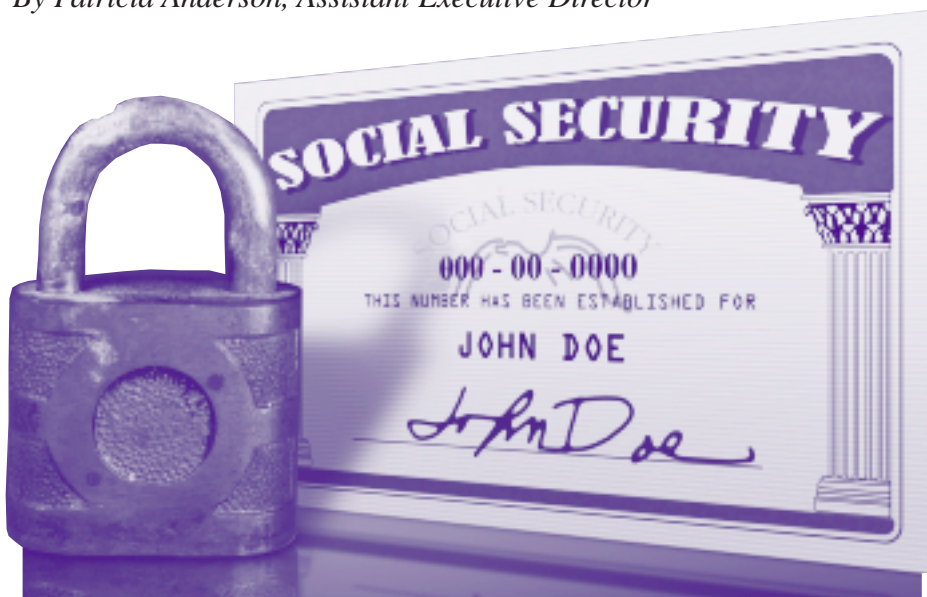


SPRING 2008

Social Security Numbers are Protected

By Patricia Anderson, Assistant Executive Director



Here is the first thing you need to know. **No one from the Alabama Real Estate Commission will ever call or email and ask you for your social security number.** Be assured of that. The second thing you need to know is that the Commission cannot issue a license to anyone who refuses to provide his or her social security number to the Commission. Applicants provide their social security number at the time of test registration and not by phone call or email from the Commission.

The Commission must have social security numbers on file for each applicant and licensee due to state and federal laws that require the number be obtained as a prerequisite for licensure. Social security numbers are stored securely in the Commission's database and are not a part of public record. They are confidential and protected and are always redacted from any document before the document can be viewed by anyone other than Commission staff.

Following is the Commission policy regarding social security numbers:

"No Alabama Real Estate Commission staff member shall initiate a telephone call or email inquiry to any

licensee or applicant to request a social security number. Staff will request either a name or license number as the primary way to identify licensees and applicants. Licensees and applicants may choose to offer their social security numbers if it is necessary to more specifically and accurately identify their record. The Alabama Real Estate Commission collects and stores social security numbers for each licensee only because it is a requirement of the Alabama Child Support Reform Act and the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Social security numbers are not used to identify callers."

When licensees and applicants communicate with Commission staff, records must be correctly identified to ensure that accurate information can be provided to the caller. Staff can access applicant records by name and licensee records by name or license number. For licensees, license number is a better identifier since there would never be a duplicate. Therefore, it is always helpful if licensees can provide an accurate license number when calling the Commission. Remember, license numbers can be obtained by going to www.arec.alabama.gov, clicking on "License Search," entering your name and finding it in the list.

We trust this explanation will put to rest any fears you may have about making your social security number available to the Commission. While necessary to keep these numbers on record, we take great care in protecting this information. ■

In This Issue

Briefly Legal: "As Is":	
Little Words, Big Impact	2
Alabama Vacation Timeshares and Fractional Interests	3
Warning...Do You Know Who is Auditing Your Company?	3
Disciplinary Actions	4
Other Administrative Actions	5
Education Corner:	
CE Courses Taken in Other States	6
Attention: Reciprocal Licensees	6
A Renewed Respect for Deadlines	7
Renewal Year!	7
Start Taking CE Now for 2008 License Renewal	8
2008 State Holidays	8

BRIEFLY LEGAL

“As Is”

LITTLE WORDS, BIG IMPACT

By Charles R. Sowell, General Counsel

In a significant opinion released last summer the Alabama Court of Civil Appeals focused on “as is” language in real estate sales contracts. The case is styled ERA Class.com and Robert Mikkelsen v. Charles David Stoddard and Rita Stoddard, having been appealed from the Circuit Court of Baldwin County. The Alabama Supreme Court transferred the case to the Court of Civil Appeals.

The facts are hard to summarize, but I will have a go at it so the case can be understood. The Stoddards were looking for commercial property on which to locate a dental office. Dr. Stoddard is a dentist. Mikkelsen was the listing agent with ERA. Mikkelsen had advertised the two lots, one with a used building located on it, as commercial property. The master zoning map of the City of Gulf Shores accurately indicated that both lots were zoned for residential use only; however, the zoning map the city made available to the public erroneously indicated that both lots were zoned for mixed use, i.e. residential and commercial. Personnel of the city planning commission told Mikkelsen that the property was zoned for commercial use. Upon a second check, city personnel told him that one of the lots was zoned for residential use only and the other was mixed use. Mikkelsen did not change the listing, sign, or other advertising showing it as commercial property. Before an offer was made, the Stoddards’ own agent inquired with the city zoning office and was told that the property was zoned commercial. The Stoddards eventually contracted to buy the property. They negotiated to delete a proposed contingency for city approval to build a new building, accepting a counteroffer stating in part: “AS IS. No termite bond, guarantee on electrical, heating, & cooling, etc. AS IS. No survey.”

After closing, the Stoddards learned for the first time that the property was zoned for residential use, only. Although the city agreed to an expedited rezoning, the Stoddards sued ERA and



Mikkelsen for damages sustained in the delay. They alleged negligence, wantonness (a reckless act), fraud, and suppression. The trial court said that the doctrine of caveat emptor in Alabama would ordinarily apply, which would mean that the plaintiffs’ claims would be denied. The trial court allowed the case to go to the jury on the idea that this was a direct misrepresentation of the facts and the plaintiffs relied upon the misrepresentation. The jury

returned a verdict against the defendants. This appeal followed. In the end the Court of Civil Appeals reversed the trial court’s judgment and remanded the case to the trial court with instructions to enter a judgment in favor of Mikkelsen and ERA.

Caveat emptor (let the buyer beware) as spelled out by Alabama courts means that sellers and their agents in used real estate transactions, as opposed to new construction, have no duty to disclose defects in the property. The main exceptions to this are if a fiduciary relationship exists between the parties; if a buyer specifically inquires about a material condition concerning the property; or if there are defects or conditions known to the seller or any agent involved, but not known to or readily observable by the buyer, which said defects affect health or safety.

The court analyzed case law regarding caveat emptor and “as is” provisions in sales contracts. It seems to me the court goes out of its way to leave no question about the law in these cases. Here is what the court said: “The Stoddards...argue on appeal that the Stoddards’ signing the “as is” sales contract does not bar their fraud and suppression claims because, they say, Mikkelsen made an affirmative misrepresentation. However, the supreme court has indicated that **all** fraud claims are barred if the sale is subject to the doctrine of **caveat emptor** and the purchaser signs an “as is” sales contract. This is so, because an ‘as is’ clause negates the element of reliance essential to **any** claim of fraud and/or fraudulent suppression. ...signing an “as is” sales contract...barred not only the purchasers’

fraud claim but also their negligence claim. ...the Stoddards' signing an "as is" sales contract to purchase used real estate barred all the Stoddards' claims."

Buyers and their agents better pay attention. On these sales it does not matter what the seller or the seller's agent tells a buyer about a property. It is the buyer's job to do whatever inspections are necessary to satisfy themselves about what they are getting. If it turns out to be a raw deal, then the buyer is stuck with a raw deal. The courts will not entertain an action against the seller or the seller's agents to give the buyer any relief. The court did not address the buyer's agent's responsibilities. A buyer in a case like this should play it safe and not rely on information provided by any agent.

"As is" provisions sometimes have a place in sales contracts. If, for example, the parties cannot agree about repair provisions in the contract, they may negotiate for the sale to be "as is." This is especially true where a property is in poor condition. There can be other reasons for "as is" provisions. The court has sent a clear message to buyers here. Real estate practitioners need to understand the message as well. ■

Alabama Vacation Timeshares and Fractional Interest

By Chris Booth, Assistant Counsel

Many of you may not be aware but the Alabama Real Estate Commission not only licenses and regulates real estate brokers and salespersons, but we also license timeshare sellers and register the timeshare projects that are marketed in Alabama.



Recently, I have received many calls regarding the sale of fractional interest in real estate. That is, someone wants to take a house or condominium and sell a portion of ownership to different individuals.

Under Article 3 of Title 34 Chapter 27 (Section 34-27-50 et. seq.) of the Alabama Timeshare Law, a timeshare is an interest in real property (deed, tenancy in common or other means) which is subject to a time usage agreement. This means that you cannot take real property and sell partial interests, with each owner getting a specific time to use the property, without registering the property as a timeshare. This does not mean that I cannot own property with my siblings, for example, and share usage. However, if our shared usage is reduced to contractual agreement and I sell my share subject to the additional contract, then I must have a timeshare seller's license and register the timeshare with the Commission. If you have additional questions, please do not hesitate to contact me at the Commission. ■

Warning... Do You Know Who is Auditing Your Company?



Denise Blevins



Vickie Shackelford



Anthony Brown

Denise Blevins, the Alabama Real Estate Commission's auditor in South Alabama, has reported that a real estate company was contacted by someone posing as a Commission auditor. This person telephoned a company and attempted to get the checking account numbers for the company's accounts.

The Commission currently employs three trust account auditors: Denise; **Vickie Shackelford**, who covers North Alabama; and **Anthony Brown**, who covers Central Alabama. They will always audit your company in person. The Commission auditors will NEVER contact you by phone to perform audits.

The best protection against criminal intent to steal your information is to maintain the same security measures you would for your own personal accounts. If you are ever in doubt about a purported Commission staff member's identity, please ask that person for identification or contact the Commission office at **334.242.5544**. ■

DISCIPLINARY ACTIONS TAKEN

September 2007 through February 2008

DISPOSITION

The below were found guilty of 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.

Nicole B. Grisby

License No. #000087652
Qualifying Broker; Nashville, Tennessee
Date of Hearing: September 28, 2007
Fined \$250

Brenda R. Kean

License No. #000078738
Salesperson; Columbus, Georgia
Date of Hearing: October 26, 2007
Fined \$250

Fred A. Darty

License No. #000034228
Salesperson; Tuscaloosa, Alabama
Date of Hearing: November 30, 2007
Fined \$250

May S. Darty

License No. #000034008
Salesperson; Tuscaloosa, Alabama
Date of Hearing: November 30, 2007
Fined \$250

Percy L. Dixon

License No. #000029886
Salesperson; Birmingham, Alabama
Date of Hearing: November 30, 2007
Fined \$100

Theresa Morgan

License No. #000090960
Temporary Salesperson; Wetumpka, Alabama
Date of Hearing: November 30, 2007
Fined \$250

Jessica Murray

License No. #000090933
Temporary Salesperson; Millbrook, Alabama
Date of Hearing: November 30, 2007
Fined \$250



Cheryl Ann Shepherd

License No. #000090926
Salesperson; Marietta, Georgia
Date of Hearing: November 30, 2007
Fined \$250

Willie Simmons

License No. #000088621
Salesperson; Birmingham, Alabama
Date of Hearing: November 30, 2007
Fined \$250

Vanessa Michele McGregor

License No. #000091017
Temporary Salesperson; Owens Cross Roads, Alabama
Date of Hearing: January 24, 2008
Fined \$250

Timothy A. Dozier

License No. #000084197
Salesperson; Huntsville, Alabama
Date of Hearing: January 24, 2008
Fined \$250

Milton M. Smith

License No. #000003790
Qualifying Broker; Birmingham, Alabama
Date of Hearing: January 24, 2008
Fined \$250

Debra Ann Williams a/k/a Debra A. Cook

License No. #000053971
Salesperson; Coaling, Alabama
Date of Hearing: February 19, 2008
Fined \$250

Kimmy Sue Dempsey

License No. #000091478
Temporary Salesperson; Montgomery, Alabama
Date of Hearing: February 19, 2008
Fined \$250

Lawrence Edward Haynes

License No. #000090600
Qualifying Broker; Atlanta, Georgia
Date of Hearing: February 19, 2008
Fined \$250

Cherisse Nicole Andrews a/k/a Cher N. Mooney

License No. #000074095
Salesperson; Ardmore, Tennessee
Date of Hearing: February 19, 2008
Fined \$250

DISPOSITION

The below were found guilty of violation of Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. for failure to deposit and account for at all times all funds being held for others by having a shortage of such funds.

James W. Cain

License No. #000062520
Qualifying Broker; Decatur, Alabama
Date of Hearing: September 28, 2007
Fined \$250; respondent's license suspended for one year, but suspension is stayed for a period of one year during which time respondent is to attend and complete a three-hour continuing education course in risk management for property managers. If the course is completed during the one-year stay, then the suspension is permanently stayed.

Sonya Bovee-Partridge

License No. #000055022
Associate Broker; Enterprise, Alabama
Date of Hearing: November 30, 2007
License suspended for a period of six months. The suspension is stayed for six months, conditioned upon respondent completing the 60 hour broker prelicense course. If respondent provides proof of completion of the course

within six months, then the six-month suspension shall be permanently stayed. If not, the suspension shall be served. The respondent is further fined the sum of \$1,000.

Patricia M. Pressley

License No. #000067829

Salesperson; Enterprise, Alabama

Date of Hearing: November 30, 2007

License Revoked; Notice of Appeal Filed

Ernest W. Ritch

License No. #000019451

Qualifying Broker; Huntsville, Alabama

Date of Hearing: January 24, 2008

License Revoked

DISPOSITION

The below was found guilty of violation of Section 34-27-36(a)(8)a. for commingling money belonging to others with his own funds.

Jeffrey Cain

License No. #000056324

Qualifying Broker; Orange Beach, Alabama

Date of Hearing: January 24, 2008

Fined \$700

DISPOSITION

The below was found guilty of violation of Section 34-27-36(a)(23)a. for having entered a plea of non contendere, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.

Lestryet Samuels

License No. #000087636

Salesperson; Mobile, Alabama

Date of Hearing: September 28, 2007

Fined \$250

DISPOSITION

The below was found guilty of Count #1 for violation of Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for failure to deposit and account for at all times all funds being held for others by having a shortage of such funds and commingling funds belonging to others with his own funds; Count #3 for violation of Section 34-27-36(a)(31) for failure to keep in his

files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a period of three years; and Count #4 for violation of Section 34-27-31(j) and Section 34-27-31(k) through section 34-27-36(a)(19) for failing to notify the Commission of the institution and disposition of a civil action involving a real estate transaction.

Lance Allen Calhoun

License No. #000065024

Qualifying Broker; Montgomery, Alabama

Date of Hearing: September 28, 2007

Fined \$500 on Count #1; Fined \$500 on Count #3; and Fined \$500 on Count #4

DISPOSITION

The below was found guilty of Count #1 for violation of Rule 790-X-3-.01 through Section 34-27-36(a)(19) for failing to notify the Commission in writing within 30 days after changing her place of business as set out on her numbered license certificate and Count #2 for violation of Rule 790-X-2-.17 through Section 34-27-36(a)(19) for failing to display her license certificate at her place of business.

Eva C. Raley

License No. #000029411

Associate Broker; Fairhope, Alabama

Date of Hearing: October 26, 2007

License suspended for one year

DISPOSITION

The below was found guilty for violation of Rule 790-X-3-.01 through Section 34-27-36(a)(19) for failing to notify the Commission in writing within 30 days after changing his place of business as set out on his numbered license certificate.

Steven V. Graham

License No. #000007798

Qualifying Broker; Birmingham, Alabama

Date of Hearing: January 24, 2008

Fined \$500

DISPOSITION

The below was found guilty of violation of Section 34-27-36(a)(1) by procuring a license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license and denied a real estate license under 34-27-32(a)(5) in that the Commission may deny a license to any person who has been convicted of or pleaded nolo contendere to a felony of a crime involving moral turpitude.

Torrie Derrell Jones

License No. #000091305

Temporary Salesperson; Montgomery, Alabama

Date of Hearing: January 24, 2008

License revoked and respondent may not apply for a real estate license for a period of two years.

(Continued on page 6)

OTHER ADMINISTRATIVE ACTIONS

DETERMINATION OF LICENSURE

Approved.....	22
Denied.....	25

DETERMINATION OF ELIGIBILITY

Approved.....	4
Denied.....	5

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees.....	2,434
From Public.....	1,137
Anonymous.....	15

Disciplinary Actions

Continued from page 5

DISPOSITION

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

Stephen T. Beaird

License No. #000041516

Associate Broker; Montgomery, Alabama

Date of Hearing: October 26, 2007

Jerald H. Gunter

License No. #000046462

Salesperson; Trussville, Alabama

Date of Hearing: October 26, 2007

Omar L. Harvill

License No. #000084781

Salesperson; Huntsville, Texas

Date of Hearing: October 26, 2007

Loretta Dunham Ables

License No. #000081465

Salesperson; Seymour, Tennessee

Date of Hearing: November 30, 2007

Christina Wayne Weems

License No. #000086987

Temporary Salesperson; Trussville, Alabama

Date of Hearing: November 30, 2007

Donald D. MacDermott, Jr.

License No. #000043628

Associate Broker; Trussville, Alabama

Date of Hearing: January 24, 2008

Scott Dan Micklewright

License No. #000087604

Temporary Salesperson; Madison, Alabama

Date of Hearing: January 24, 2008

Leon E. Fortune

License No. #000046745

Associate Broker; Troy, Alabama

Date of Hearing: February 19, 2008 ■

EDUCATION CORNER

CE Courses Taken in Other States

By Ryan Adair, Education Director

As we progress into the year 2008, you will begin hearing more about real estate license renewal. This is an appropriate time to begin thinking about the 15 hours of continuing education required for renewal of an active license. Everyone needs to take three hours in Risk Management and another 12 hours in approved elective courses. A quick word of encouragement: do not wait until September to take your CE! Take it now and put it behind you so you will not have to worry about it later.

Some licensees do not limit themselves to CE courses offered in the state of Alabama. They may cross state lines into Georgia, Florida, Tennessee, or Mississippi and take CE in one of those states. Other licensees may travel a farther distance to other states to attend seminars or conferences where CE is offered. If you are a licensee who has completed CE in another state, you may receive credit for that CE in Alabama. All you have to do is submit the following to the Education division of the Alabama Real Estate Commission:

1. Verification that the course taken is approved by any real estate commission
2. Verification of the number of hours for which the course was approved
3. Verification that you attended 100 percent of the course

This can easily be done by acquiring this documentation from the provider of the course and submitting it to the Commission. If you have taken courses in other states, and have not already done so, submit the proper documentation as soon as possible so we can enter the credit into your record. If you plan to take any out-of-state courses prior to October 1, 2008, make sure you submit the proper documentation as soon as the course is completed so your record can be updated. If you have any questions regarding CE taken out of state, please call the Education division. ■

ATTENTION! RECIPROCAL LICENSEES

With approximately 3,500 active reciprocal licensees in the state of Alabama, the Commission wants to make sure all reciprocal licensees are aware of the options available for meeting the CE requirement for license renewal. A letter detailing the options will be mailed within the next few months.

OPTION 1: Take 15 hours of CE in Alabama

Reciprocal licensees can take Alabama CE just like all other licensees. This requirement includes three hours of Alabama Risk Management and 12 hours of approved elective courses. This credit must be entered into CMap by September 30, 2008.

OPTION 2: Show proof of active licensure in another state

A certification of licensure from the other state issued after June 1, 2008, is required for this option. The expiration date must be later than September 30, 2008. This documentation must be received by September 15, 2008, to assure it is entered into the Commission's system by the time licenses print on October 1, 2008.

A letter detailing these options and other requirements will be mailed to all reciprocal licensees in the next few months. This is intended to be a reminder of what the Commission will require so reciprocal licensees can begin considering which option to pursue and make appropriate arrangements. If you have any questions regarding renewal of reciprocal licenses, please call the Education division. ■

A Renewed Respect for **DEADLINES**

We have all faced deadlines in our lives. As difficult as it may be for some people to accept, deadlines are a necessity in life. Alabama real estate license law contains many deadlines that must be met by licensees. However, there seems to be more and more people who are failing to meet these deadlines and are asking Real Estate Commissioners for extensions. The number continues to grow and the time of hearing applicants saying they “do not know and have not been told” must draw to a close.



A concerted emphasis needs to be made in assuring deadline responsibilities are received and acknowledged. Commissioners are more firmly holding the line when there are not relevant extenuating circumstances and are denying extensions for deadlines that were missed because someone forgot or misunderstood the law. All qualifying brokers need to make sure these deadlines are advertised and explained to each salesperson for whom a license is held.

The following are current deadlines and the license law references where they can be found.

- The 60 hour salesperson prelicense course must be completed within one year of the date of course enrollment — *Rule 790-X-1-.06(5)(d)*
- The 60 hour broker prelicense course must be completed within one year of the date of course enrollment — *Rule 790-X-1-.06(5)(e)*
- The salesperson licensing examination must be passed within 12 months immediately following the date of the completion of the 60 hour salesperson prelicense course — *Rule 790-X-1-.06(6)*
- The broker licensing examination must be passed within 12 months immediately following the date of the completion of the 60 hour broker prelicense course — *Rule 790-X-1-.06(7)*
- Application for a temporary salesperson or original broker license must be made within 90 days of passing the licensing examination — *Section 34-27-33(b)*
- The 30 hour post license course must be completed and application for an original salesperson license submitted within 6 months or the temporary license will automatically be placed on inactive status — *Section 34-27-33(c)(2)* and *Rule 790-X-2-.03(3)*
- The 30 hour post license course must be completed and application for an original salesperson license submitted within 12

months of the temporary license being issued or it will automatically expire and lapse — *Section 34-27-33(c)(2)*

- 15 hours of continuing education must be completed and credit reported in CMap for license renewal by September 30 of every even-numbered year. The 15 hours must include 3 hours of Alabama Risk Management and 12 hours of approved elective courses — *Section 34-27-35(j)(1)* and *Rule 790-X-1-.11*
- Salesperson, broker, and company licenses must be renewed by August 31 of every even-numbered year to avoid the penalty fee of \$150 and by September 30 to avoid expiration — *Section 34-27-35(g)(h)(i)*

Renewal Year!

- This is a license renewal year. Renewal notices will be mailed the latter part of July. Renewal fees must arrive in the Commission's office or be postmarked by **August 31, 2008**, in order for licensees to avoid paying the penalty fee of \$150 in addition to the license renewal fees. After August 31, 2008, renewal fees with penalty must be received in our office or postmarked by September 30, 2008, in order for the license to be issued active on October 1. CE requirements also must have been met and reported by September 30.
- All licenses must be renewed regardless of whether the license status is active or inactive. A temporary salesperson license is not subject to license renewal.
- Online renewal will be available by July 1, 2008.



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



1201 Carmichael Way • Montgomery, AL 36106

OUR MISSION

To protect the public through the licensing and regulating of Real Estate licensees.

OUR VISION

To insure public confidence in real estate transactions.

OUR VALUES

Effective management of our resources, excellent customer service, innovation, and honesty and integrity.

COMMISSIONERS

- Gordon Henderson, Albertville, *Chairman*
- Jewel D. Buford, Tuscaloosa
- Steve Cawthon, Huntsville
- Robert S. Hewes, Dothan
- Sheila S. Hodges, Gulf Shores
- Chester Mallory, Montgomery
- Janet R. Morris, Montgomery
- Dorothy P. Riggins, Montgomery
- Bill Watts, Birmingham

- D. Philip Lasater, Executive Director
- Patricia Anderson, Asst. Executive Director
- Vernita Oliver-Lane, Editor

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

Phone: 334.242.5544
Fax: 334.270.9118

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

**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, 2008.

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



**Start Taking CE Now
for 2008 License Renewal**

- **Total CE needed:** 15 hours
- **Deadline:** September 30, 2008
- **Courses to take:** 3 hours in Risk Management
12 hours in approved elective courses

**The Alabama Real Estate Commission will be closed
on the following 2008 official state holidays.**

National Memorial Day	May 26
Jefferson Davis' Birthday.....	June 2
Independence Day	July 4
Labor Day.....	September 1
Columbus Day/Fraternal Day/American Indian Heritage Day	October 13
Veteran's Day.....	November 11
Thanksgiving	November 27
Christmas Day	December 25