

## MINUTES

A meeting of the Alabama Real Estate Commission was held February 25, 2016 at the Commission offices, 1201 Carmichael Way, Montgomery, Alabama.

Those present were Chairman Bill Watts; Vice Chairman Carole Harrison; Commissioners Steve Cawthon, Reid Cummings, Cindy Denney, Clif Miller, Dorothy Riggins-Allen, Danny Sharp and Nancy Wright; Executive Director Patricia Anderson; Assistant Executive Director Teresa Hoffman; General Counsel Chris Booth; Assistant General Counsel Mandy Lynn; Education Director Ryan Adair; Licensing Administrator Anthony Griffin; Investigators David Erfman, Chuck Kelly, Phil Bunch and K. C. Baldwin; and Auditors Denise Blevins and Anthony Brown. The Hearing Officer was Jim Hampton.

Other staff members in attendance for all or part of the meeting were Public Relations Manager Vernita Oliver-Lane; Public Relations Specialist Lori Moneyham; Accounting and Personnel Director Molli Jones; Information Technology Manager Brett Scott and Information Technology Specialist Steven Brown.

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order at 9:00 a.m. by Chairman Bill Watts and a quorum was declared.

Commissioner Wright made a motion to approve the minutes from the January 21, 2016 meeting. Commissioner Riggins-Allen seconded the motion and it passed unanimously 8-0. Commissioner Cawthon was not present for the vote due to late arrival at 9:06 a.m.

Executive Director Patricia Anderson presented the January 2016 financial report. Expenditures are under projections. Revenues increased due to new temporary licenses and original salesperson licenses.

Ms. Anderson introduced Cheryl Fondon from Governor Robert Bentley's office to provide updates on out-of-state travel guidelines. The biggest change has been the conversion to electronic processing. Most travel requests can be submitted through the online process. Ms. Fondon commended the Commission on how well the agency handles out-of-state travel.

Ms. Anderson provided a legislative update. The Commission's Sunset Bill, SB37, passed the Alabama House and has been sent to Governor Bentley for signature. The bill allows for the continuance of the Alabama Real Estate Commission through October 1, 2020. Ms. Anderson also updated Commissioners on SB80 which will provide for Legislative Reference Service and the Joint Committee on Administrative Regulation Review to review rule amendments for possible antitrust action. This is in response to the United States Supreme Court decision in the case *North Carolina Board of Dental Examiners v. Federal Trade Commission*. Ms. Anderson reported the bill has passed the Senate and is in committee in the House. Commissioners also received a written report from Assistant Executive Director Teresa Hoffman showing actions various states have taken to comply with the Supreme Court decision.

Ms. Hoffman presented Commission Education Director Ryan Adair for recognition by the Commission. Mr. Adair was the first recipient of the *Larry Outlaw Education Excellence Award*, which is presented by the Distinguished Real Estate Instructors (DREI) Leadership Council. The award was named for the North Carolina Real Estate Commission's long-time education director, Larry Outlaw, who passed away in 2015. The award will be "presented annually to a non-DREI in a regulatory or education role who has most supported and encouraged the principles and commitment to the elevation of Real Estate education held by the DREI Leadership Council."

The Commission had one finding from the Legislative Sunset Committee. It addressed low pass/fail rates on the licensing examination. To address this concern, Mr. Adair brought forth the staff recommendation for an interpretation of Rule 790-X-1-.06(2) that will end continuous enrollment in prelicense courses. Since the rule states that "all prelicense and post license courses shall have a definite beginning and ending date" and a ruling by the Fifth Circuit Court of Appeals that upholds the interpretation that all students begin at the first lesson and proceed through the course in sequence, Mr. Adair asked Commissioners to consider enforcing the rule in this manner. Currently, the interpretation is to allow students to begin anywhere in the course, thereby starting a new course with each new student with courses running concurrently. Research shows that students who go through the material in a logical, sequential manner perform better on the licensing exam. Most other states also require students to begin and end the course in sequence.

Commissioner Cummings provided a report on research regarding school pass/fail rates. He reviewed data from 2002-2015 for public and private real estate schools. Based on the data, he recommended that real estate schools' pass/fail rates be posted on the Commission's website. He also recommended reducing the amount of time individuals have to take the prelicense examination after completing the prelicense course.

After Commissioners discussed the findings in Commissioner Cummings' and Mr. Adair's reports, Commissioner Cummings made a motion to interpret Rule 790-X-1-.06(2) as requiring enrollment in both classroom and online prelicense courses to begin at the first lesson of the course and proceed sequentially through the course material. Commissioner Wright seconded the motion and it passed unanimously 9-0. Commissioner Cummings made a motion that this interpretation of Rule 790-X-1-.06(2) become effective June 1, 2016. Commissioner Harrison seconded the motion and it passed unanimously 9-0. Commissioner Cummings made a motion to have the Commission begin publishing real estate school pass/fail rates on the Commission's website on October 1, 2016. Commissioner Wright seconded the motion and it passed unanimously 9-0. Commissioner Cummings made a motion to amend Rule 790-X-1-.06(6) and Rule 790-X-1-.06(7), to require salesperson and broker applicants to pass their respective licensing examinations within six-months of completing the prelicense course instead of the current requirement of twelve months with the rule change to become effective October 1, 2016. Commissioner Wright seconded the motion and it passed unanimously 9-0. Education staff will monitor to determine if these measures serve to improve pass rates.

Commissioner Harrison opened the discussion on the License Management Software System RFP by recognizing Information Technology Manager Brett Scott who provided a report from the RFP Review Task Force. Mr. Scott explained that the current system is outdated and no longer meets the needs of the Commission. Interested vendors were invited to a meeting at the Commission office during which they received an explanation of the current licensing structure and what is required in the new system. Subsequent to that meeting, only one vendor elected to submit a response to the RFP. Based on the review, scoring and discussion of the sole proposal submitted, the task force recommended that the bid be awarded to CyberBest. Commissioner Harrison made a motion to move forward with purchasing the new licensing system and to award the bid to CyberBest. Commissioner Miller seconded the motion and it passed unanimously 9-0. The CyberBest contract will be presented to the Contract Review Permanent Legislative Oversight Committee in April 2016.

Commissioner Cummings made a motion to conduct disciplinary hearing disposition discussions and decisions in an Open Meeting. Commissioner Wright seconded the motion and it passed unanimously 9-0.

#### HEARINGS AND APPEARINGS

#### **Alabama Real Estate Commission vs. Ashley Keith Davis and H2 Real Estate LLC, Formal Compliant No. 3377**

Ashley Keith Davis and H2 Real Estate LLC were charged on Count 1 of violating *Code of Alabama* 1975, Section 34-27-36(a)(8)b. by failing in their positions as qualifying broker and company to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama by having a shortage of funds in the trust account and charged on Count 2 of violating *Code of Alabama* 1975, Section 34-27-36(a)(8)a. in that, in their positions as qualifying broker and company, they commingled money belonging to others with the company's own funds to pay a company American Express account.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Cummings made a motion to find Mr. Davis and H2 guilty on both counts. Commissioner Sharp seconded the motion and it passed unanimously 9-0. Commissioner Cummings made a motion to fine Mr. Davis \$2,500 on both counts and to fine H2 \$2,500 on both counts for a total fine of \$10,000. Commissioner Wright added a friendly amendment to the motion that Mr. Davis also be required to take License Law, Level I Risk Management and Level II Risk Management within 90 days. He may use the continuing education credit from these courses toward his license renewal. Commissioner Miller seconded the motion and it passed 8-1 with Commissioner Cawthon voting against the motion.

**Alabama Real Estate Commission vs. Marl M. Cummings III and Cummings Realty Corporation and Cummings and Associates Inc., Formal Complaint No. 3378**

Commissioner Cummings recused himself from this hearing and was not present either for the testimony or the deliberation.

Marl M. Cummings III, Qualifying Broker, Cummings Realty Corporation, and Cummings and Associates, Inc., Mobile, Alabama; Cummings Realty Corporation; and Cummings and Associates Inc. were charged of violating *Code of Alabama* 1975, Section 34-27-36(a)(8)b. by failing in their positions as qualifying broker and companies to deposit and account for at all times funds belonging to or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama, by having a shortage of funds in the trust account.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Wright made a motion to find Mr. Cummings, Cummings Realty and Cummings and Associates guilty. Commissioner Cawthon seconded the motion and it passed unanimously 8-0. Commissioner Sharp made a motion to fine Mr. Cummings, Cummings Realty and Cummings and Associates \$1,000 each. Commissioner Cawthon seconded the motion and it passed unanimously 8-0.

**Jack Witherspoon Hines Jr., Request to be Relicensed After Revocation, Investigative File I-14,735**

Mr. Hines requested and was granted a continuance.

NOT APPEARING ITEMS FOR RULING

**Nathan C. Thacker, Hardship Request for Home Operation, Investigative File I-14,742**

Upon review of Mr. Thacker's hardship request for home operation, Commissioner Cummings made a motion to approve his request. Commissioner Cawthon seconded the motion and it passed unanimously 9-0.

**Pamela G. McKelvy, Hardship Request to Renew Lapsed Salesperson License, Investigative File I-14,746**

Upon review of Ms. McKelvy's hardship request for license renewal, Commissioner Miller made a motion to grant her request. Commissioner Cummings seconded the motion and it passed unanimously 9-0.

**Confirm Next Meeting Date and Location for the Record: March 24, 2016, 9:00 a.m. –  
Montgomery**

Commissioner Wright made a motion to approve the next Commission meeting for March 24, 2016 at 9:00 a.m. in Montgomery. Commissioner Harrison seconded the motion and it passed unanimously 9-0.

There being no further discussion, the meeting adjourned at 3:22 p.m.

Done this 25<sup>th</sup> day of February, 2016.

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Bill Watts, Chairman

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Lori Moneyham, Recording Secretary