

HB397 INTRODUCED



1 HB397
2 TZAE599-1
3 By Representative Sellers
4 RFD: Boards, Agencies and Commissions
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SYNOPSIS:

Under existing law the Alabama Real Estate Commission may investigate formal complaints made against a licensee, revoke or suspend his or her license, impose a fine, or reprimand the licensee if he or she is found guilty of a disciplinary infraction.

This bill would authorize the commission to take disciplinary action against a licensee for selling, offering to sell, assigning, or offering to assign an equitable interest in a contract to purchase residential real estate and not disclosing to a potential buyer that the seller is not the deed holder.

This bill would further provide for disciplinary actions against a licensee for failure to disclose in writing to a seller, the buyer's intent to assign an equitable interest in the seller's property prior to the assignment, to provide prior notice of at least three business days of the effective date of the assignment, and to set a closing date with no automatic extension.

This bill would further provide for additional definitions.



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A BILL

TO BE ENTITLED

AN ACT

Relating to the Real Estate Commission; to amend Sections 34-27-2 and 34-27-36, Code of Alabama 1975; to provide for definitions; and to provide for additional disciplinary causes of actions for the non disclosure of information regarding an equitable interest in a contract or agreement to purchase certain property.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 34-27-2 and 34-27-36 Code of Alabama 1975, are amended to read as follows:

"§34-27-2

(a) For purposes of Articles 1 and 2 of this chapter, the following terms ~~shall~~ have the respective meanings ascribed by this section:

(1) ASSOCIATE BROKER. Any broker other than a qualifying broker.

(2) BROKER. Any ~~person~~individual licensed as a real estate broker under Articles 1 and 2 of this chapter. The term also includes associate broker and qualifying broker.

(3) COMMISSION. The Alabama Real Estate Commission, except where the context requires that it means the fee paid to a broker or salesperson.

(4) COMMISSIONER. A member of the commission.

(5) COMPANY. Any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business



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organization as the Legislature may provide for from time to time, which is licensed as a company under Articles 1 and 2 of this chapter.

(6) ENGAGE. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.

(7) EQUITABLE INTEREST. Any interest or right that a buyer acquires under a contract or agreement for the purchase of residential real estate, even though legal title has not been transferred.

~~(7)~~ (8) INACTIVE LICENSE. A license which is being held by the commission office by law, order of the commission, at the request of the licensee, or which is renewable but is not currently valid because of failure to renew.

~~(8)~~ (9) LICENSEE. Any broker, salesperson, or company.

~~(9)~~ (10) LICENSE PERIOD. That period of time beginning on October 1 of a year designated by the commission to be the first year of a license period and ending on midnight September 30 of the year designated by the commission as the final year of that license period.

(11) LISTING AGREEMENT. An agreement between a company and an owner wherein the company agrees to assist the owner in the sale of the owner's real property in exchange for a fee. The definition includes agreements authorizing the company to list or market the owner's real property upon the owner's future decision to sell the property.

(12) OWNER. A person or entity to whom a grantor has



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conveyed real property through a valid deed.

~~(10)~~ (13) PERSON. A natural person.

~~(11)~~ (14) PLACE OF BUSINESS.

a. A licensed broker living in a rural area of this state who operates from his or her home, provided that he or she sets up and maintains an office for the conduct of the real estate business, which shall not be used for living purposes or occupancy other than the conduct of the real estate business. The office shall be used by the broker only and not as a place of business from which any additional licensee operates under his or her license. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.

b. All licensees located within the city limits or police jurisdiction of a municipality shall operate from a separate office located in the city limits or police jurisdiction. The office shall have a business telephone, meet all other regulations of the Real Estate Commission, and be properly identified as a real estate office. Hardship cases may be subject to waiver of this regulation upon application and approval by the commission.

c. All business records and files shall be kept at the place of business as required by law or Real Estate Commission rules.

~~(12)~~ (15) QUALIFYING BROKER. A broker under whom a sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may from time to time provide is licensed, or a broker



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licensed as a company to do business as a sole proprietorship who is responsible for supervising the acts of the company or proprietorship and all real estate licensees licensed therewith.

~~(13)~~ (16) RECOVERY FUND. The Alabama Real Estate Recovery Fund.

(17) RESIDENTIAL REAL ESTATE. Real property located in the state used as a single-family residence.

~~(14)~~ (18) SALESPERSON. Any person licensed as a real estate salesperson under Articles 1 and 2 of this chapter.

(b) The licensing requirements of Articles 1 and 2 of this chapter shall not apply to any of the following persons and transactions:

(1) Any owner in the managing of, or in consummating a real estate transaction involving, his or her own real estate or the real estate of his or her spouse or child or parent.

(2) An attorney-at-law performing his or her duties as an attorney-at-law.

(3) Persons acting without compensation and in good faith under a duly executed power of attorney authorizing the consummation of a real estate transaction.

(4) Persons or a state or federally chartered financial institution acting as a receiver, trustee, administrator, executor, or guardian; or acting under a court order or under authority of a trust instrument or will.

(5) Public officers performing their official duties.

(6) Persons performing general clerical or administrative duties for a broker so long as the person does



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not physically show listed property.

(7) Persons acting as the manager for an apartment building or complex. However, this exception shall not apply to a person acting as an on-site manager of a condominium building or complex.

(8) Persons licensed as time-share sellers under Article 3 of this chapter performing an act consistent with that article.

(9) Transactions involving the sale, lease, or transfer of cemetery lots."

"§34-27-36

(a) The commission or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The commission may issue subpoenas and compel the testimony of witnesses and the production of records and documents during an investigation. If probable cause is found, a formal complaint shall be filed and the commission shall hold a hearing on the formal complaint. The commission shall revoke or suspend the license or impose a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts set out in this section. The commission may revoke or suspend a license until such time as the licensee has completed an approved continuing education course and/or made restitution to accounts containing funds to be held for other parties. The commission also may ~~also~~ stay the revocation or suspension of



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a license and require completion of an approved education course and/or the making of restitution to accounts containing funds to be held for other parties.

(1) Procuring or attempting to procure, a license, for himself or herself or another, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license.

(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.

(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.

(4) Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement.

(5) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salespersons or any medium of advertising or otherwise.

(6) Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the



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197 advertisement to be placed as a licensed broker or
198 salesperson.

199 (7) Acting for more than one party in a transaction
200 without the knowledge and consent in writing of all parties
201 for whom he or she acts.

202 (8)a. Failing, within a reasonable time, to properly
203 account for or remit money coming into his or her possession
204 which belongs to others, or commingling money belonging to
205 others with his or her own funds.

206 b. Failing to deposit and account for at all times all
207 funds belonging to, or being held for others, in a separate
208 federally insured account or accounts in a financial
209 institution located in Alabama.

210 c. Failing to keep for at least three years a complete
211 record of funds belonging to others showing to whom the money
212 belongs, date deposited, date of withdrawal, and other
213 pertinent information.

214 (9) Placing a sign on any property offering it for
215 sale, lease, or rent without the consent of the owner.

216 (10) Failing to voluntarily furnish a copy of each
217 listing, contract, lease, and other document to each party
218 executing the document with reasonable promptness.

219 (11) Paying any profit, compensation, commission, or
220 fee to, or dividing any profit, compensation, commission, or
221 fee with, anyone other than a licensee or multiple listing
222 service. This subdivision shall not prevent an associate
223 broker or salesperson from owning any lawfully constituted
224 business organization, including, but not limited to, a



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corporation or limited liability company or limited liability corporation, for the purpose of receiving payments contemplated in this subsection. The business organization shall not be required to be licensed under this chapter, and shall not engage in any other activity requiring a real estate license.

(12) Paying or receiving any rebate from any person in a real estate transaction.

(13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.

(14) If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.

(15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing prominently on the advertising; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing prominently on the advertising.

(16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.



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(17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.

(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

(19) Violating or disregarding any provision of this chapter or any rule, regulation, or order of the commission.

(20) ~~If a broker, accepting~~Accepting a "net listing" agreement for sale of real property or any interest therein. A "net listing" is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission and the licensee is not a buyer, seller, or assigned buyer of the subject property.

(21) Misrepresenting or failing to disclose to any lender, guaranteeing agency, or any other interested party, the true terms of a sale of real estate.

(22) Failing to inform the buyer or seller at the time an offer is presented that he or she will be expected to pay certain closing costs and the approximate amount of those costs.

(23)a. Having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.

b. Having a final money judgment rendered against him



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or her which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.

(24) Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.

(25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.

(26) Conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness.

(27) Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.

(28) Failing or refusing on demand to produce a document, book, or record in his or her possession concerning a real estate transaction conducted by him or her for inspection by the commission or its authorized personnel or representative.

(29) Failing within a reasonable time to provide information requested by the commission during an investigation or after a formal complaint has been filed.

(30) Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into his or her possession.

(31) If a qualifying broker or company, failing to keep in their files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a



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period of three years.

(32) When selling, offering to sell, assigning, or offering to assign an equitable interest in a contract to purchase residential real estate:

a. Failing to disclose in writing to a potential buyer that the holder of an equitable interest is not the deed holder of the property and is only offering to sell or assign his or her equitable interest; or

b. Failing to disclose in writing to a seller both of the following:

1. The intent to assign an equitable interest in the seller's real estate prior to offering to assign the interest.

2. The effective date of an assignment of the buyer's equitable interest to a subsequent purchaser of the property at least three business days prior to the effective date of the assignment.

c. Failing to include a fixed date of closing with no automatic extension in the contract that establishes the equitable interest.

(b) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of Article 1 or 2 of this chapter or any rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with Articles 1 and 2 of this chapter or any rule or order of the commission. To prevail in an action, it shall not be necessary to allege or prove either that an adequate



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remedy at law does not exist or that substantial or irreparable damage would result from the continued violation.

(c)(1) Notwithstanding any other provisions of law, the commission may issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. The order shall be entered by the executive director after a finding of probable cause by the commission staff. The order shall become final 15 days after its service upon the accused, unless the accused requests a hearing before the commission. Upon hearing the case and finding violations, the commission may make the cease and desist order final and the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(2) Notwithstanding any other provisions of law, the commission may decline to issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. In this instance, the commission shall proceed to give appropriate



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notice of the violations and hold a hearing thereon. Upon hearing the case and finding violations, the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fine or fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(d) The commission shall notify the licensee and qualifying broker in writing regarding the complaint.

(e) The commission shall notify the complainant, licensee, and qualifying broker in writing regarding the disposition of the complaint."

Section 2. This act shall become effective on October 1, 2025.