

MINUTES

A meeting of the Alabama Real Estate Commission was held November 18, 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 Emmette Barran at 9:00 a.m.

Chairman Commissioner Emmette Barran called the roll and the following Commissioners indicated their presence with a spoken "present": Vice Chairman Terri May, Commissioners Jimmie Ann Campbell, Joyce Harris, Carole Harrison and Cerita Tucker Smith. Commissioners Reid Cummings and Susan Smith were absent with notice. A quorum was declared. The seat for the Sixth District is currently vacant.

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 Senior Lori Moneyham; State Professional Trainee Jess Sparks and Communications and Public Relations Intern Tylar Hooks; Education Director Ryan Adair; Education Specialists David Bowen, Julie Norris and Pam Oates; Education Assistant Nancy Williamson; Accounting and Personnel Director Molli Jones; Auditors Denise Blevins, Anthony Brown and Vickie Shackelford; Information Technology Director Brett Scott; Information Technology Systems Specialist Steven Brown; Licensing Assistant Amber Green and Executive Assistant Barbi Lee. The Hearing Officer was Jim Hampton.

Members of the public also attended via video teleconference.

The oath of office was administered to new Commissioner Cerita Tucker Smith by Executive Director Vaughn Poe. Commissioner Tucker Smith represents the Seventh Congressional District and her term expires on September 30, 2024.

In accordance with Section 34-27-7(f) of Alabama License Law, Chairman Barran asked for a motion to elect a Commission Chairman and Vice Chairman. Commissioner Harrison nominated Commissioner Emmette Barran for Chairman and Commissioner Terri May for Vice Chairman. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Vice Chairman May made a motion to approve the minutes from the October 21, 2021 Commission meeting. Commissioner Harrison seconded the motion and it passed 5-0. Commissioner Tucker Smith did not vote since her term did not commence until November 10, 2021.

At 9:15 a.m. Chairman Barran called for the Public Hearing for Rule Amendment 790-X-2-.02 Applications for Examination and Licensure. Chairman Barran called for anyone who would like to speak on the proposed rule change. There was no response from anyone in person or through VTC. The deadline for written comments is December 10, 2021. The final rule will be presented for adoption at the January 20, 2022 Commission meeting.

Chairman Barran recognized and welcomed Grayson Glaze, Executive Director of the Alabama Center for Real Estate (ACRE). Mr. Glaze expressed his appreciation to Chairman Barran and the Commission for the opportunity to give an update to Commissioners relating to the successes of ACRE. He extended an invitation to Commissioners for the 25th Anniversary Recognition of ACRE on Thursday, December 9, 2021 in Tuscaloosa, Alabama.

Mr. Glaze discussed ACRE's core purpose, guiding principles, education opportunities, annual forums, research, outreach and their Career Opportunities in Real Estate (CORE) program. He explained their DREAM initiative is now called REIMAGINED – Making Diversity in Real Estate a Reality. Mr. Glaze expressed his appreciation to the Commission and the Alabama Association for REALTORS® (AAR) for their continued support and partnership.

Chairman Barran thanked Mr. Glaze for the informative update and the great work that he and ACRE are doing for the real estate industry.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Vaughn Poe expressed his appreciation to Commissioner Cerita Tucker Smith for agreeing to serve on the Commission. Commissioner Tucker Smith is filling an unexpired term due to the resignation of a former Commissioner; therefore, license law allows her to begin serving immediately. Director Poe recognized Betsy Echols who was in attendance and has been appointed to serve as Commissioner representing the Third Congressional District. Director Poe also recognized Randle McKinney, who was not present, and has been appointed to serve as a Commissioner representing the First Congressional District. Both are awaiting confirmation by the Alabama Senate.

Executive Director Vaughn Poe presented the October 2021 financial reports and gave Commissioners an update on revenues and expenditures in the operating and recovery fund accounts. There have been no recovery fund payouts for the past 30 days. The Commission has paid \$607,751.66 to other state agencies for services for fiscal year 2021 and \$71,101.00 for fiscal year 2022.

Director Poe reported the Commission has issued 37,122 total licenses. There are 4,478 licensed companies or branches. The current growth rate is 9.2 new license applications per day or roughly 276 per month.

Director Poe stated the Accounting Division reported that 19 general audits and nine assistance visits were completed in October 2021. He said the assistance visits are still greatly

appreciated by licensees. The Education Division reported there are 867 total education licenses and 288 elective courses. Four education audits were completed in October 2021.

Director Poe reported the topic of the November 3, 2021 Briefly Legal Facebook Live event was “How to Prepare for an Audit.” Auditor Vickie Shackelford and Assistant General Counsel Zack Burr did an outstanding job discussing this topic and it was well attended by licensees.

Director Poe discussed professional development requirements for licensees and stressed that the same expectations are required for Commissioners. Opportunities for regulator’s professional development is available through the Association of Real Estate License Law Officials (ARELLO®) Commissioner College that is available in-person or online. He encouraged Commissioners to take advantage of this training and the opportunity to meet with regulators in other states.

Director Poe reminded Commissioners Rule Amendments 790-X-1-.07 Qualifications for Prelicense and Post License Instructors, 790-X-1-.21 Distance Education Courses, 790-X-2-.01 Documentation Required for License Issuance, and new Rule 790-X-1-.23 Misuse of Agency Name, Initials, Logo or Seal will become effective December 13, 2021.

Director Poe recognized team members Senior Accountant Pam Garner and General Counsel Starla Van Steenis for their graduation from the Certified Public Managers® Program (CPM). This is a two-year program offered through Auburn University at Montgomery that provides comprehensive training to current and future public sector managers across Alabama.

COMMISSIONER DISCUSSION

1. Approve for Filing Proposed New Rule with Legislative Services Agency.
 - New Rule – 790-X-3-.15 Broker Supervision

Executive Director Poe provided the following synopsis of the proposed rule:

“Code of Alabama, 1975, §§ 34-27-8.1, 34-27-34 and 34-27-36 collectively render it a violation for a qualifying broker to fail to supervise the real estate activities performed by the qualifying broker’s company or its licensees. The Code does not define failure to supervise. The new rule provides a list of activities or in-activities that constitute a failure to supervise by a qualifying broker.”

Executive Director Poe read the proposed rule in its entirety.

“Rule 790-X-3-.15. Broker Supervision.

Failure of a qualifying broker to properly supervise his/her company or those licensed under him/her shall include, but is not limited to, the following:

- (1) Failing to maintain an active broker's license with the Commission and thereby compromising the licensing status of those licensed under the qualifying broker.
- (2) Allowing a person not licensed by the Commission to engage in activities requiring a license on behalf of the broker or brokerage firm.
- (3) Allowing a licensee to conduct licensed activity for a company under which the licensee is not licensed.
- (4) Allowing a person to engage in activities requiring an active real estate license while that person's license is expired, inactive, pending transfer, suspended, or revoked.
- (5) Failing to take action to ensure that a licensee complies with any restrictions or conditions placed upon that person's license.
- (6) Directing or instructing a licensee to take any action in violation of state, federal, or local laws or regulations while conducting licensed activity.
- (7) Failing to take action to prevent a licensee from violating state, federal, or local law or regulations while conducting licensed activity, if the supervising broker or branch broker has actual knowledge or should reasonably have actual knowledge of the impending violation.
- (8) Failing to timely take action to correct or mitigate a violation of license law or regulation after learning of the violation.
- (9) Failing to ensure that all contracts and forms used by the licensee are reviewed for accuracy and compliance with applicable statutes, regulations, and office policies.
- (10) Failing to ensure that all licensees can maintain reasonable and timely communication with the supervising broker, branch broker, or a competent designee.
- (11) Failing to oversee and account for the proper handling of funds or property of others by the company or its licensees.
- (12) Failing to ensure that the company's advertisements or its licensee's advertisements conform with license laws and regulations."

Director Poe stated this proposed rule is a direct result of calls received by licensees, trending analysis of cases that have been presented for disciplinary action, and recommendations from the Broker Supervision Task Force. Commissioner Harrison stated the proposed rule will be a great step forward, especially with growth in the industry and increase in the number of licensees. Commissioner Campbell stated the proposed rule will give a basis on which to place

judgments. Chairman Barran stated, based on the cases of the past several years, this rule is necessary and very relevant. Commissioner Harris stated the timing is perfect.

Vice Chairman May made a motion to approve the proposed new rule for filing with the Legislative Services Agency. Commissioner Harris seconded the motion and it passed unanimously 6-0.

Director Poe gave an update on the Prelicense and Post Licensing Task Force. The members will address how real estate licenses are granted in Alabama in structure and course content. The first meeting will be in late November 2021.

Commissioner Campbell made a motion that Commissioners conduct disciplinary hearing disposition discussions in an open meeting. Vice Chairman May seconded the motion and it passed unanimously 6-0.

HEARINGS

Alabama Real Estate Commission VS. Sharii Andria Perry, Formal Complaint No. 3559

Sharii Andria Perry, Lapsed Temporary Salesperson, Birmingham, Alabama was charged on **Count 1** with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(1) by attempting to procure an original salesperson's license for herself by fraud or deceit. Respondent was charged on **Count 2** with Section 34-27-36(a)(26) by exhibiting conduct that demonstrates dishonest dealings, bad faith, or untrustworthiness.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman May made a motion to find Ms. Perry guilty on **Counts 1 and 2**. Commissioner Campbell seconded the motion and it passed unanimously 6-0. Vice Chairman May made a motion to fine Ms. Perry \$500 per count for a total of \$1,000. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Gamal Pride, Application for Determination of Licensing Eligibility, Investigative File I-21-349

Upon discussion of the evidence and testimony presented in the matter regarding Mr. Pride's application for determination of licensing eligibility, Commissioner Harris made a motion to approve his application. Commissioner Harrison seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Samuel T. Schiffman, Formal Complaint No. 3568

Samuel T. Schiffman, Qualifying Broker, Blue Sky Realty, Birmingham, Alabama was charged on **Count 1** with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(19) by failing to comply with *Code of Alabama, 1975*, Section 34-27-31(k) in his failure to notify the Commission within 10 days of a final judgment being issued against him in a civil matter

involving a real estate transaction. Respondent was charged on **Count 2** with Section 34-27-36(a)(23)b. by having a final money judgment rendered against him which resulted from an act or omission in pursuit of his or her real estate business.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman May made a motion to find Mr. Schiffman guilty on **Counts 1** and **2**. Commissioner Harrison seconded the motion and it passed unanimously 6-0. Commissioner Harris made a motion to revoke his license. Commissioner Campbell seconded the motion and it passed 5-1 with Commissioner Harrison voting against the motion.

Lorenza (Low) Finley, Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-21-229

General Counsel Starla Van Steenis stated Mr. Finley had a medical situation and asked that his hearing be continued. This hearing was continued until January 20, 2022.

Alabama Real Estate Commission VS. Margryette Boyd, Formal Complaint No. 3570

General Counsel Starla Van Steenis stated this hearing was continued until February 17, 2022 due to additional documentation submitted by Ms. Boyd.

Lydia Ann Taylor and River Region Rentals, Request for Rehearing, Formal Complaint No. 3534

Commissioner Tucker Smith did not participate in this hearing.

Attorney Michael Braun appeared with Ms. Taylor as her legal counsel.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman May made a motion to reinstate Ms. Taylor's license effective upon notice from the Commission. Commissioner Harris seconded the motion and it passed 5-0.

At 11:55 a.m. Chairman Barran called for a 20-minute lunch break.

At 12:22 p.m. Chairman Barran called the Commission back to order with all of the previous noted Commissioners present.

Tina Marie D'Aversa, Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-21-331

Attorney Michael Lunsford appeared with Ms. D'Aversa as her legal counsel.

Upon discussion of the evidence and testimony presented in the matter regarding Ms. D'Aversa's request for approval to hold a real estate license after license was previously revoked,

Commissioner Harrison made a motion to approve her request. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Robert Mahaney, Jr., Application for Determination of Licensing Eligibility, Investigative File I-21-260

General Counsel Starla Van Steenis stated Mr. Mahaney was not present for the hearing and the Commission did not have proper service. She asked that the hearing be continued to a later date.

Alabama Real Estate Commission VS. Tyrei Jarrae Hampton, Formal Complaint No. 3550

General Counsel Starla Van Steenis advised Commissioners that Mr. Hampton was not in attendance; however, proper service was obtained through ABC Services on October 23, 2021. Hearing Officer Jim Hampton allowed the case to be presented.

Tyrei Jarrae Hampton, Prelicense Registrant, Jasper, Alabama was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-30 by presenting himself and 4 Rent Properties as able to perform acts requiring an active real estate license and by assisting Mrs. Barbara Gerard in renting her mobile homes.

Upon discussion of the evidence and testimony presented in the matter, Commissioner Harrison made a motion to find Mr. Hampton guilty. Vice Chairman May seconded the motion and it passed unanimously 6-0. Commissioner Harrison made a motion to fine Mr. Hampton \$2,500. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Matthew Funchess, Application for Determination of Licensing Eligibility, Investigative File I-21-354

Upon discussion of the evidence and testimony presented in the matter regarding Mr. Funchess' application for determination of licensing eligibility, Commissioner Harris made a motion to approve his application. Commissioner Harrison seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Veronica Lanese (Vee) Carr, Formal Complaint No. 3569

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

Veronica Lanese (Vee) Carr, Inactive Associate Broker, Biloxi, Mississippi was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) for 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 Harrison made a motion to accept Ms. Carr's guilty plea and fine her \$250. Commission Campbell seconded the motion and it passed unanimously 6-0.

Judy R. Wireman (formerly Judy R. Ramey), Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-22-005

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Wireman's request for approval to hold a real estate license after license was previously revoked, the request was denied for lack of a motion from the Commissioners.

NOT APPEARINGS

Melanie Renae Mitchell, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-343

Upon review and discussion of Ms. Mitchell's application for a real estate salesperson's temporary license, Commissioner Harrison made a motion to approve her application. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Confirm February Meeting Date and Location for the Record: February 17, 2022, 9:00 a.m. in Montgomery, Alabama.

Commissioner Harrison made a motion to confirm the February meeting for February 17, 2022 at 9:00 a.m. in Montgomery, Alabama. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Next Commission Meeting: Thursday, January 20, 2022, 9:00 a.m. in Montgomery.

There being no further business, Commissioner Harrison made a motion to adjourn the meeting at 2:01 p.m. Commissioner Harris seconded the motion and it passed unanimously 6-0.

Done this 18th day of November 2021.

Emmette Barran, Chairman

Barbi Lee, Recording Secretary