

MINUTES

A meeting of the Alabama Real Estate Commission was held September 23, 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 indicated their presence with a spoken "present": Vice Chairman Reid Cummings, Commissioners Jimmie Ann Campbell, Joyce Harris Terri May and Susan Smith. Vice Chairman Reid Cummings and Commissioners Joyce Harris and Susan Smith participated virtually. A quorum was declared. Commissioner Emmette Barran was absent with notice. The seats for the Sixth and Seventh Congressional Districts are 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 Taylor Hooks; Education Director Ryan Adair; Education Specialists David Bowen, Julie Norris and Pam Oates; Accounting and Personnel Director Molli Jones; Auditors Denise Blevins, Anthony Brown and Vickie Shackelford; Information Technology Director Brett Scott; Information Technology Systems Specialists Codey Cherry and Steven Brown; Programmer Analyst Eric Aldridge; Programmer Will Perkins; 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 August 19, 2021 Commission meeting. Commissioner Harris seconded the motion and it passed unanimously 6-0.

At 9:04 a.m. Chairman Harrison announced the meeting was being paused temporarily due to technical difficulties for those watching virtually.

At 9:07 a.m. the technical issue was resolved and the meeting was called back to order with Chairman Harrison, Vice Chairman Reid Cummings and Commissioners Jimmie Ann Campbell, Joyce Harris, Terri May and Susan Smith present.

PUBLIC HEARING

At 9:10 a.m. Chairman Harrison called for the Public Hearing for 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. She provided instructions for those who were participating virtually and wanted to comment during the public hearing. Chairman Harrison also provided the timeline for these rules. Chairman Harrison called for anyone who would like to speak on the proposed rule changes or proposed new rule. There was no response from anyone in person or through VTC. The deadline for written comments is October 8, 2021. The final rules will be presented for adoption at the October 14, 2021 Commission meeting.

AWARD PRESENTATION

Executive Director Vaughn Poe announced the Alabama Real Estate Commission was the co-winner of the 2021 Association of Real Estate License Law Officials (ARELLO®) Communications Award. This award was presented at the 2021 ARELLO® Annual Conference in Orlando, Florida on September 18, 2021. Communications and Public Relations staff members Lori Moneyham and Jess Sparks and IT Director Brett Scott accepted the award. Director Poe stated all jurisdictions throughout the country are now looking to Alabama as an example because of how the Commission is conducting business.

Chairman Harrison agreed to the importance of being recognized, especially with all the obstacles the Commission has faced in the past year and a half with the pandemic and how changes had to be implemented to allow the Commission to continue conducting business.

Director Poe introduced new Communications and Public Relations team member Taylor Hooks. Ms. Hooks is an intern from Alabama State University.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Poe began by asking Commissioners and attendees to observe a moment of silence and offered sincere condolences to team member Denise Blevins on the loss of her husband, Darrell Blevins and father-in-law Ricky Blevins.

Executive Director Vaughn Poe presented the August 2021 financial reports and gave commissioners an update on revenues and expenditures in the operating and recovery fund accounts. He reminded commissioners September is the final month of the 2021 fiscal year; however, a keen eye is being kept on the budgets and finances. The budget for fiscal year 2023 will be presented at the October meeting for approval. There have been no recovery fund payouts for the past 90 days and the Commission has paid \$588,316.14 to other state agencies for services for fiscal year 2021.

Director Poe announced the Commission hit a milestone regarding total licenses issued. As of September 13, 2021, the Commission has issued 40,074 licenses. Of that total, 4,933 are

licensed companies or branches. There has been a total of 6,233 new licenses issued since October 1, 2020.

Director Poe stated the Accounting Division reported 12 general audits and five assistance visits were completed in August. To date, 31 companies have requested assistance and 21 assistance visits have been completed. A continuing effort is being made to audit any company that does not have a current audit on file.

Director Poe discussed statistics for the Education Division. There are 849 total education licenses. The renewal cycle for education is almost complete with only two weeks remaining. The following renewal percentages were given: Pre/Post License Instructors – 67%; CE Instructors-37%; Administrators 58%; Approved Schools 50% and Licensed Schools 72%. There have been 288 elective courses renewed. The Education Division completed seven audits during the month of August.

Director Poe gave an update on the ARELLO® 2021 Annual Conference that was held September 15-19 in Orlando, Florida. He stated he had the privilege to sit on a panel regarding the National Association of REALTORS® (NAR) Code of Ethics that was instituted by NAR on November 13, 2020. He stated there are differing perspectives on the Code of Ethics and behavior of REALTORS® and licensees. He further explained that some jurisdictions have similar license law in their statute; Alabama does not. He advised that future discussions would need to take place in a public forum along with the state trade association to discuss the professional behavior of all licensees and how to address those licensees who are not members of the trade association. Director Poe announced ARELLO® elected their new President MiChell Bird from Idaho. The Region 2 Vice President is, currently, Andrea Alford from Arkansas and in 2022 will be Bruce Unganst from Louisiana. Alabama Real Estate Commission Education Director Ryan Adair was elected as a Director for Region 2.

Director Poe advised Commissioners that the Sunset Committee meeting went well. There were no findings or significant issues during this audit. He stated the committee had accolades for the Commission's performance and standing as a state agency. There were questions and affirmations about the comments on the Commissioner Questionnaire.

Director Poe reminded everyone that the 2021 ARELLO® Regulatory Investigations Seminar (ARIS) will be held October 5-8 in Birmingham, Alabama. Alabama is the host state for this year's seminar and staff will be assisting the ARELLO® team.

COMMISSIONER DISCUSSION

1. Wholesaling

General Counsel Starla Van Steenis addressed Commissioners regarding this topic and stated the following:

“The legal division was tasked with providing an opinion regarding our current ability to regulate the act of wholesaling. Wholesaling is becoming a more prevalent complaint to Real Estate Commissions nationwide, in fact at ARELLO® last week it was the leading issue discussed. At the outset I want to make it very clear that it is not the act of wholesaling that is troublesome to real estate commissions, it is the current practice by unlicensed individuals that are not bound by any oversight. For purposes of this opinion, we are defining the act of wholesaling as a person or corporation entering into a contract to purchase real estate and then attempting to resell, for profit, their interest in that real estate contract to a different purchaser prior to closing on that property.

The threshold question to be considered is if the Commission, under existing Alabama license law, has the authority to regulate the act of wholesaling. We do not believe so. The word regulation in this context is our ability to pursue unlicensed individuals for performing licensed activities. Do you as the Commission have the authority to do that under current license law? Yes. However, when it comes to wholesaling that authority may be undermined by vagueness in our laws and rules. Specifically, in our ownership exception. Most states have the exception, as Alabama does, that a real estate license is not required to sell one’s own real estate. This is the argument most commonly set forth by wholesalers when defending themselves against real estate commissions for engaging in licensed activity without a license. They argue that a purchase contract gives them an equitable interest in that property, therefore triggering the ownership exception. If ownership is not clearly defined in a state’s laws or rules this can be problematic. Our current law does not define ownership. If there is any vagueness in a State’s law on this issue, then the decision of the Commission is ripe for appeal. Tennessee recently faced this exact issue. A recent appellate decision in Tennessee determined that simply holding a contract on a piece of real estate does not equate to ownership; therefore, the ownership exception is not triggered. Just like in Tennessee - under our current law, it is our opinion that a court will have to ultimately decide what defines ownership. Our ownership exception needs to be more narrowly tailored if we are to make the act of wholesaling a licensable activity.

Other states have proactively amended their laws and rules to extend their jurisdiction over those individuals involved in wholesaling. The real estate commissions in Oklahoma, Illinois, Texas and Arkansas have successfully passed legislation regulating the act of wholesaling. Their primary concern in enacting this legislation was consumer protection, as often it is less sophisticated homeowners who are targeted by wholesalers. If wholesalers are not regulated, then who provides the layer of protection for consumers? I think it will be prudent to monitor these new laws for any legal challenges. There are worries that each of these state’s laws leave room for attack by anti-regulatory bodies.

In closing, our opinion is that an attempt to regulate wholesalers under our current license law is not advised.”

2. Approve for Filing Proposed Rule Amendment with Legislative Services Agency
Rule 790-X-2-.02 – Applications for Examination and Licensure

General Counsel Starla Van Steenis provided Commissioners with an overview of the proposed rule amendment to be considered. Currently, all licensing applications from individuals with convictions of felonies or crimes of moral turpitude are brought before the Commission for a hearing. The Commission has denied an overwhelming majority of the applications when the applicant owes fines or restitution or remains on probation or parole. The proposed rule would allow the Commission's investigations staff to reject those applications. However, the rejected applicant could still request a hearing before the Commission relative to the application within 30 days of the applicant's receipt of the notice of rejection. Applications from people convicted of a felony or crime of moral turpitude that do not owe restitution or fines and are no longer on probation or parole would continue to be automatically set for a hearing before the Commission.

This rule change would also allow the Commission's investigations staff to reject applicant's that provide false information on their application. Any applicant rejected by the staff would be able to request a hearing concerning their application before the Commission within 30 days of the applicant's receipt of the notice of rejection. Upon discussion of proposed rule amendment 790-X-2-.02, Commissioner Campbell made a motion to approve filing the amendment with Legislative Services Agency. Commissioner May seconded the motion and it passed unanimously 6-0.

3. 2022 Commission Meeting Dates

Chairman Harrison advised Commissioners that the 2022 calendar with proposed meeting dates was included in the packet. She asked that everyone look at these dates for the upcoming year and plan to finalize at the October meeting.

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

HEARINGS

Alabama Real Estate Commission VS. Tanesha Dionne Royal, Formal Complaint No. 3552

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

Tanesha Dionne Royal, Qualifying Broker, New Orleans, Louisiana 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 May made a motion to accept Ms. Royal's guilty plea. Commission Vice Chairman Cummings seconded the motion and it passed unanimously 6-0. Commissioner May made a motion to fine Ms. Royal \$250. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Vickie Ausmer, Revoked Salesperson, Request for Rehearing, Investigative File I-21-170

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Ausmer's request for rehearing, Vice Chairman Cummings made a motion to deny her request. Commissioner May seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Donald Lee Watson, Formal Complaint No. 3560

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

Donald Lee Watson, Salesperson, Dothan, Alabama 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 Vice Chairman Cummings made a motion to accept Mr. Watson's guilty plea and fine him \$250. Commissioner May seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Electia Bonita Love (PMI River Region) and Electia Bonita Love (Bealoaks Properties), Formal Complaint No. 3561

Electia Bonita Love (PMI River Region), Qualifying Broker, Montgomery, Alabama and Electia Bonita Love (Bealoaks Properties), Qualifying Broker, Montgomery, Alabama were 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 May made a motion to find Electia Bonita Love (PMI River Region) and Electia Bonita Love (Bealoaks Properties) guilty with no fine assessed. Commissioner Smith seconded the motion and it passed unanimously 6-0.

Kimberly Ann Spitzer, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-283

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Spitzer's application for a real estate salesperson's temporary license, Commissioner Harris made

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

Alabama Real Estate Commission VS. Steven Earl Hayden and Elist Realty Alabama LLC, Formal Complaint No. 3562

Assistant General Counsel Zack Burr advised commissioners that Mr. Hayden submitted an executed Not Appearing Waiver and entered a guilty plea. The charge against Elist Realty Alabama LLC was dropped. The facts of the case were presented.

Steven Earl Hayden, Qualifying Broker, Weatherford, Texas 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 May made a motion to find Steven Earl Hayden guilty and fine him \$250. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Kisa Harris, Request for Approval to Hold a Real Estate License after License was Previously Revoked, Investigative File I-21-307

General Counsel Starla Van Steenis advised Commissioners Ms. Harris received proper service of the Notice of Hearing; however, she did not show up for her hearing. Commissioner May made a motion to dismiss the request. Vice Chairman Cummings seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Jammie Reed Gray, Formal Complaint No. 3553

Assistant General Counsel Zack Burr informed Commissioners that proper service had not been obtained and the hearing would be continued.

NOT APPEARINGS

Brenda Lindsey, Application for Real Estate Salesperson's Reciprocal License, Investigative File I-21-275

Upon review and discussion of Ms. Lindsey's application for a real estate salesperson's reciprocal license, Commissioner May made a motion to approve her application. Commissioner Harris seconded the motion and it passed unanimously 6-0.

LaShundra Pullins, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-286

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

Canada Collins, Application for Determination of Licensing Eligibility, Investigative File I-21-303

Upon review and discussion of Ms. Collins' application for determination of licensing eligibility, Commissioner Campbell made a motion to approve her application. Commission Harris seconded the motion and it passed unanimously 6-0.

Aimee Thompson, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-305

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

Confirm November Meeting Date and Location for the Record: November 18, 2021, 9:00 a.m. in Montgomery, Alabama.

Commissioner Harris made a motion to confirm the November meeting for November 18, 2021 at 9:00 a.m. in Montgomery, Alabama. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Next Commission Meeting: Thursday, October 14, 2021, 9:00 a.m. in Montgomery.

There being no further business, Commissioner May made a motion to adjourn the meeting at 10:44 a.m. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Done this 23rd day of September 2021.

Carole Harrison, Chairman

Barbi Lee, Recording Secretary