Risk Management: Avoiding Violations

DETAILED CONTENT OUTLINE

Introduction
Risk Management is all about you, the licensee, being able to make a good living selling or leasing real estate while staying out of trouble. The best ways to manage your risks are to know and obey Alabama License Law and to understand where and why legal complaints against you originate and how to minimize those complaints. Our goal is not how to win lawsuits but how to avoid lawsuits.

I. Alabama License Law

Intended Learning Outcomes

After completion of this section on Alabama License Law, you will be able to state your obligations:

- When dealing with immediate family
- When dealing with another’s money
- Pertaining to mortgage fraud
- When possible violations of the law occur
- In directing an unlicensed assistant
- Pertaining to misleading advertising

A. “Who Are These People?”
(Self, spouse, child, parent)
1. Immediate family
   a. Self
   b. Spouse
   c. Child
   d. Parent

2. License not required
   a. §34-27-2 (b) (1)
      • License not required when consummating a real estate transaction involving self, spouse, child, or parent.
   b. 790-X-1-.03 (1)
      • Owners of real property are exempt from the licensing requirements.
      • Owner is defined as the individual owner or one who has decision-making authority of a corporation or partnership.

3. Acting like an agent
   790-X-1-.03 (2)
   • If licensed, an owner of a property may advertise the property in the same way as any private party, but the licensee must follow all the other provisions of License Law.
4. Advertising your own property
   a. 790-X-1-.03 (2)
      • If the licensee chooses to advertise his/her property as if he/she is a licensed broker or
        salesperson, or that of a spouse, child, or parent, then all such advertising as well as all
        other activities involving the property must be conducted in accordance with License
        Law.

   b. §34-27-36 (a) (6)
      • It is illegal for the licensee to publish any advertisement which deceives or misleads
        the public.
      • It is illegal for the licensee to publish any advertisement which fails to identify him/her
        as a licensed broker or salesperson.

5. Charging for your services
   §34-27-30
   • It is illegal for any person, for a fee, commission, or other valuable consideration, to be
     involved in a real estate transaction without a license.

6. Do not misrepresent
   §34-27-36 (a) (2)
   • It is illegal for a licensee to be engaged in misrepresentation or dishonest or fraudulent
     acts when dealing with his/her own property or that of a spouse, child, or parent.

7. Can you buy your own listing?
   a. §34-27-36 (a) (18)
      • Yes, but only if the licensee discloses to the owner that he/she intends to acquire,
        directly or indirectly, the property that he/she or his/her company has been employed
        to sell.

   b. Recommended steps:
      (1) Consult with your qualifying broker first.
      (2) Draft a letter to the seller with full disclosure identifying the buyer and the
          buyer’s interest to purchase.
      (3) Take no further action until the seller receives the letter and gives permission to
          proceed.
      (4) Repeat the disclosure in the sales contract.

8. Disclosure is the key
   §34-27-84 (a) (6)
   • Licensee may act on his/her behalf, or on behalf of an immediate family member, or
     on behalf of any other entity in which the licensee has a personal interest, only with
     prior timely written disclosure to all parties to the transaction.
B. “It’s Not Your Money!”
(Trust funds, escrow deposits, earnest money, security deposits, rent monies)

1. Properly account for money belonging to others
   §34-27-36 (a) (8) a., b., c.
   • It is illegal if the licensee fails, within a reasonable time, to properly account for money coming into his/her possession that belongs to others.
   • It is illegal for the licensee to commingle money belonging to others with his/her funds.
   • It is illegal if the licensee, usually the qualifying broker, fails to deposit money belonging to others in a separate federally insured account in an Alabama bank.
   • It is illegal if the licensee, usually the qualifying broker, fails to keep financial records of funds belonging to others, to include to whom the money belongs, date deposited, date withdrawn, and other pertinent information, for at least three years.

2. The proper handling of trust funds
   790-X-3-.03
   • A licensee who is a salesperson or associate broker shall pay over to his/her qualifying broker all funds belonging to others immediately.
   • The qualifying broker is responsible for the deposit of all funds belonging to others.
   • The qualifying broker can be relieved of the responsibility for the deposit of funds belonging to others if it is expressed in writing.
   • If the funds are cash, then the qualifying broker shall deposit the funds immediately.
   • If the funds are in the form of a check and the contract form states that the check is to be held for a specific length of time or until the occurrence of a specific event, then the check shall be deposited when stated in the contract.
   • If nothing in the contract addresses the specific handling of the check, then the check shall be deposited when the offer becomes a contract.
   • Funds held in trust for others can be held by any of the qualifying brokers involved in the sale.
   • If the sale is not completed, or if the parties disagree to whom the trust funds should be dispersed, the qualifying broker holding the funds cannot disperse the funds except pursuant to a written agreement signed by both parties or by court order.

3. Security deposits and rental payments
   a. Brokers who are in the property management business should maintain a security deposit escrow account and a rental escrow account.

   b. Security deposit escrow account – A continuous ledger of all security deposits should be maintained, including the tenant’s name, property address, owner’s name, deposit amount, and date of deposit. The total amount reflected in the ledger should balance with the security deposit escrow account bank statement.
c. **Rental escrow account** – Rent paid by the tenant and belonging to the owner of the property is held in this trust account. Payment to the property owner as proceeds, to the real estate management company for their fees, and possibly invoices for maintenance, will be made from this account. As with the security deposit escrow account, the rental escrow account should reconcile favorably with the monies on deposit.

C. **Don’t Try to Fool the Banker**  
(Mortgage Fraud)

Do not be part of any action designed to deceive the lender

1. **§34-27-36 (a) (21)**
   - It is illegal for the licensee to be party to any attempt to misrepresent or fail to disclose the true terms of a sale to the lender.
   - A federal felony as well. It is also a criminal offense, a federal felony, for a licensee to be any part of a conspiracy to defraud a lender.
   - “Under the table.” The parties to the transaction may sometimes plan to pass money “under the table,” so that the funds do not appear in the contract, on the closing disclosure, or settlement statement. The licensee should not be party to any such deception.
   - “Just don’t tell me.” Should a mortgage lender suggest that he/she not be told about some financial maneuverings to get the sale to close, then the lending representative is inviting improper conduct, but only the licensee would be punished by License Law.

D. **“But It’s The Law”**

**§ 34-27-36. Disciplinary Action.**

- It is illegal for the licensee to make significant or material misrepresentations to a customer or client about a transaction.
- It is illegal for the licensee to fail to disclose to a purchaser or renter any hidden structural defect known to the licensee, if such defect might be significant to the purchaser or renter to complete the transaction.
- It is illegal for the licensee to make false promises to convince any party to enter into an agreement.
- It is illegal for the licensee to place a “for sale” or “for rent” sign on a property without the owner’s permission.
- It is illegal for the licensee to fail to give copies of all signed transaction paperwork to the parties executing such paperwork with reasonable promptness.
- It is illegal for the licensee to pay compensation, commission, rebate, or fee to anyone other than another licensee or MLS, or to receive any rebate from any person in a real estate transaction.
- It is illegal for the licensee to induce any party to break a contract for the purpose of substituting a new contract for the benefit of the licensee.
- It is illegal for the licensee to accept payment for real estate services provided from anyone other than his/her qualifying broker.
• It is illegal for the licensee to give a check to the commission that is returned unpaid.
• It is illegal for the licensee to work with an unlicensed person who is expected to act like a licensee.
• It is illegal for the licensee to employ a “net listing.”
• It is illegal for the licensee to misrepresent or fail to disclose to any lender the true terms of the transaction.
• It is illegal for the licensee to fail to inform the buyer or seller when an offer is either written or presented that the buyer or seller will be expected to pay certain closing costs and the approximate amount of those costs.
• It is illegal for the licensee to fail to include an expiration date on a listing.
• It is illegal for the licensee to be guilty of dishonest dealings, bad faith, or untrustworthiness.
• It is illegal for the licensee to act negligently or incompetently.
• It is illegal for the licensee to fail to provide information or to produce documents or records requested by the commission.
• It is illegal for the licensee to fail to give a document to its rightful owner upon request.

E. “Uh-Oh! What Do I Do Now!”

(Law violation)

1. Licensee in trouble
   §34-27-36 (a) (23) a., b.
   • It is illegal if the licensee has entered a plea of guilty, or “nolo contendere” (“I do not wish to contend”), or found guilty of a felony or of a crime involving moral turpitude.
   • It is illegal if the licensee has had a final money judgment rendered against him/her which resulted from an act or omission involving a real estate transaction or involves the goodwill of the real estate company.

2. Notify the Commission
   §34-27-31 (j) (k)
   • The licensee has 10 days to notify the commission in writing by certified mail if any criminal complaint has been instituted against him/her, or of any civil complaint involving a real estate transaction or the goodwill of the real estate company. The notification should include a copy of the complaint.
   • The licensee has 10 days to notify the commission in writing by certified mail after he/she receives notice that a criminal verdict has been rendered or dismissed, or that a civil action involving a real estate transaction or the goodwill of the real estate company has been rendered or dismissed. The notification should include a copy of the court order.
F. “But You Can’t Do That!”
(Unlicensed assistants)
790-X-1-.04

- An unlicensed assistant, like clerical or office employees, cannot show listed property, drive or accompany a prospect to a property, solicit or accept listings or property management agreements, present offers, negotiate contracts, conduct an open house, prospect for clients, act like an agent, or perform any act for which a license is required.
- An unlicensed assistant can answer the telephone, take messages, make appointments for the licensee, complete MLS forms and send the information to the multiple listing service, deliver information and forms to mortgage companies and closing attorneys, receive, copy, and provide keys, write and place ads, receive and deposit trust funds, place signs on properties, arrange for and oversee repairs, make rental collection calls to tenants, and answer questions about a property if the answers are available in some pre-printed form.

G. “Tell The Truth!”
(False advertising)
1. Do not deceive or mislead
   §34-27-36 (a) (6)
   - It is illegal for a licensee to publish any advertisement which deceives or misleads the public.
   - It is illegal for the licensee to publish any advertisement which fails to identify him/her as licensed broker or salesperson.

2. Identify your company
   §34-27-36 (a) (15)
   - It is illegal for a licensee to advertise himself/herself as a real estate agent without the name or trade name of the broker or company appearing prominently in the ad.

3. Electronic advertising
   - Advertising under the law not only refers to print media, but to electronic media as well. This would include the internet, web sites, and any other technology.
   - Advertising under the law also refers to social networking sites, such as Facebook, Twitter, LinkedIn, and myspace.com. These social networking sites are subject to the same laws as all other forms of advertising.
II. Property Condition and Disclosure

**Intended Learning Outcomes**
After completion of this section on Property Condition and Disclosure, you will be able to:
- Identify the source of most lawsuits
- Explain the significance of “caveat emptor”
- Identify the factors for an unfavorable lawsuit
- Explain the importance of the home inspection
- Demonstrate the use of the Seller’s Disclosure
- Explain the significance of “as is”
- Explain the dilemma of stigmatized properties

A. “Who’s Doing The Suing!”
1. The majority of all lawsuits are brought by buyers concerning the condition of the property after closing
   a. 2/3 to 3/4 of all lawsuits in Alabama up to this point in time have been brought by buyers
   b. concerning the physical condition of the property
   c. after closing
2. Risk management is all about avoiding lawsuits
   - Risk management is not about winning lawsuits, but about avoiding them in the first place.
3. If a suit is filed, nobody wins
   - Even though the licensee may not be guilty of the charges as filed, the time consumed, the fees paid to attorneys, and the strain and stress associated with the suit defeat the agent’s ability to conduct business in a positive and productive manner.

B. “Buyer Beware!”
1. Caveat Emptor
   a. Alabama is one of the few remaining states where “buyer beware” still governs all real estate transactions. Thus, the burden is on the buyer to be satisfied with the condition of the property and the desirability to purchase it and to live in it.
   b. The exceptions to “caveat emptor”
      (1) New construction – because a newly constructed property typically carries a new home warranty with it, the burden is on the builder/seller (“caveat venditor”) to deliver a habitable home.
      (2) Health and Safety – if the seller or the seller’s agent is aware of a problem that poses a threat to the health and safety of the buyer, then they must disclose the problem.
      (3) Direct inquiry – if the seller or the seller’s agent are asked a direct, specific question by the buyer or the buyer’s agent concerning the condition of the property, then they must answer the question honestly [as required by Alabama License Law §34-27-84 (a) (1)].
(4) Assumption of a duty or a special relationship – if the licensee assumes a duty or creates a special relationship, such as choosing to represent a buyer as a client, then the agent becomes obligated to that buyer client and is not protected by “caveat emptor.”

2. An apparent contradiction
   a. **Statutory law** [§34-27-36 (a) (3)] – License Law says that it is illegal for a licensee to make a material misrepresentation or to fail to disclose to a purchaser or lessee any latent structural defect or any other defect known to the licensee.
   b. **Case law** – almost all legal cases involving real estate in Alabama affirmed the doctrine of “caveat emptor,” thus placing the burden on the buyer to be satisfied with the condition of the property.
   c. Because the courts have been most active in the support of the doctrine of “caveat emptor,” it is suggested that the licensee elect to satisfy the tendencies of the courts.

C. “You’re Gonna Lose If . . .”
   Three factors need to be in place before the licensee fears losing a lawsuit:
   1. Misrepresentation – the licensee had to have provided material information to the consumer that was either incorrect or misleading.
   2. Reliance – the consumer had to have relied on that incorrect or misleading information provided by the licensee.
   3. Damage – the consumer had to have been damaged by that reliance.

D. “Hire The Experts!”
   1. The home inspection
      - One of the basic principles of risk management is to transfer liability where possible. Because the licensee is not an expert on property condition, and because most lawsuits come from buyers concerning the condition of the property, the buyer should be convinced of the importance of having the property inspected by a professional home inspector.

   2. Selecting the inspector
      a. The licensee should avoid providing the buyer with one and only one home inspector.
      b. The licensee could provide a list of licensed inspectors.
      c. The licensee should allow the buyer to select the inspector.
      d. The licensee should never recommend, guarantee, or warrant any inspector.

E. “Inspection ‘Do Not’s’”
   1. Do not perform the inspection
      - The licensee should avoid giving any opinion concerning the condition of the property that might be relied upon by the buyer in the decision to purchase the property.
2. Do not accompany the inspector
   - The licensee should remain at “arm’s-length” from the inspection process, allowing the home inspector and the buyer to transact directly.

3. Do not interpret the inspection
   - The licensee should not provide any opinion concerning the condition of the property to the buyer should the agent have access to the completed inspection report.

4. Do not use the seller’s inspector
   - The licensee should never allow the buyer to use an inspector suggested by the seller or the seller’s agent.

F. “If The Buyer Says ‘No!’”
   1. Should the buyer refuse to have the property inspected in an effort to conserve funds, the licensee should document the fact that he/she strongly recommended a home inspection and that the buyer refused the agent’s recommendation.

2. This documentation should be in writing.

G. “Seller’s Disclosure – To Use or Not To Use!”
   1. Seller’s Disclosure Statement
      a. Some brokers recommend that their seller/clients complete a Seller’s Disclosure Statement as a risk management tool, acknowledging that the majority of law suits come from buyers concerning the condition of the property.
      b. Other brokers do not suggest that their seller/clients complete a Seller’s Disclosure Statement, believing that the burden of satisfaction concerning the condition of the property rests with the buyer due to “caveat emptor.”
      c. Still another group of brokers recommend that their buyer’s agents submit a blank Seller’s Disclosure Statement with an offer to purchase with a request that the seller complete the form along with a response to the offer.
      d. Some brokers mistakenly believe that the use of a Seller’s Disclosure Statement is mandated by law. Alabama has no such law.

2. Buyer’s Acknowledgment Statement
   a. Some brokers use a Buyer’s Acknowledgment Statement instead of a Seller’s Disclosure Statement as a risk management tool.
   b. This form is a list of terms, concepts, and problem areas typically encountered by buyers of real estate in Alabama. The buyer sees the form at least twice – first at the Buyer Counseling Session and then at the time of an offer on a specific property. The form can be property specific.
   c. The form is signed by the buyer and retained by the licensee as proof of discussion and disclosure concerning these terms, concepts, and problem areas.
H. “As Is!”

1. “As Is” and “caveat emptor” – a bad combination
   • There is a legal opinion in Alabama that a property bought in “as is” condition in this
     “caveat emptor” state bars all fraud claims because the “as is” clause negates the
     element of reliance essential to any claim of fraud. Therefore, the buyer and the
     buyer’s agent are at the mercy of the seller and the seller’s agent without much
     recourse should the property condition become an issue after closing.

2. “As Is” and foreclosure – even worse
   • This complicates the situation even more, as the buyer and the buyer’s agent as well
     as the listing agent are often dealing with an out-of-state entity handling the
     foreclosed property.

I. “What Really Happened There!”

1. Stigmatized properties
   • “A property that has been psychologically impacted by an event which occurred, or
     was supposed to have occurred, on the property, such event being one that has no
     physical impact of any kind.” (NAR) (Examples: ghosts, death in the house,
     murder/suicide on the property, drug dealer’s house)

2. AIDS disclosure
   • The fact that a seller of a property had suffered from AIDS or had died of AIDS cannot
     be discussed with a purchaser because that situation falls under the federal fair
     housing protected class of “handicap” (race, color, religion, sex, familial status,
     national origin, handicap). This is a stigma that may not be addressed.

3. Recommended steps (by NAR)
   a. Step 1: Fact or fiction? – The licensee should determine if the stigma is fact or fiction. If
      the stigma cannot be proven, then the licensee’s obligation ends with step one. If it is
      factual, then the licensee should proceed to step two.
   b. Step 2: Check state laws – Alabama laws are silent concerning stigmatized property.
      Therefore the licensee should proceed to step three.
   c. Step 3: Determine materiality – The licensee should determine if the stigma might be
      important to a potential purchaser of the property. If the licensee feels that the stigma is
      material to the transaction, then the licensee should proceed to step four.
   d. Step 4: Discuss disclosure – The licensee should discuss disclosure with the seller or the
      seller’s representative. If disclosure is permitted, then the licensee should disclose timely
      and discreetly. If disclosure is prohibited by the seller or the seller’s representative, then
      the licensee should consider whether or not to represent the property in the transaction.
4. Corrected defects – a stigma?
   • If a property defect has been repaired and corrected, then the defect no longer exists. Therefore, there is no defect to disclose. However, the stigma may remain, so disclosure should be discussed with the seller. (Examples: a property that had experienced a fire, or a property that once was finished with defective synthetic stucco)

5. Duty to discover?
   §34-27-85 (a) (2)
   • The licensee is required by License Law to disclose all information known by the licensee that is material to the transaction, but the licensee has no affirmative duty to discover the information.

J. “The Cost Is High!”
1. Penalties from the courts
   a. Actual damages
   b. Punitive damages
   c. Rescission of the contract

2. Penalties from the commission
   a. Revoke your license
   b. Suspend your license
   c. Reprimand you
   d. Fine you

K. Some Final Thoughts on Property Disclosure
1. Watch out for “cost shifting.”
   (Having the seller pay some of the buyer’s expenses. If a problem occurs, lawyers and judges often look to see who paid for the dysfunctional item.)
2. “I don’t know” is a good answer if . . .
   ( . . . you don’t know. “I don’t know but I’ll help you try to find out” is a good answer for a buyer’s agent.)
3. Do not predict the future.
   (Statements like, “Everything will be OK” or “This really shouldn’t become a problem” are asking for trouble.)
4. Home warranties will help with property condition problems.
   (They tend to make big problems smaller and smaller problems go away.)
5. Do not verify important information for clients; let them do it.
   (If you verify important information for the client, then you become responsible for the information that you provided.)
6. Never let the client say, “Based on the advice of my agent, I ______________.”
   (Any decision concerning an action taken about the condition of the property must be the buyers and not yours.)
7. Know the difference between first-hand and second-hand knowledge.
   (“First-hand knowledge” means you have seen it; “second-hand knowledge” means it has been
told to you.)
8. If you are more motivated in making the sale than your client, then you are asking for trouble.
   (Licensees who place their own interests, especially their desire for income, ahead of their
clients often times get in trouble.)
9. Get it in writing.
   (“Verbal” is nothing but hearsay and is a weak defense in case of a problem.)
10. Maintain distance after closing.
    (When the licensee is contacted by a party after closing concerning a problem, the licensee
should make every effort to put the buyer and seller in contact while extracting himself/herself
from the encounter.)

III. Conclusion

Keys to effective risk management:

A. Know and obey Alabama License Law
B. Know and obey the Code of Ethics if you are a REALTOR®
C. Know the sources of legal complaints
D. Practice effective agency
E. Know and follow your company’s policies and procedures
F. Communicate with your qualifying broker
G. Never lie or misrepresent
H. Handle problems earlier rather than later
I. Poor communication is the source of most problems
J. Reduce all agreements and understandings to writing
K. Verbal agreements are not binding
L. Create and maintain a paper trail
M. Stay within your own area of expertise and training
N. Stay within the sales contract
O. Insist upon a home inspection
P. Think first, talk second
Q. Act only on your client’s intentions and desires
R. “Caveat emptor” does not protect a buyer’s agent
S. When in doubt, disclose
T. Always be directed by one question: “What’s in my client’s best interests?”
SUPPLEMENTAL CONTENT

A. WAIVER OF RIGHT TO INSPECT PROPERTY
   A form designed to protect the licensee and the licensee’s qualifying broker should the buyer of a property make the decision to forego professional inspection(s) of the property after being informed/counseled by the licensee on the importance of such inspection(s). The protection provided by this form is especially important in a “caveat emptor” (buyer beware) state such as Alabama. This form should only be employed with the qualifying broker’s approval.

B. SELLER’S PROPERTY CONDITION DISCLOSURE STATEMENT
   A form that requests the seller to list, to the best of his/her knowledge, the physical condition(s) of the property that is for sale. The decision of the form’s utilization is made by the seller and the listing agent. The form is property specific. The form may be considered important to a potential purchaser in Alabama due to the state’s “caveat emptor” environment. However, the information on the form may be inaccurate for various reasons. Another factor of the form’s usage is that the burden is on the buyer to be satisfied with the condition of the property, and the employment of the form may compromise the seller’s advantage over the buyer’s obligation to be satisfied with the property’s condition before purchase. This form should only be employed with the qualifying broker’s approval.

C. BUYER’S ACKNOWLEDGMENT STATEMENT
   A form that makes the buyer aware of numerous situations/problems/hazards that could occur in the purchase of real estate before the buyer makes the decision to purchase. The buyer can receive the form at the initial counseling session by the licensee and executes the form at the time that the buyer makes an offer to purchase the real estate. The form is property specific. The form is especially important in a “caveat emptor” (buyer beware) state such as Alabama. Forms similar to this are presently employed by several real estate companies and real estate boards/associations located in Alabama. This form should only be employed with the qualifying broker’s approval.
WAIVER OF RIGHT TO INSPECT PROPERTY

Re: Property Address _____________________________________________________________________

Date of Offer: ____________________

We, the undersigned Purchasers of the property referred to above, do hereby acknowledge and confirm:

That we have been advised by (real estate company and agent) of our right and responsibility to inspect the condition of the property which we are offering to purchase.

That it is our sole responsibility, and not the Broker’s or Agent’s responsibility, to determine or verify, either personally or through a licensed inspector, licensed contractor, or other representatives of our choosing, any and all conditions of the property material to our decision to purchase the property.

That we hereby decline to make or arrange for such inspections and that any real estate Brokers and Agents associated with (real estate company) who are involved in this sale are hereby released from any and all claims, actions, demands, damages, costs and expenses whatsoever arising out of this transaction and our failure to inspect.

_________________________________________   ________________________________________
Witness                                Purchaser

_________________________________________   ________________________________________
Witness                                Purchaser

_________________________________________
Date
SELLER’S PROPERTY CONDITION DISCLOSURE STATEMENT

PROPERTY: ________________________________________________________________

(physical address)

________________________________________________________________________

(city) (county) Alabama.

LEGAL: ________________________________________________________________

(Lot #) (Block) (Subdivision)

If owner has ever occupied property, list dates of occupancy? ___/___/___ to ___/___/___.

Residential real estate consumers, both purchasers and sellers, may be

benefit from a mechanism

maximizing their ability to obtain information concerning a home purchase and sale. This uniform
disclosure statement may aid both purchasers and sellers to identify aspects of properties which may
require attention: health, safety, environmental, structural, mechanical or other potential problem areas.

This disclosure form is not intended to diminish the responsibility of buyers to carefully examine the

property which they intend to purchase, and, in fact, highlights the importance of professional
inspections and environmental tests. This disclosure form does not limit existing responsibilities by a

seller, buyer or licensee concerning the condition of the property or potential liabilities or remedies at

law, statute or in equity.

This disclosure may significantly improve the transfer process and better serve the interest of all parties
to a property purchase. It may increase clarity regarding the nature of the property and provide greater
certainty to contracts entered into by better-informed buyers and sellers.

Although under current Alabama law, the SELLER is under no duty to disclose a known defect or
condition unless the defect or condition posses a threat to health and safety. By completing this
Disclosure Form, SELLER acknowledges to BUYER that SELLER knows of no defects in the subject
property, other than those deficiencies disclosed in this form.

Accordingly, SELLER(s) hereby authorize(s) licensee/broker to provide a copy of this Disclosure to any

person(s) or entity(ies) in connection with any actual or anticipated sale of the property.

PROPERTY CONDITION DISCLOSURES

Seller’s statement: This disclosure is based solely on the seller’s observation and knowledge of the
property’s condition and improvements and without assistance or direction from the Seller’s
Agent/Broker/Licensee. This document shall not be a warranty by the seller or seller’s agent and shall
not be intended as a substitute for an inspection or warranty the purchaser may wish to obtain.

Instructions to the seller: (1) Complete all numbered items. (2) If additional explanation is required
please attach additional pages with your signature. (3) If any item does not apply to your property, check
the “N/A” (not applicable) line. (4) If you do not know the answer to a question, check the “don’t know”
line.
1. Environmental Issues

<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>DON’T KNOW</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Was the house built before 1978?</td>
<td></td>
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</tr>
<tr>
<td>(b) Are you aware of the use of urea formaldehyde, asbestos materials, or lead-based paint in or on this home?</td>
<td></td>
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</tr>
<tr>
<td>(c) Are you aware of any testing for radon gas?</td>
<td></td>
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</tr>
<tr>
<td>Results, if tested</td>
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</tr>
<tr>
<td>(d) Are you aware of any underground storage tanks, old septic tanks, field lines, or abandoned wells on the property?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. House Systems

Do you know of existing problems affecting:

<table>
<thead>
<tr>
<th>Area</th>
<th>YES</th>
<th>NO</th>
<th>DON’T KNOW</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Plumbing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Electrical System</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Appliances</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Floors and Walls</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Doors and Windows</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(f) Ceiling and attic fans</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(g) Security system</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(h) Sump pump</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Chimneys, fireplaces and inserts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(j) Pool, hot tub, sauna</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(k) Sprinkler system</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(l) Heating - Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(m) Cooling/air conditioning - Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explain: ___________________________________________________________

3. Foundation/Structure/Basement/Exterior Finish

<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>DON’T KNOW</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Any defects or problems, current or past, to the foundation or slab?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Any defects or problems, current or past, to the structure or exterior veneer?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explain: ___________________________________________________________

<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>DON’T KNOW</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) Has the basement leaked since you owned or lived in the property?</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>(d) Have you ever had any repairs done to the basement?</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Explain: ___________________________________________________________

<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>DON’T KNOW</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e) Does the house have an Exterior Finish and Insulation System (EIFS) siding?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(f) Any defects or problems, current or past, to the EIFS siding?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explain: ___________________________________________________________

<table>
<thead>
<tr>
<th>Seller's Initials</th>
<th>Date</th>
<th>Buyer's Initials</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller's Initials</td>
<td>Date</td>
<td>Buyer's Initials</td>
<td>Date</td>
</tr>
</tbody>
</table>
4. Termites, wood destroying organisms, fungi, etc.
   (a) Are you aware of any active or previous signs of subterranean or dry wood termites, powder post or wood boring beetles or wood decaying fungus? .......................... [ ] [ ] [ ] [ ]
   (b) Are you aware of any damage due to wood infestation? [ ] [ ] [ ] [ ]
   (c) Have the house or other improvements ever been treated for wood infestation? .......................................................... [ ] [ ] [ ] [ ]
       If yes, when, by whom, any warranties? __________________________

5. Roof
   (a) Age of the roof? ________________________________ [ ] [ ] [ ] [ ]
   (b) Has the roof leaked at any time since you have owned or lived in the property? .................................................. [ ] [ ] [ ] [ ]
       Explain: ________________________________________________________

6. Land/Drainage
   (a) Any soil stability problems? ................................. [ ] [ ] [ ] [ ]
   (b) Has the property ever had drainage, flooding or grading problems? ................................................................. [ ] [ ] [ ] [ ]
   (c) Is the property in a flood plain zone? ......................... [ ] [ ] [ ] [ ]
   (d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining the property? ...... [ ] [ ] [ ] [ ]
       Explain:________________________________________________________________________

7. Boundaries
   (a) Do you have a previous survey of the property? .......... [ ] [ ] [ ] [ ]
   (b) Have you made any improvements since the last survey? [ ] [ ] [ ] [ ]
   (c) Are there any encroachments or unrecorded easements relating to the property of which you are aware? ......... [ ] [ ] [ ] [ ]
       Explain:________________________________________________________________________
   (d) Are you aware of any burial plots on the property? ...... [ ] [ ] [ ] [ ]
8. Water

(a) Source of water supply?  Public  Well  Shared well
   Lake/Pond  .................................................................
   .................................................................
(b) Are you aware of below normal water supply or water
   pressure? .................................................................

9. Sewer System

(a) Property is serviced by: Public sewer  Private sewer  Septic
   tank  none  .................................................................
   .................................................................
(b) Does your system require a pump/lift? .................................
   .................................................................
(c) Are you aware of any problems with the sewer system? ......
   Explain: ____________________________________________
   ____________________________________________________

10. Construction/Remodeling

(a) Since you have owned the property, have there been any
    additions, structural modifications, or other alterations made?
    Explain: ____________________________________________
    ____________________________________________________
(b) Have you been notified of any building code violations? ......

11. Homeowner’s/Condo Association(s)

(a) Is the property/condo subject to rules or regulations of a
    homeowner’s association? .............................................
(b) If yes, what is the yearly assessment? $_______________
(c) Is the assessment voluntary  or required  ?.....................
(d) Are you aware of any condition that may result in an increase in
    taxes or assessments? ...................................................
(e) Are any features of the property shared in common with
    adjoining landowners, such as walls, fences, driveways, etc.?
    Explain: ____________________________________________
    ____________________________________________________

12. Miscellaneous

(a) Are you aware of any existing or threatened legal action
    affecting this property? ..............................................
(b) Are there any assessments other than property assessments that
    apply to this property (i.e. sewer assessments, etc.)?.........
(c) Are you aware of any other conditions which are defective with
    regard to this property? ..............................................
    Explain: ____________________________________________
    ____________________________________________________

Seller’s Initials_________ Date_________  Buyer’s Initials_________ Date_________
The information provided is true and correct to the best of my knowledge and I give permission to my broker to share this information with all prospective purchasers.

___________________________________  ______________________
Seller                                   Buyer
___________________________________  ______________________
Date                                     Date

The Buyer acknowledges receipt of copy of this form.

___________________________________  ______________________
Seller                                   Buyer
___________________________________  ______________________
Date                                     Date

THE USE OF THIS DISCLOSURE FORM IS VOLUNTARY AND IS MADE AVAILABLE BY AAR ONLY FOR USE BY THOSE MEMBERS WHO MAKE AN INDEPENDENT DETERMINATION FOR THE NEED FOR SUCH A FORM. BY MAKING AVAILABLE THIS DISCLOSURE FORM TO ITS MEMBERS, AAR DOES NOT RECOMMEND OR ENDORSE ITS USE OR NON-USE.
Buyer’s Acknowledgment Statement

VERY IMPORTANT DOCUMENT – PLEASE READ CAREFULLY

This acknowledgment statement is to be reviewed by the Buyer in reference to the property located at:

________________________________________________________________________

The purpose of this statement is to help you, the Buyer, understand some of the frequently-used terms/concepts and to be aware of some of the potential problem areas in the purchase of residential real estate. Your signature below indicates that these points have been discussed with you by the Sales Associate and that you are satisfied with the discussions and explanations.

BUYER ACKNOWLEDGES THAT NEITHER THE REAL ESTATE AGENT NOR THE BROKER HAS GIVEN ANY LEGAL ADVICE OR MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING THE CONDITION OR FEATURES OF THE PROPERTY. BUYERS ARE ADVISED TO INSPECT THE PROPERTY, EITHER PERSONALLY OR THROUGH OTHERS OF THE BUYER’S CHOOSING, AND NOT TO RELY ON ANY VERBAL OR PRINTED DESCRIPTION OF THE PROPERTY OR STATEMENTS REGARDING THE PROPERTY’S CONDITION.

1. **HOME INSPECTION.** With regard to the purchase of used houses, Buyer acknowledges that Alabama is a *Caveat Emptor* (“Buyer Beware”) state, which means that the burden is on you, the Buyer, to discover and determine any and all conditions of the property important to your decision to purchase the property. The Seller and/or the Seller’s Agent must disclose only those conditions which constitute a health and safety threat and are known to the Seller and/or Seller’s Agent. The Seller’s Agent must also respond honestly to all questions asked by you, the Buyer, or by the Buyer’s Agent, that are a specific, direct inquiry, if the Seller’s Agent has the knowledge to answer the question. Therefore, it is **very strongly recommended** that you, the Buyer, have the property inspected by a qualified home inspector(s) before making the decision to purchase the property.

2. **HOME WARRANTY.** It is **strongly recommended** that you, the Buyer, purchase a home warranty from a qualified home warranty provider. Even though a typical home warranty has certain limitations, it does anticipate and cover some systems important to the Buyer’s use of the property for a limited period of time.

3. **CONTRACT DEADLINES.** Most real estate sales contracts contain provisions that allow you, the Buyer, to inspect the property and determine your satisfaction or dissatisfaction with the property’s condition. You must be aware that time deadlines often pertain to these inspections and your obligation to respond timely to these inspections. Should you miss these deadlines, you may be required to purchase the property “as is,” which means accepting the property with its present defects and deficiencies with no obligation on the Seller’s part to correct these problems. The contract may also contain other deadlines important to a satisfactory purchase by you, the Buyer.

4. **“AS IS”.** You, the Buyer, might elect to purchase the property “as is,” which means that the Seller makes no warranties concerning the property’s condition and that you are buying it exactly as you found it. It also typically means that the Seller will make no repairs, even though you still could reserve the right to inspect the property and terminate the sales contract should you be dissatisfied with the property’s condition. In Alabama’s *Caveat Emptor* (“Buyer Beware”) environment, “as is” places an even greater burden on you to be willing to accept the property in its present condition. Also, foreclosed property is almost always sold “as is,” with the property often being handled by an out-of-state financial institution. This means that you, the Buyer, have little or no rights in the purchase of the “as is” foreclosed property.

5. **IN WORKING ORDER.** As it pertains to used houses, the words “in working order,” with regard to the heating, cooling, plumbing and electrical systems and any built-in appliances do not obligate the Seller to repair or replace these components, but only that these items function as intended. The Seller is not obligated to repair or replace these items unless agreeing to do so at your written request in the sales contract or an addendum to the contract. Be aware that these components are “used” and not “new;” therefore “in working order” means that they may function less efficiently than when “new.”
6. **FINAL WALK-THROUGH.** You will be allowed and are **strongly recommended** to perform a “final walk-through” of the property shortly before closing. The two-fold purpose of this inspection is to determine that the property is in the same condition as at the time of the sales contract, excluding normal wear and tear, and that all repairs and corrections to be performed by the Seller, if any, are completed. The “final walk-through” is **not** another inspection, allowing you to address new and different conditions of the property. After closing, all conditions of the property are the responsibility of you, the Buyer.

7. **PROFESSIONAL VENDORS.** One of the many services offered by your Sales Associate is providing the names of certain professional vendors who are often employed to make your home purchase a success. Names of several such vendors as mortgage lenders, title and hazard insurance providers, home inspectors, pest control companies, surveyors, appraisers, closing attorneys, or home repair contractors may be given to you by your Agent. In no way is the Agent and the real estate Company recommending, guaranteeing, or warranting their work; we are simply providing a service that you may desire and are acknowledging that we have received acceptable service from these vendors in past transactions. The Buyer acknowledges that the Agent and the Company are not responsible or liable for any errors or omissions of any of these vendors.

8. **MOLD.** Although mold has always been present in our environment, recent studies have indicated that certain types of mold may be a health hazard to certain individuals. Potentially, when three elements – oxygen, water, and certain building materials – come together, mold can be produced. The Buyer understands that the presence of mold and its impact upon the habitability of the property is your responsibility and that you will not rely on the Sales Associate for advice.

9. **CHINESE DRYWALL.** This tainted wallboard, which was imported from China, often gives off a foul odor, corrodes copper, electrical wiring, and other metal surfaces, and may cause serious health problems with prolonged exposure. If you, the Buyer, are considering occupying a home either built or renovated since 2001, ask the home inspector to check for this drywall problem, or hire an inspector specifically trained in discovering this defective drywall.

10. **MEGAN’S LAW.** Even though homeowners in neighborhoods may be informed of the presence of registered sex offenders who move into their neighborhoods, the Seller and the Seller’s Agent have no obligation to notify you, the Buyer, of the presence of the sex offender. If this information is important to your decision to purchase the property, then the burden is on you to check with proper law enforcement authorities to determine the presence of a registered sex offender.

11. **EIFS** (Exterior Insulation Finishing System). Synthetic stucco (EIFS), when improperly installed, can cause major structural problems. If the subject property has synthetic stucco, you, the Buyer, should absolutely have the synthetic stucco inspected by a licensed EIFS inspector before moving forward with the purchase of the property.

12. **WOOD INFESTATION.** The Buyer acknowledges that the wood infestation report provided by an authorized pest control company is usually a visual inspection of accessible areas only and usually does not guarantee that inaccessible areas are free from active termites or damage caused by active or previous termites or other wood-destroying organisms. Some lenders may place a time limit on the validity of the wood infestation report.

13. **SURVEY.** The Buyer acknowledges that any representations, either verbal or written, concerning lot size, location of property lines, encroachments or easements, are not warranted to be accurate if provided by the Seller or the Seller’s Agent. We recommend that you, the Buyer, acquire a current survey from a registered Alabama land surveyor, regardless of whether or not a survey is required by the Buyer’s lender.

14. **SQUARE FOOTAGE.** The Buyer acknowledges that any representations, either verbal or written, concerning the square footage of the property are estimates only and may have been taken from unreliable sources, such as public tax records. The Buyer is responsible for determining square footage should the square footage be important to your decision to purchase the property.

15. **SEWER/SEPTIC SYSTEM.** Almost all waste disposal systems in this marketplace are either sewer or septic systems. You need to determine which system is present on the property. If on sewer, you should determine that the property is connected and that all impact and connection fees have been paid. If on septic system, you should determine if it is operational, that it should be inspected, and acknowledge that it requires periodic cleaning.
16. **VARMINFESTATION.** The Buyer acknowledges that homes sometimes have been invaded by varmints (rodents, reptiles, animals, insects) and that their presence and/or residue could be a deterrent to purchasing. If this is a problem for you, you should consider strongly an inspection by a pest control expert.

17. **STIGMATIZED PROPERTY.** The Buyer acknowledges that certain properties may be “stigmatized;” that is, impacted by certain events which occurred on the property but had no effect on the actual construction materials of the home, but may have some psychological impact on future occupants. Some examples are murder, suicide, and ghosts. If these issues are important to your decision to purchase, then the burden of discovery falls on you, the Buyer. Alabama law does not require the Seller or the Seller’s Agent to disclose such stigmas.

18. **HAZARD (HOMEOWNERS) INSURANCE.** The homeowners insurance industry is relying more than ever on the CLUE (Comprehensive Loss Underwriting Exchange) report, which is a database history of claims made on many properties. If the subject property has had numerous claims against its hazard insurance carriers, the insurance rates may be higher or the property may not be insurable at all. It is important for you, the Buyer, to anticipate this potential problem, gather as much information as possible, and protect yourself in the sales contract.

19. **PROPERTY TAXES.** The irregularities of tax reporting may cause some problems for you, the Buyer. Even though the tax collector (tax amount collected last year) and tax assessor (tax amount due next year) can give you amounts at that point in time, those numbers may change up until the tax year deadline of October 1. Therefore, the taxes as disclosed by the Seller and/or the Seller’s Agent and reported by the taxing authorities may be different than anticipated. Also, a homestead exemption currently in place on the property may expire before closing and not transfer to you, the Buyer, at closing, therefore increasing your property taxes. It is important for you to be prepared to verify the property taxes up to closing.

20. **OTHER OFFERS.** The Buyer acknowledges that the Seller may receive and consider offers other than your offer during the time that you are considering your offer or counteroffer. The Buyer also understands that those other offers may be generated by your own Sales Associate and/or other agents in your Sales Associate’s company. Buyer also acknowledges that the Seller may withdraw any counteroffers at any time prior to delivery of your written acceptance and notification of acceptance by you and your Sales Associate to the Seller or the Seller’s Agent and to accept any offer of the Seller’s choice.

21. **EARNEST MONEY.** The Buyer acknowledges that Alabama law requires that the real estate broker holding your earnest money check to deposit your check immediately when your offer becomes a completed contract, unless there is wording in the contract that states otherwise. Buyer also acknowledges that the earnest money held by someone other than a real estate broker, such as a seller, a for-sale-by-owner, or a builder, is not bound by Alabama law and may dispose of your earnest money as they see fit.

________________________________________________________________________

_________________________  ________________

BUYER  DATE

________________________________________________________________________

_________________________  ________________

SALES ASSOCIATE  DATE  BUYER  DATE