hearing, the below

OTHER ADMINISTRATIVE ACTIONS

Determination for Licensure
 Approved 3
 Denied. 0

Determination of Eligibility
 Approved 4
 Denied. 3

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees. 1189
 From Public 547
 Anonymous 45

LICENSING TIDBITS

Moved — No Forwarding Address?

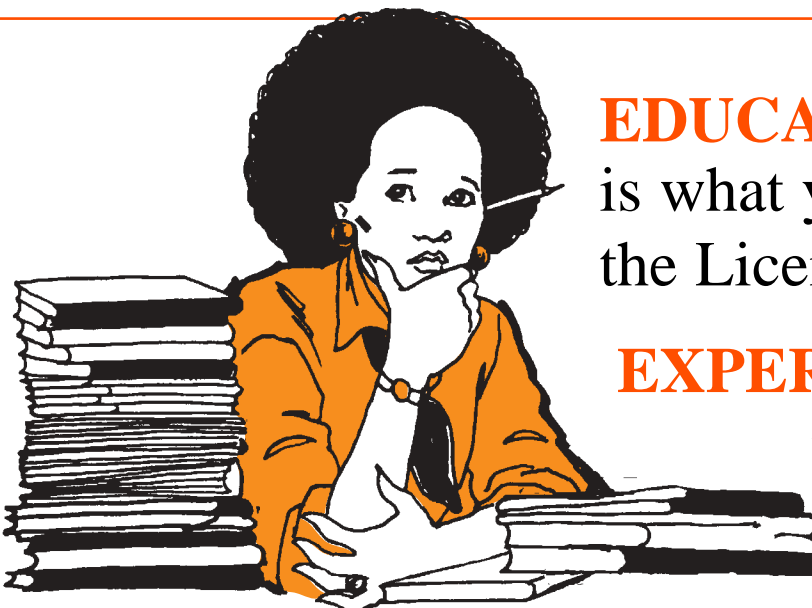
By Annie Hall, Licensing Supervisor

Change of Business Address

Attention brokers, this is a reminder that Rule 790-X-3-.01 of the Alabama Real Estate License Law states: "It shall be a violation for any licensee to change the address of his place of business as set out on his numbered license certificate and fail to notify the Commission in writing within thirty (30) days after such change has been made. To effect a change of business address, the qualifying broker must return to the commission the company license, if the company is a corporation, partnership or branch office, plus all broker and salesperson licenses. A \$25 transfer fee must be included for each license issued to that company."

Change of Residence Address

Section 34-27-35(h) of Real Estate License Law states that each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change. There is no fee to change a licensee's residence address. All correspondence returned to the Commission by the U S Postal Service marked "Undeliverable," or "Forwarding Order Expired" will be indicated on the licensee's record. No further correspondence will be mailed or transactions processed until the licensee notifies the commission of an address change. Changes can be sent by mail, fax or email. ■



EDUCATION

is what you get from reading the License Law book.

EXPERIENCE

is what you get from not reading it.

BRIEFLY LEGAL

Is That Your Final Answer? Or Is It Fraudulent Suppression?

By Charles R. Sowell, General Counsel

Note: This is a reprint of an article that was previously published only on the Commission's Web site.

Here is the situation. You are the listing agent. Your company has an agency relationship with the sellers of a house that has a basement. You are showing it to hopeful buyers. While looking at the somewhat dark basement, one of them asks, "Does the basement leak?" You know it does, but before you answer you think to yourself; "Oh no. That is the only problem with this house. Otherwise it is otherwise perfect, and a great buy for these people." You remember what the sellers told you. They said it had leaked some, and only after that freak hurricane. But you saw three or four high water stain marks a foot or so above floor level. You saw other evidence of leaking and water damage, too.

Here are some possible answers to the buyers' question:

1. I am not sure. It has not really rained since we listed it.
2. This house is being sold "as is." We are making no representations about its condition.
3. We need to get back upstairs. There is a lot more to see.
4. Maybe just a little in flooding conditions.
5. This house is a great buy for you.

Are any of these your final answer? If so, the buyers' attorney could be a millionaire. All these answers are likely fraud under Alabama law.

Some of the best authority in this area is *Cato v. Lowder Realty Co.*, 630 So2d 378. In this case the buyers sued the sellers and the company over a leaky roof and defective furnace. The case is based on statutory Alabama fraud law, which says that suppression of a material fact, which a party is under an obligation to communicate, constitutes fraud. The statute is Section 6-5-102 *Code of Alabama* 1975, as amended. In this case the court discusses caveat emptor, and goes on to say, "Seller generally has a duty to disclose defects to a buyer only if a fiduciary relationship exists

between the parties or if the buyer specifically inquires about a material condition concerning the property, in which case the seller has an obligation to disclose known facts."

The court then cites *Boswell v. Coker*, 519 So2d 493. This case says; "Where one responds to an inquiry, it is his duty to impart correct information, and he is guilty of fraud if he denies all knowledge of a fact which he knows to exist, or if he gives equivocal, evasive, or misleading answers calculated to convey a false impression, even though literally true as far as they go, or if he fails to disclose the whole truth." Let me cite one more case. "This section does not require proof of intent to deceive, as the breach of an obligation to disclose is sufficient to trigger liability for fraudulent suppression." *Intercorp, Inc. v. Pennzoil Co.*, 877 F.2d 1524. If you are having trouble understanding the court's language, allow me to translate. If you are asked a specific question, the court is saying, "Spill your guts."

Let's summarize the law on fraudulent suppression in Alabama. If you are an agent for the buyer or seller, you have a duty **without being asked** to disclose known, material facts to your client. Your client is the seller, if you are the listing agency and have an agency-creating listing agreement. Your client is the buyer if you have a written buyer's agency agreement. Regardless of agency relationships, you have a duty to accurately and completely answer any specific questions about known, material facts regarding the property, regardless of who poses the questions.

Now back to our question. The buyers asked, "Does the basement leak?" Your final answer should be; "Yes. The sellers said it has leaked, and there is evidence of leaking and water damage." In the *Lowder* case the buyer did not ask anyone about the condition of the roof or the furnace. Lowder Realty was an agent for the sellers. For these reasons, neither the sellers nor Lowder Realty were held liable. ■

EDUCATION CORNER

The Joy of CE Audits

By Pat Anderson, Education Director

If you hold an active real estate license, you either completed your required 15 hours of continuing education by August 31, 2002, or you placed your license inactive until you did complete it and then re-activated it -right? And, you have your certificates of completion in a file at your office — right?

We hope the answer to both questions is “yes.” CE compliance audits will begin soon. A Real Estate Commission auditor will check some certificates during routine audits but most audits will be initiated by computer generated lists of randomly selected licensees. These licensees will receive a written notice from the Commission to send in CE certificates within thirty days. As Commission resources are available, random mail-in audits will be performed over the next two-year period. All of you must keep your certificates for the entire 2003-2004 license period ending September 30, 2004. If you are not included in the first round of audits, do not despair. You are subject to audit at any

time and may be included in a future audit. If for some reason you do not have a certificate for each course you completed, you need to contact the school immediately and obtain a replacement certificate.

In January 2002, the Commission mailed out Certificates of Completion to all active licensees and to all inactive licensees who completed continuing education courses between October 1, 2000 and October 31, 2001. If you completed courses during this time and do not have a Commission issued certificate, you may obtain one by sending a written request and a \$10.00 check.

Most want to know what will happen for non-compliance. Failure to produce acceptable CE certificates showing that requirements were completed prior to your having an active license will result in a formal complaint being filed and a hearing before the Commission being scheduled. If found guilty of a License Law violation, the Commission can reprimand, fine, suspend, and/or revoke your license. ■

Daily Computer Testing for Licensing Examinations Now Available!

Daily administration of salesperson and broker licensing examinations began on October 21, 2002. A person who meets all qualifications for licensure can now schedule an examination at their convenience. Examinations are administered at designated H&R Block offices in Huntsville, Birmingham, Montgomery and Mobile each weekday morning at 9:00 a.m. and each afternoon at 1:30 p.m. Examination sites are closed on specified holidays.

After an intensive competitive bid process, the Commission awarded the contract to Applied Measurement Professionals (AMP). Potential exam candidates can obtain all necessary information from their real estate schools or by going to AMP's Web site at www.goamp.com where the Alabama Candidate Handbook can be viewed and/or downloaded. The cost of the exam is \$63.00.

Applicants may register for the salesperson's or broker's exam one of the following ways: 1) Online at AMP's Web site; 2) By phone by calling AMP at 1.800.345.6559; 3) By mail to Alabama Real Estate Exam Candidate Services, 8310 Nieman Road, Lenexa, Kansas 66214-1579. If registering online or by phone, credit card payment is required by use of Visa, MasterCard, American Express or Discover. If registering by mail, the applicant must complete and mail with the application, certified funds for the \$63.00 examination fee. Walk-in testing will not be allowed. Candidates must register in advance to be admitted to the testing center.

An additional benefit of daily testing both for exam candidates and companies is that the exams are scored on-site. Passing candidates leave the exam site with a combined score report and license application. This is speeding up the licensing process by more than ten days.

The Commission is very proud of this major step forward and our improved service to real estate licensees. ■



**New Risk Management Book
and Course Available for
Property Managers**

Just released in October by the Alabama Real Estate Research and Education Center (AREREC) at the University of Alabama is a three-hour course book in Risk Management written specifically for those who engage in property management. Alabama's educators were introduced to it at their Annual Seminar held in mid October. That means that two Risk Management courses will now be offered. Licensees, whether or not they engage in property management, can take either of the Risk Management courses in order to meet the three-hour CE requirement for Risk Management. The new book can be obtained from the AREREC by calling 205.348.4117 or going to www.arerec.cba.us.edu, click on Products/Research Order Form, and order online.

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REAL ESTATE LICENSING FEES

October 1, 2002 - September 30, 2004

■ Original Broker	
(\$150 License Fee, \$25 Public Safety, \$30 Research)	\$205
(\$150 License Fee, \$25 Public Safety)	\$175
■ Second Broker's Application	
	\$150
■ Temporary Broker's Application	
	\$150
■ Reciprocal Broker Active Application Fees	
(\$150 License Fee, \$25 Public Safety, \$30 Recovery, \$30 Research)	\$235
■ Reciprocal Broker Inactive Application Fees	
(\$150 License Fee, \$25 Public Safety, \$30 Research)	\$205
■ Original Salesperson	
From October 1, 2002 to Sept. 30, 2003	\$130
From October 1, 2003 to Sept. 30, 2004	\$65
(Add \$30 Recovery Fund Fee if Temporary License was never active)	
■ Temporary Salesperson Active Application Fees	
(\$150 License Fee, \$25 Public Safety, \$30 Recovery, \$30 Research)	\$235
■ Temporary Salesperson Inactive Application Fees	
(\$150 License Fee, \$25 Public Safety, \$30 Research)	\$205
■ Reciprocal Salesperson Active Application Fees	
(From 10-1-02 to 9-30-03: \$130 License Fee, \$25 Public Safety, \$30 Recovery)	\$185
(From 10-1-03 to 9-30-04: \$65 License Fee, \$25 Public Safety, \$30 Recovery)	\$120
■ Reciprocal Salesperson Inactive Application Fees	
(From October 1, 2002 to Sept. 30, 2003: \$130 License Fee, \$25 Public Safety)	\$155
(From October 1, 2003 to Sept. 30, 2004: \$65 License Fee, \$25 Public Safety)	\$90
■ Corporation, Branch, Partnership Application Fee	
(From October 1, 2002 to Sept. 30, 2003)	\$130
(From October 1, 2003 to Sept. 30, 2004)	\$65



1201 Carmichael Way
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Fax: (334)270-9118

www.arec.state.al.us

arec@arec.state.al.us

**Commission Meetings
Open to the Public**

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

License Renewal Dates

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

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