



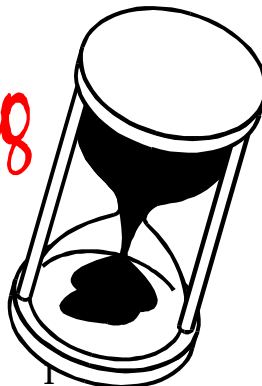
Fall 2000

RENEWAL 2000

Renewal Requirements is in accordance with Code of Alabama 1975, Section 34-27-35 and Rule 790-X-2-.16

- ❑ All permanent licenses will expire on September 30, 2000.
- ❑ Renewal forms will be mailed by August 1, 2000 – notify Commission if not received by August 10, 2000.
- ❑ Because of new computer software, NO CHANGES are permitted on the renewal forms. Changes will seriously delay processing time.
- ❑ The entire renewal form must be returned to the Commission – do not tear or separate the form for any reason.
- ❑ All renewal requirements (forms, fees, E&O verification, CE) are due in the Commission office
- by August 31, 2000, or postmarked by the U.S. Postal Service by that date. All renewal requirements received postmarked after this date will result in the license(s) being issued on inactive status on October 1, 2000.
- ❑ Renewal fees received after the August 31 deadline will be subject to a penalty fee of \$65 in addition to the renewal fee.
- ❑ Personal checks, business checks, cash or any certified funds are acceptable forms of renewal payment.
- ❑ Renewal fees are as follows:
Broker..... \$95
Salesperson..... \$75
Corporation,
Partnership and
Branch..... \$70
- ❑ Inactive Licenses must be renewed the same as an active license.
- ❑ **Temporary Salesperson licenses are not subject to renewal requirements.**
- ❑ Reciprocal licensees may submit proof of Errors & Omissions insurance by submitting a Certification of Licensure documenting membership in a "Group" Errors & Omissions Insurance program. Otherwise, licensees must submit a Certification of Coverage form.

Time is Running Out



EDUCATION CORNER

By Pat Anderson, Education Director

CE Due By August 31, 2000: Check Your Credit On The Web!

It's that time again! Many of you have completed all or part of your continuing education courses but there are a lot of you out there who have not taken any of it. Time is passing by. You need to get it done now!

How to Check Your CE Credit:

Many of you are calling the Commission office to find out how many hours of continuing education we have on record for you. In fact, the education department is getting about 75 of these calls per day. Now there is quick, easy, free way to do it and you can check 24 hours a day (if you happen to be awake at 2:00 a.m. with nothing else to do). Go to www.arec.state.al.us and click on License Search. From there you can put in your last name or license number. Find your name in the list that comes up and click on it and presto! Your continuing education credit appears. It is that easy.

Here is the rest of the story. If you call the Commission office to check on your continuing education credit, you will be told that you need to send a written request and a \$10 fee for a printout and it will be mailed to you. The Commission simply does not have staff resources to dedicate to looking up CE for 16,000 active licensees and giving you the information by telephone. That is why we put it on the web for your easy access.

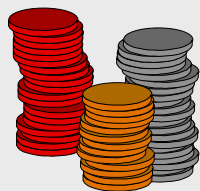
What CE to Take: How could anybody be confused at this point, but let's take it from the top one more time. For this license renewal, those required to take continuing education must complete twelve hours. That twelve hours consists of the following: 3 hours in Risk Management; 3 hours in one of the 3 following mandatory courses – License Law/Trust Funds, RECAD or Fair Housing; and 6 hours in approved electives. For licensees

who completed twelve hours of continuing education (6 hours mandatory and 6 hours elective) prior to September 30, 1999, you do not have to take Risk Management for this renewal. Everybody else does (except those who are exempt due to age).

Missing the August 31

Deadline: NOT ADVISABLE! There will be no continuing education courses offered in September so don't even think about missing the August 31 deadline. If you renew your license by August 31 but fail to take all of your required CE and mail in the certificates by August 31, your license will be issued to inactive status on October 1. That means you are out of business until you complete your continuing education and reactivate your license. During this time of the year, reactivation takes two to four weeks. Do not set yourself up for an unwanted vacation.

OFFICIAL Notice Of Practice From The Alabama Real Estate Commission



ATTENTION ALL BROKERS!

Real Estate Commission auditors look for TRUST ACCOUNT shortages everyday, including property management accounts. You cannot on behalf of your client pay for any repairs on a property you are managing if that client does not have funds being held by you in trust equal to the amount of the cost of the repair, unless you choose to advance the money from your own general account and invoice the client for reimbursement later. It is a violation of law to use money held in trust for the benefit of any client other than the one for whom it is being held in trust. These violations result in formal complaints, hearings and disciplinary actions.

** This statement was adopted by the Alabama Real Estate Commission April 14, 2000, and directed for distribution to all Qualifying Brokers, prelicense instructors, License Law and Risk Management CE instructors, and all commonly read statewide real estate related publications.*

IS THAT YOUR FINAL ANSWER? OR IS IT FRAUDULENT SUPPRESSION?

BRIEFLY LEGAL

By Charles R. Sowell, General Counsel

Here is the situation. You are the listing agent. Your company has an agency relationship with the sellers of a house that has a basement. You are showing it to hopeful buyers. While looking at the somewhat dark basement, one of them asks, "Does the basement leak?" You know it does, but before you answer you think to yourself; "Oh no. That is the only problem with this house. Otherwise it is perfect, and a great buy for these people." You remember what the sellers told you. They said it had leaked some, and only after that freak hurricane. But you saw three or four high water stain marks a foot or so above floor level. You saw other evidence of leaking and water damage, too.

Here are some possible answers to the buyers' question:

1. I am not sure. It has not really rained since we listed it.
2. This house is being sold "as is." We are making no representations about its condition.
3. We need to get back upstairs. There is a lot more to see.
4. Maybe just a little in flooding conditions.
5. This house is a great buy for you.

Are any of these your final answer? If so, the buyers' attorney could be a millionaire. All these answers are likely fraud under Alabama law. Some of the best authority in this

area is *Cato v. Lowder Realty Co.*, 630 So2d 378. In this case the buyers sued the sellers and the company over a leaky roof and defective furnace. The case is based on statutory Alabama fraud



law, which says that suppression of a material fact, which a party is under an obligation to communicate, constitutes fraud. The statute is Section 6-5-102 Code of Alabama 1975, as amended. In this case the court discusses caveat emptor, and goes on to say, "Seller generally has a duty to disclose defects to a buyer only if a fiduciary relationship exists between the parties or if the buyer specifically inquires about a material condition concerning the property, in which case the seller has an obligation to disclose known facts."

The court then cites *Boswell v. Coker*, 519 So2d 493. This case says; "Where one responds to an inquiry, it is his duty to impart correct information, and he is guilty of fraud if he denies all knowledge of a fact which he knows to exist, or if he gives equivocal, evasive, or misleading answers calculated to convey a

false impression, even though literally true as far as they go, or if he fails to disclose the whole truth." Let me cite one more case. "This section does not require proof of intent to deceive, as the breach of an obligation to disclose is sufficient to trigger liability for fraudulent suppression." *Intercorp, Inc. v. Pennzoil Co.*, 877 F.2d 1524. If you are having trouble understanding the court's language, allow me to translate. If you are asked a specific question, the court is saying, "Spill your guts."

Let's summarize the law on fraudulent suppression in Alabama. If you are an agent for the buyer or seller, you have a duty *without being asked* to disclose known, material facts to your client. Regardless of agency relationships, you have a duty to accurately and completely answer any specific questions about known, material facts regarding the property.

Now back to our question. The buyers asked, "Does the basement leak?" Your final answer should be; "Yes. The sellers said it has leaked, and there is evidence of leaking and water damage." In the Lowder case the buyer did not ask anyone about the condition of the roof or the furnace. *Lowder Realty* was an agent for the sellers. For these reasons, neither the sellers nor *Lowder Realty* were held liable.

DISCIPLINARY ACTIONS TAKEN

February through June 2000

Name: Lou Thorne, Qualifying Broker, Birmingham, Alabama

Date of Hearing: February 17, 2000

Disposition: Ms. Thorne was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. by commingling money belonging to others with her own funds and failing to deposit and properly account for at all times money coming into her possession which belonged to others.

Name: Binion Clark Langus, Salesperson, Mobile, Alabama

Date of Hearing: February 17, 2000

Disposition: Mr. Langus was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16) by 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.

Name: James Mark Jones, Qualifying Broker, and Jones Prestige Properties, Inc., Auburn, Alabama

Date of Hearing: March 17, 2000

Disposition: Mr. Jones was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at the time an offer becomes a



contract and is signed by the parties.

Name: Tom A. West III., Qualifying Broker, and Tom West Company, Inc., Dothan, Alabama

Date of Hearing: March 17, 2000

Disposition: Mr. West was found guilty and fined \$500 for violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at the time an offer becomes a contract and is signed by the parties.

Name: Bonnie J. Wilson, Salesperson, Decatur, Alabama

Date of Hearing: March 17, 2000

Disposition: Ms. Wilson was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16) by 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.

Name: E. B. Odom, Jr., Qualifying Broker and E. B. Odom, et al., Incorporated, Opelika Alabama

Date of Hearing: March 17, 2000

Disposition: Mr. Odom and E. B. Odom, et al., Incorporated, were found guilty and fined \$250 for violation of Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at the time an offer becomes a contract and is signed by the parties.

Name: Richard Lee Stafford, Inactive Salesperson, Hoover, Alabama

Date of Hearing: March 17, 2000

Disposition: Formal complaint dismissed.

Name: Mary B. Dubose, Qualifying Broker, Elba, Alabama

Date of Hearing: March 17, 2000

Disposition: Ms. Dubose was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(19); Rule 790-X-3-.04 for a real estate broker to fail to use the required estimated closing statements; Section 34-27-36(a)(19); Rule 790-X-3-.13 for a real estate broker to fail to use the required Real Estate Brokerage Services Disclosure Forms Section 34-27-36(a)(19) for a real estate broker to fail to include in all sales contract forms the agency disclosure clause required by Section 34-27-8(c); Section 34-27-36(a)(19) for a real estate broker to fail to have in place the RECAD Agency Office Policy required by Section 34-27-83; Section 34-27-36(a)(8)a. for a real estate broker



to commingle money belonging to others with her own funds Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties.

Name: Gail Oris Carlsen, Salesperson, Columbus, Georgia
Date of Hearing: April 14, 2000
Disposition: Ms. Carlsen was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16) by 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.

Name: Howell Realty, Inc., d/b/a RE/MAX Group, and Hoyt W. Howell, Jr., Qualifying Broker, Anniston, Alabama
Date of Hearing: April 14, 2000
Disposition: Howell Realty, Inc., d/b/a RE/MAX Group, and Hoyt W. Howell, Jr., were found guilty and fined \$1000 for violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at

the time an offer becomes a contract and is signed by the parties.

Name: Charles D. Storey, Qualifying Broker, Tuscaloosa, Alabama
Date of Hearing: April 14, 2000
Disposition: Charles D. Storey was found guilty and fined \$1000 for violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at the time an offer becomes a contract and is signed by the parties.

Name: Hazel L. Etheridge, Salesperson, Millbrook, Alabama
Date of Hearing: May 12, 2000
Disposition: Ms. Etheridge was found guilty and fined \$250 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16) by 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.

Name: South First Limited One d/b/a RE/MAX Huntsville, and

Charles V. Lanza, Qualifying Broker, Huntsville, Alabama
Date of Hearing: June 8, 2000
Disposition: South First Limited One d/b/a RE/MAX Huntsville, and Mr. Lanza were found guilty and fined \$500 for violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b., for a real estate broker to fail to deposit and account for at all times all funds to be held in trust for other parties. Section 34-27-36(a)(19) and Alabama Real Estate Commission Rule 790-X-3-.03(2) for a real estate broker to fail to deposit an earnest money check at the time an offer becomes a contract and is signed by the parties.

OTHER ADMINISTRATIVE ACTIONS

Determination for Licensing Eligibility

Approved.....6
Denied.....1

COMPLAINTS AND INQUIRIES

From Licensees.....1475
From Public.....831
Anonymous.....31
Lawsuits.....77



Real Estate Coalition and Interchange Bring Effective Forum for Referral Fee Issues

After-the-fact referral fees have come under fire nationally for several years. Because the payment of referral fees has traditionally not been guided by consistent standards of business practice, discrepancies in determining the origin or existence of a referral fee agreement occur. To address the referral fee issue, the Employee Relocation Council (ERC) developed the Real Estate Coalition for Cooperative Business Practices, an industry-led group of concerned and dedicated corporations and professional services firms. On behalf of its membership, the Coalition advocates its principles at the local, state and national levels with real estate commissions, legislatures, governmental leaders and professional associations.

The Coalition has forged a strong relationship with the Association of Real Estate Licensing Law Officials (ARELLO). In fact, its innovative work with ARELLO led to a mutual agreement of proper business: the *Policy Statement on the Collection of Real Estate Referral Fees*.

ARELLO representative Sandy Taraszki of Howard Hanna Real Estate notes that, "A successful referral fee policy should be based upon the assumption that certain business procedures have been followed which create an enforceable obligation for the payment of referral fees. ARELLO and the Coalition have managed to create this effective policy, with which hundreds of Coalition members have already pledged to comply. And the Coalition should be commended for further enhancing this effort by creating the 'Interchange' in a proactive move to provide its constituents with a forum to resolve referral fee issues."

The Coalition's Interchange was created to facilitate the communication of after-the-fact referral fee concerns and the collection of information that will aid in the Coalition's efforts. Through the Interchange, it is possible to ensure swift and equitable problem resolution by bringing the issue to the attention of the appropriate executive from relocation service firms.

Pamela J. O'Connor, SCRP, president & CEO of RELO, the largest national real estate network for independent brokers said, "We have found that our member firms have been successful in securing waivers of after-the-fact referral fees by referencing the Coalition's policy statement to relocation companies who have attempted to charge such fees. In fact, the policy statement is so effective that referring to it has so far pre-empted our members' need to use the Interchange, though I believe the very existence of such a forum is highly effective in eliminating occurrences of unfair practices. No one wants to be spotlighted for practices which the industry has identified as being inappropriate."

"I think the absolute worst thing that happens in the relocation industry is when a transferee is pulled into one of these referral fee issues, which is exactly the opposite of our collective goal – to minimize the transferee's stress and inconvenience. From the real estate broker's perspective, the Interchange provides an opportunity to be heard, and to have disputes resolved fairly and on the basis of the facts. Any time an open forum for communication is established and utilized by all parties to a dispute, the chance of reaching a mutually acceptable resolution increases enormously,

giving us all greater faith in 'the system'," said Sheila Barr, director, marketing & relocation, Patterson-Schwartz Real Estate.

For information on the Coalition and the Interchange, visit the Coalition's Web site at <http://coalition.erc.org>. This will allow users to access the Interchange and download the Coalition's pledge and other communication about the Coalition's efforts. To learn about the Employee Relocation Council, visit its Web site at www.erc.org or call 202/857-0857.

ERC is a nonprofit professional membership organization addressing workforce transition issues and the effective relocation of employees worldwide. ERC's current membership includes corporations and government and military agencies that relocate their employees, as well as nearly 11,000 individuals and companies from the relocation industry including real estate appraisers and brokers, area and personal counseling services, consulting services, home inspection companies, household goods movers, mortgage services, national home purchase firms, and a variety of other relocation-related services.

Reprinted Article



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