

MINUTES

A meeting of the Alabama Real Estate Commission was held September 14, 2023 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 Commission Chairman Emmette Barran at 9:00 a.m.

Chairman Barran called the roll and the following Commissioners indicated their presence with a spoken "present": Vice Chairman Terri May, Commissioners Jimmie Ann Campbell, Jim Dye, Betsy Echols, Joyce Harris, Randy McKinney, Susan Smith and Cerita Tucker Smith. A quorum was declared.

Chairman Barran recognized incoming Commissioner Deborah Lucas Robinson who was in attendance. Her term begins October 1, 2023.

Commission staff members in attendance or participating via VTC for all or part of the meeting were Executive Director Vaughn T. Poe; Assistant Executive Director Teresa Hoffman; General Counsel Starla Leverette; Assistant General Counsel Zack Burr; Assistant Attorney General Serena Cronier Grayson; Investigators K.C. Baldwin, Rickey Fennie and Marshall Simons; Auditor Anthony Brown; Communications and Public Relations Director Vernita Oliver-Lane; Communications and Public Relations Specialist Senior Lori Moneyham; Communications and Public Relations Specialist Jess Sparks and State Professional Trainee Taylor Hooks; Education Director Ryan Adair; Education Specialists Brittni Anderson, Julie Norris and Pam Oates; Education Assistant Nancy Williamson; Information Technology Director Brett Scott; Programmers Eric Aldridge and Chris Prestridge; Licensing Administrator Anthony Griffin; Licensing Assistants Shy'kierra Knight, Price Sparks and Pam Taylor; Account Payable Clerk Jaci Ingersoll; Account Clerk Marissa Mason; and Executive Assistant Barbi Lee. The Hearing Officer was Jim Hampton.

Members of the public also attended via video teleconference.

Chairman Barran asked for a motion to approve the minutes from the August 17, 2023 Commission meeting. Commissioner Campbell made a motion to approve the minutes from the August 17, 2023 meeting. Commissioner Harris seconded the motion and it passed unanimously 9-0.

EXECUTIVE DIRECTOR'S REPORT

Commissioner Recognition – Joyce Shivers Harris

Director Poe recognized Commissioner Joyce Shivers Harris as this was her last Commission meeting. He read and presented to Commissioner Harris a resolution from the Commission recognizing her five-year term as the Black Commission member-at-large. Commissioner Harris addressed the Commission and expressed that it was an "awesome opportunity" and an honor for her to serve. She expressed gratitude that she had the opportunity to serve and stated she was grateful for the things she had learned, for the people she has met, and for the friendships she has developed. She added that she was the first female Black member-at-large on the Commission. She dedicated her tenure of

service to her mother and expressed that she wanted to honor her mother for her strength and faith and for being “the wind beneath her wings.” She encouraged serving Commissioners to be intentional about listening to the people who come before them. She also thanked the staff for their help and support.

Director Poe explained that the Commission was in the last month of the 2023 fiscal year. Financials will be finalized during the 13th Accounting Period and the books will be closed in November. He presented the August 2023 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 \$548,037.85 to other state agencies for services during fiscal year 2023.

Director Poe reported the Commission has issued 44,185 total licenses. There are 4,538 licensed companies and branches. During August a total of 506 licenses were issued: 209 Temporary, 220 Original Salesperson; and 77 Broker. The average rate of growth for August was 9.54 new license applications per day, or roughly 286 per calendar month. Presently, there are 12,876 inactive licensees. There are currently 38,267 unique individuals licensed.

For the month of August, the Legal Division reported having completed 11 desk audits and one real estate company assistance visit. General Counsel Starla Leverette hosted Briefly Legal Live on Microsoft Teams Wednesday, September 6, 2023. The topic of discussion was broker supervision.

The Education Division reported there are 896 total education licensees: 869 active and 27 inactive. There were seven education audits performed in August; that included one salesperson prelicense course, one continuing education course, and five schools. Education renewals are ongoing. Currently, those who have renewed include 52% of prelicense instructors; 39% of continuing education instructors; 58% of prelicense schools; 45% of continuing education schools; and 50% of school administrators. Currently, 301 CE courses have been renewed compared to 450 at the last renewal cycle. The Alabama Real Estate Educators Association (AREEA) is offering a final instructor CE training on September 29, 2023 in Birmingham, Alabama. Credit from this course can be used to meet the continuing education instructor renewal CE requirement.

Director Poe stated Coffee with the Commission was held September 14, 2023 with Commissioner Betsy Echols and Executive Director Poe co-hosting. A myriad of topics were discussed including operating a real estate company, broker duties and responsibilities, wholesaling issues, virtual offices, and real estate teams. Commissioner Echols expressed that it was a “great experience” and that it was a pleasure for her to participate. There were roughly 100 attendees and the session lasted for over an hour. There were several very interesting questions from in-state and out-of-state licensees. One particular multijurisdictional licensee remarked that they had licenses in 19 different states and none of them offered an interaction like Coffee With the Commission.

Director Poe stated he was looking forward to seeing Commissioners at the upcoming 2023 Association of Real Estate License Law Officials (ARELLO®) Annual Conference on September 18-22, 2023. The Commission’s ARELLO® conference participation includes several committee roles. The Commission’s legal division is preparing and presenting the Law and Regulation Committee violation scenario scripts at the conference. This is a popular part of the annual conference program whereby

license law case scenarios are presented and attendees determine whether they were violations of real estate license law.

Director Poe discussed the Commission's outreach platforms: Briefly Legal, held quarterly; Coffee with the Commission, held monthly the day before the Commission meeting; and social media sites YouTube, X (formerly Twitter), Instagram and Facebook. The handle for all Commission social media sites is @arecalabamagov.

COMMISSIONER DISCUSSION

Recusal Discussion – Clark Morris, Assistant Chief Deputy Attorney General, Special Prosecutions Division, Office of the Alabama Attorney General.

Ms. Morris is the head of all prosecutions at the Alabama attorney general's office, including ethics prosecutions. She spoke with Commissioners regarding the process and reasons for recusing themselves from hearings. She offered scenarios in which they should recuse themselves, including if they have a business or personal relationship with the person appearing before them. The bottom line was that it is better to for them to recuse themselves than not if they are not sure whether it is warranted. The key is to not give any appearance of impropriety or bias. This protects the reputation and integrity of the Commissioner and the Alabama Real Estate Commission. She recommended implementing an internal practice whereby Commissioners will contact the Commission by email stating their intention to recuse themselves so that there will be documentation. Commissioner Dye questioned whether it was okay to not recuse if the appellant states that they do not have a problem with a Commissioner hearing and voting on their case, despite having a business or personal relationship with the Commissioner. Ms. Morris explained that the appellant is not the one to make that decision and that it is always best to err on the side of caution and recuse to prevent any appearance of impropriety. Commissioner May raised the question of how to handle instances in which one attorney may appear before the Commission multiple times representing different clients or if the Commission has consulted the attorney on an issue. Ms. Morris compared those scenarios to a judge who sees the same lawyers representing clients in different cases. Neither of these instances pose a problem if there is no personal or business connection between a Commissioner and the attorney or the Commission has consulted the attorney on a matter not related to the case.

Petition of the Commission – Robert Blum

The Commissioners had a recent discussion regarding their latitude in considering hardships and made changes regarding the types of cases that would be brought before them. Prior to the changes, Robert Blum applied for a hardship request for a deadline to submit his real estate license application.

Upon discussion of the evidence and testimony presented by Mr. Blum regarding his request Commissioner Tucker Smith made a motion to deny his application. Commissioner McKinney seconded the motion and the motion passed 8-0-1 with Commissioner May abstaining from the vote.

Commissioner Discussion

Chairman Barren opened a discussion about Section 34-27-36(a)(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” – and the fact that it did not align with Alabama state law. Commissioner Dye wished to make a motion to add the removal of Section 34-27-36(a)(3) from Alabama license Law as part of upcoming Commission legislation. Executive Director Poe advised Commissioners to delay motions and voting on the issue, as the public had not been made aware of the discussion. He recommended Commissioners gain input from licensees before further discussion and voting on the issue. Commissioner Cerita Tucker Smith made a motion to table the discussion for a later time. Commissioner McKinney added a friendly amendment to add this matter to the November Commission Meeting Agenda. Commissioner Harris seconded the motion as amended and it passed unanimously 9-0. The discussion will be held in an open forum in November 2023 to allow for licensee and consumer input.

HEARINGS – 9:30 a.m. Docket

Lena Sue Yarbrough, Hardship Request for Home Operation, Investigative File I-23-287

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Yarbrough’s hardship request for home operation, Commissioner Tucker Smith made a motion to deny her request. Commissioner Campbell seconded the motion and it passed unanimously 8-1 with Commissioner May voting against the motion.

Kayla George, Application for Real Estate Salesperson Temporary License, Investigative File I-23,274

Upon discussion of the evidence and testimony presented in the matter regarding Ms. George’s application for real estate salesperson temporary license, Commissioner Smith made a motion to approve her application. Commissioner Harris seconded the motion and it passed 9-0.

Alabama Real Estate Commission VS. Megan Taylor Grant, Formal Complaint #3696

General Counsel Starla Leverette advised Commissioners that Megan Taylor Grant submitted an executed Consent Decree after the September agenda deadline and was moved to the Consent Decree Docket.

Rodney D. Thompson, Application for Real Estate Salesperson Temporary License, Investigative File I-23-330

Upon discussion of the evidence and testimony presented in the matter, Commissioner Harris made a motion to approve Mr. Thompson’s request. Commissioner Smith seconded the motion and it passed unanimously 9-0.

Amy Diane Tortorigi, Applicant for Approval to Hold a Real Estate License After License was Previously Revoked, Investigative File I-23,286

Upon discussion of the evidence and testimony presented in the matter, Commissioner May made a motion to approve Ms. Tortorigi's application subject to payment of all fees and fines within 30 days of written notice. Commissioner Echols seconded the motion it motion passed unanimously 9-0.

Tamala L. Shepherd, Application for Real Estate Salesperson Temporary License, Investigative File I-23-280

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Shepherd's application for a real estate salesperson temporary license, Commissioner Tucker Smith made a motion to approve her application. Commissioner Smith seconded the motion and it passed 8-1 with Commissioner Echols voting against the motion.

Alabama Real Estate Commission VS. Shannon Rae Sharpe, Formal Complaint No. 3700

General Counsel Starla Leverette advised Commissioners this hearing was being continued until October 26, 2023.

At 11:47 a.m. Hearing Officer Jim Hampton advised Chairman Barran that the 9:30 a.m. docket was concluded. Considering that the 9:30 a.m. docket was complete, Chairman Barran asked for a motion to stay in open session or go into executive session for approximately 25 minutes to deliberate these cases in accordance with the Alabama Open Meetings Act, *Code of Alabama* 36-25A-7(a)(9). Commissioner Echols made a motion that Commissioners go into executive session in accordance with the Alabama Open Meetings Act, *Code of Alabama* 36-25A-7(a)(9) for approximately 25 minutes. Commissioner Campbell seconded the motion and it passed unanimously 9-0.

At 12:32 p.m. Commissioners returned with all Commissioners named during the initial 9:00 a.m. roll call present. Chairman Barran asked for a motion to return to open session. Commissioner Tucker Smith made a motion to return to open session. Commissioner Echols seconded the motion and it passed unanimously 9-0.

CONSENT DECREE SUBMISSIONS

- 1. Alabama Real Estate Commission VS. Brittney Melinda Fillion, Formal Complaint No. 3698**
- 2. Alabama Real Estate Commission VS. Charles E. (Chuck) Williams II Formal Complaint No. 3701**
- 3. Alabama Real Estate Commission VS. Olivia Jeane Lowell, Formal Complaint No. 3702**
- 4. Alabama Real Estate Commission VS. Megan Taylor Grant, Formal Complaint No. 3696**

Chairman Barran stated the Commission accepted the above Consent Decree submissions in accordance with Commission Policy Number 2 and the agreed upon disciplinary action in each.

Confirm November 2023 Meeting Date and Location for the Record: November 30, 2023, 9:00 a.m. in Montgomery, Alabama

Commissioner Tucker Smith made a motion to confirm the November 2023 meeting for November 30, 2023, 9:00 a.m. in Montgomery, Alabama. Commissioner Campbell seconded the motion and it passed unanimously 9-0.

Next Commission Meeting: Thursday, October 26, 2023, 9:00 a.m., at the University of Alabama School of Law, Moot Court, 101 Paul W. Bryant Drive East, Tuscaloosa, Alabama.

Executive Director Poe advised Commissioners that there was a request from closing attorneys and title companies to address Commissioners regarding the handling of earnest money. This is not a motion for action, but a request to address Commissioners due to a lot of brokerages changing the way they handle earnest money. This will be an item for Commissioner discussion on the November 30, 2023 meeting agenda.

There being no further business, Commissioner Smith made a motion to adjourn the meeting at 12:40 p.m. Commissioner Harris seconded the motion and it passed unanimously 9-0.

Done this 14th day of September 2023.

Emmette Barran, Chairman

Lori Moneyham, Recording Secretary