

MINUTES

A meeting of the Alabama Real Estate Commission was held June 17, 2021 at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama. This meeting was also available by video teleconference (VTC).

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order by Chairman Carole Harrison at 9:00 a.m.

Chairman Harrison called the roll and the following Commissioners were present: Vice Chairman Reid Cummings; Commissioners Emmette Barran, Jimmie Ann Campbell, Joyce Harris, Terri May and Susan Smith. The seats from the Sixth and Seventh Congressional Districts are currently vacant. A quorum was declared.

Commission staff members in attendance or participating via VTC for all or part of the meeting were Executive Director Vaughn Poe; Assistant Executive Director Teresa Hoffman; General Counsel Starla Van Steenis; Assistant General Counsel Zack Burr; Investigators K.C. Baldwin, David Erfman, Rickey Fennie and Marshall Simons; Communications and Public Relations Director Vernita Oliver-Lane; Communications and Public Relations Specialist Lori Moneyham; State Professional Trainee Jess Sparks; Education Director Ryan Adair; Education Specialists David Bowen, Julie Norris and Pam Oates; Accounting and Personnel Director Molli Jones; Information Technology Director Brett Scott; Information Technology Systems Specialists Steven Brown and Codey Cherry; Licensing Director Anthony Griffin; Licensing Assistants Edward Arrington, Amber Green and Pam Taylor; and Executive Assistant Barbi Lee. The Hearing Officer was Jim Hampton.

Members of the public also attended via video teleconference.

Commissioner May made a motion to approve the minutes from the May 20, 2021 Commission meeting. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

PUBLIC HEARING

At 9:05 a.m. Chairman Harrison called on Executive Director Vaughn Poe to lead the Public Hearing on proposed rule amendment to Alabama Real Estate Commission Rule 790-X-1-.06 Preliminary and Post License School Approval and Requirements and proposed new rules Alabama Real Estate Commission Rules 790-X-1-.22 Prohibition Against Contract Lobbyist; 790-X-1-.23 Misuse of Agency Name, Initials, Logo, or Seal; and 790-X-2-.26 Renewals During Military Deployment.

Director Poe stated that members of the public were able to participate in the Public Hearing via video teleconference in addition to appearing in person. After providing a brief overview of the proposed rules, Director Poe called for anyone who would like to speak on the

proposed rule change or proposed new rules. There was no response from anyone in person or through VTC. The deadline for written comments is July 7, 2021. The final rules will be presented for adoption at the July 22, 2021 Commission meeting.

EXECUTIVE DIRECTOR'S REPORT

Director Poe presented the May 2021 financial reports and gave commissioners an update on revenues and expenditures in the operating and recovery fund accounts. He indicated projected revenue is still on course for the fiscal year. Other state agencies have been paid \$429,166.46 and there have been no payments from the recovery fund. There has been a budget modification due to a new line item expense mandated by the Division of Purchasing of the Finance Department. *Alabama Buys* is a new procurement tool to be used by all state agencies and the maintenance costs (\$2.2M) are being passed down to the agencies. It is estimated that the Commission will pay \$4,218.63 annually for this service.

Director Poe discussed the new License Summary Report provided to commissioners this month. The document provides data as it relates to all licensees, education providers and time shares. Director Poe gave the following statistics from the June 11, 2021 report: Total licenses is 38,836 - 4,797 companies (4,120 active and 677 inactive); 9,558 brokers (7,356 active and 2,202 inactive); salespersons 22,991 (14,984 active and 8,007 inactive); temporary salespersons 1,490 (1,164 active and 326 inactive). There has been a total of 4,815 new licenses issued since October 1, 2020 – 302 companies (295 active and 7 inactive); 615 brokers (587 active and 28 inactive); 2,518 salespersons (2,274 active and 244 inactive); 1,380 temporary salesperson (1,150 active and 230 inactive). There are 818 Education licensees with 246 schools (245 active and 1 inactive); 217 pre and/or post Instructors (216 active and 1 inactive); 263 active CE instructors and 92 active administrators. There is one timeshare broker in the state.

Director Poe stated the Accounting Division reported 28 general audits were completed in May. A strategy has been developed to assist new companies establish proper accounting procedures and a continuing effort is being made to audit any company that does not have a recent audit on file. Also, the Education Division completed six audits during the month of May.

Director Poe addressed Commissioners and licensees' concerns regarding delayed pending background check results. He explained that the Alabama Law Enforcement Agency (ALEA) modified its data repositories on May 22, 2021 causing them to be unable to retrieve background reports expeditiously. The issue has been resolved and the reports are being submitted to the Commission. Assistant Executive Director, Teresa Hoffman, added the modification was originally expected to take three days to complete; however, the system was down until Monday, June 14. She also stated the turnaround time from ALEA is improving and the Licensing Division is issuing the licenses on the same day results are received.

Director Poe announced, unless there was objection by Commissioners, the monthly hearings would be returning to the hearing room on the first floor beginning with the July 22, 2021 meeting. All Commissioners were in complete agreement.

Director Poe provided an update from the education task force. A recommendation has been made to modify an administrative rule regarding distance education (DE). He explained that great care and research in a responsible and professional manner have gone into this recommendation in response to legislation that was introduced during the 2021 legislative session. Director Poe indicated that each action regarding education must be considered with a 2014 finding by the Examiners of Public Accounts during the Commission's sunset review relating to the pass/fail rates of potential licensees uppermost in mind.

Chairman Harrison asked, as clarification for all Commissioners, the difference between synchronous and asynchronous. Education Director Ryan Adair explained that asynchronous DE refers to a course that students take at their own pace with no live instruction. Synchronous DE has live instruction but students and instructor are separated by distance.

Mr. Adair provided additional information regarding the 2014 sunset finding and the measures taken by the education team to improve the pass/fail rates including requiring additional assessments for students during the classes, training in 2014 and 2017 for those instructors with low pass rates, requiring students to start the 60-hour course at the beginning instead of mid-syllabus reducing time to take the license examination from one year to six months, and publishing the examination pass rates of all schools on the Commission's website. These efforts were successful in raising the pass rate.

Mr. Adair also discussed the effects of COVID-19 and additional changes that were implemented during the pandemic on the pass/fail rates. Classroom prelicense instructors were allowed to teach their courses virtually with no training starting in April 2020. During the November 19, 2020 Commission meeting, a decision was made that it was necessary to extend the deadline for virtual courses until June 30, 2021. A detailed document was sent to all instructors that explained how the courses needed to be taught virtually. He also stated that PSI examination sites were closed in April 2020 due to COVIDs and resulting backlogs caused many students an unexpected delay in taking their exam. Examination deadlines were extended by the Commission and some students ended up taking their exam one year or more after passing the course. Mr. Adair stated the first-time pass rate for pre-COVID (January 2021 – March 2020) was 59 percent. The first-time pass rate post-COVID (January 2021 – May 2021) was 53 percent. The overall pass rates have been affected negatively as well. He also stated some instructors are going back into the classroom, but we are still in a COVID recovery period. Commissioner Campbell asked Mr. Adair if he had an ideal target pass rate. He stated there was not a target pass rate but, looking at data from 2018 and 2019, the first-time pass rates were 63 percent and he felt these rates were acceptable. Director Poe added that the bottom of declining pass rates cannot be completely recognized until the effects of COVID-19 have subsided.

Vice Chairman Cummings provided additional dialogue concerning two additional factors regarding pass/fail rates for those students who have received their prelicense education virtually. Alabama does not have broadband internet available throughout the state and he suggested trying to obtain data by zip code of those taking the examination and the available broadband in that area. Another consideration for those who take education virtually is age.

Director Poe was in complete agreement and stated there is a technology gap among providers and licensees. Vice Chairman Cummings indicated for these reasons he tended to support a proposed rule that the Commission require certifications of distance education courses by the Association of Real Estate License Law Officials (ARELLO®) and the International Distance Education Certification Center (IDECC®). He indicated these certifications are minimum professional standards and the highest that the Commission should aspire to achieve.

Director Poe discussed the following main points of the upcoming proposed amendments to Rule 790-X-1-.21: (1) the rule was originally written mainly for asynchronous DE courses, now reorganized to specify requirements for both synchronous and asynchronous courses; (2) student participation requirements are specifically identified; (3) student monitoring by a moderator other than the instructor must take place; (4) secondary providers will still not be required to have a DE course certified by ARELLO®, IDECC® or the Commission.

Director Poe explained that additional rule amendments are being prepared for approval; however, the Commission-approved criteria will require modification to license law statute. These changes will be introduced during the next legislative session that begins in January 2022. In the interim, Director Poe asked Commissioners to extend the June 30, 2021 deadline for certification of virtual CE until April 30, 2022. Vice Chairman Cummings made a motion to extend the current deadline for virtual CE until April 30, 2022. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Director Poe discussed the Commission's monthly and quarterly communication outreach plan. This plan was developed to allow the Commission to communicate information to every licensee in the state through a variety of media. Briefly Legal is a quarterly Facebook Live session and Coffee with the Commission is a monthly session broadcast the day before the Commission meeting on Microsoft Teams. Licensees and consumers can join the monthly Commission meetings in person or watch the live stream on Microsoft Teams. The Commission also maintains a website, arec.alabama.gov, and has an active presence on social media platforms Facebook, Twitter, Instagram and YouTube.

Director Poe asked Commissioners to open the floor for public input and discussion regarding wholesalers. He stated the Commission has received multiple calls regarding this topic and this is an opportunity for open discussion. The discussion is not a call for any particular action of the Commission, but there are legislative interests in the Commission addressing wholesalers and wholesale activity in the state.

Chairman Harrison asked Director Poe if someone could explain what a wholesaler is and how they operate in the state. Director Poe replied that wholesalers are selling the purchase contract prior to the property closing. Wholesalers are not typically the owner of a property being sold. Vice Chairman Cummings added wholesaling is the means to control the outcome of a transaction. Director Poe stated that additional information would be available in the coming weeks and asked for specific datapoints that Commissioners would be interested in knowing

about. Vice Chairman Cummings suggested looking at what happens to the mortgage paper that may be in existence on a piece of property as that transaction moves from negotiation to closing.

There was one participant who discussed her concerns regarding wholesalers. She indicated that wholesalers are performing the exact tasks that REALTORS® are executing without being licensed or required to be licensed in the state. She described a recent situation and stated it took over a year to sort out and close the transaction. There was no further discussion.

COMMISSIONER DISCUSSION

Chairman Harrison opened the floor for discussion of the Executive Director's proposed salary increase. Director Poe's raise was due to be effective on May 1, 2021, but he requested it be placed on hold until after the 2021 legislative session. Salary ranges for the Executive Director and Assistant Executive Director were approved in June 2020 and approved by Governor Ivey July 15, 2020. Vice Chairman Cummings made a motion to approve a five-percent salary increase for Director Poe, from his current Step 14 to Step 16 of the established pay range. Commissioner Campbell seconded the motion and it passed unanimously 7-0. Chairman Harrison stated that Director Poe has done an awesome job this year and this raise is appropriate. Commissioner May praised Director Poe for his leadership to staff and Commissioners during the unprecedented COVID-19 pandemic.

Chairman Harrison advised Commissioners that Vice Chairman Cummings stated he had a conflict with the October 21, 2021 meeting date and asked Commissioners if they would consider changing the date to October 14 or 28. Upon discussion of this request, Commissioner Smith made a motion to change the October meeting date to Thursday, October 14. Commissioner Barran seconded the motion, and it passed unanimously 7-0.

Commissioner Barran made a motion that Commissioners conduct disciplinary hearing disposition discussions in an open meeting. Commissioner Smith seconded the motion and it passed unanimously 7-0.

HEARINGS

Alabama Real Estate Commission VS. Jacqueline Battle, Formal Complaint No. 3546

Jacqueline Battle, Salesperson, Huntsville, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the 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.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman Cummings made a motion to find her guilty. Commissioner Campbell seconded the motion and it passed unanimously 7-0. Commissioner Campbell made a motion to fine her \$250. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

Keesha Taylor, Application for Determination of Licensing Eligibility, Investigative File I-21,099

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Taylor's application for determination of licensing eligibility, Commissioner Harris made a motion to approve her application. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Alabama Real Estate Commission VS. James Calvert, Formal Complaint No. 3548

Assistant General Counsel Zack Burr advised Commissioners that Mr. Calvert submitted an executed Not Appearing Waiver and entered a guilty plea. The facts of the case were presented.

James Calvert, Salesperson, Huntsville, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the 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.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Smith made a motion to accept Mr. Calvert's guilty plea. Commissioner Barran seconded the motion and it passed unanimously 7-0. Commissioner Smith made a motion to fine him \$250. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Jacqueline N. Cameron, Hardship Request to Renew Lapsed Salesperson License, Licensing File LC2021-006

Upon review of Ms. Cameron's hardship request to renew lapsed salesperson license, Commissioner Harris made a motion to approve her request. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

Kia Neaka Dailey Lewis, Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-21,163

This hearing was continued until July 22, 2021.

Alabama Real Estate Commission VS. Benjamin Wales, Formal Complaint No. 3547

General Counsel Starla Van Steenis advised Commissioners that Mr. Wales submitted an executed Not Appearing Waiver and entered a guilty plea. The facts of the case were presented.

Benjamin Wales, Salesperson, Huntsville, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the 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.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Smith made a motion to accept Mr. Wales' guilty plea and fine him \$250. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

Vickie Ausmer, Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-21-170

Upon review of Ms. Ausmer's request for approval to hold a real estate license after license was previously revoked, Vice Chairman Cummings made a motion to approve her request. Commissioner Harris the motion and it passed unanimously 7-0.

Alabama Real Estate Commission VS. Jheralynne Foster, Formal Complaint No. 3545

General Counsel Starla Van Steenis advised Commissioners that Ms. Foster submitted an executed Not Appearing Waiver and entered a guilty plea. The facts of the case were presented.

Jheralynne Foster, Salesperson, Tuscaloosa, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the 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.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Smith made a motion to accept Ms. Foster's guilty plea and fine her \$250. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

Ashlei Rena Jackson, Application for Determination of Licensing Eligibility, Investigative File I-21,136

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Jackson's application for determination of licensing eligibility, Commissioner Barran made a motion to deny her application. Commissioner May seconded the motion and it passed unanimously 7-0.

Shelly Burgett Springer, Hardship Request for Home Operation, Investigative File I-21-193

Hearing Officer Jim Hampton advised Commissioners that general counsel had withdrawn the Notice of Hearing for Ms. Springer; therefore, no action was necessary.

Alabama Real Estate Commission VS. Robert Scott, Formal Complaint No. 3539

General Counsel Starla Van Steenis advised Commissioners that Mr. Scott submitted an executed Not Appearing Waiver and entered a guilty plea. The facts of the case were presented.

Robert Scott, Salesperson, Mobile, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the 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.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman Cummings made a motion to accept Mr. Scott's guilty plea. Commissioner Barran seconded the motion and it passed unanimously 7-0. Vice Chairman Cummings made a motion to fine him \$305. Commissioner Barran seconded the motion and it passed unanimously 7-0. Vice Chairman Cummings made a motion to suspend Mr. Scott's license until his fine has been paid to the Commission. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Shanica Frazier, Application for Determination of Licensing Eligibility, Investigative File I-21,175

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Frazier's application for determination of licensing eligibility, Vice Chairman Cummings made a motion to approve her application. Commissioner Harris seconded the motion and it passed unanimously 7-0.

Leah Howard Massey, Application for Determination of Licensing Eligibility, Investigative File I-21,065

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Massey's application for determination of licensing eligibility, Commissioner Barran made a motion to approve her application subject to full payment of all restitution, fees and fines. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

NOT APPEARINGS

Valerie Roy, Application for Real Estate Brokers Reciprocal License, Investigative File I-21-162

Upon review of Ms. Roy's application for a real estate brokers reciprocal license, Vice Chairman Cummings made a motion to approve her application. Commissioner Barran seconded the motion and it passed unanimously 7-0.

Kelli Felix, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-109

Upon review of Ms. Felix's application for a real estate salesperson's temporary license, Commissioner May made a motion to deny her application until she can appear before the Commission and provide an explanation. Vice Chairman Cummings seconded the motion and it passed unanimously 7-0.

Demetria Mock-Mims, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-156

Upon review of Ms. Mock-Mims' application for a real estate salesperson's temporary license, Vice Chairman Cummings made a motion to approve her application. Commissioner Harris seconded the motion and it passed unanimously 7-0.

Confirm August Meeting Date and Location for the Record: August 19, 2021, 9:00 a.m. in Montgomery, Alabama.

Commissioner Barran made a motion to confirm the August meeting for August 19, 2021 at 9:00 a.m. in Montgomery, Alabama. Commissioner Smith seconded the motion and it passed unanimously 7-0.

Next Commission Meeting: Thursday, July 22, 2021, 9:00 a.m. in Montgomery.

There being no further business, Commissioner May made a motion to adjourn the meeting at 12:22 p.m. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

Done this 17th day of June 2021.

Carole Harrison, Chairman

Barbi Lee, Recording Secretary