



# THE UPDATE

ALABAMA REAL ESTATE  
**COMMISSION**  
 EMPOWER, CONNECT, AND EDUCATE

## COMMISSION WELCOMES NEW CONSUMER MEMBER



*Alabama Real Estate Commission Executive Director Patricia Anderson (left) administers the oath of office to the Commission's new Consumer-at-Large member Capt. Vaughn T. Poe.*



The Alabama Real Estate Commission is proud to welcome a new Commissioner. **Capt. Vaughn T. Poe** of Eutaw, Alabama was appointed by the governor and recently

confirmed by the Alabama Senate. He is now serving as the Commission's Consumer-at-Large member and his term is effective through September 30, 2021.

Capt. Poe was born and raised in West Alabama, and his family has roots in Hale County dating back to 1831. Immediately following graduation from Akron Community High School in Akron, Alabama, Capt. Poe enlisted in the U.S. Marine Corps. During his twenty-one years of active service, Capt. Poe led as many as 150 Marines in combat, and underwent many global and domestic assignments. He is a highly decorated officer, achieving a great number of accolades for his many assignments and combat tours.

After his military career, Capt. Poe retired to Hale County and started PoeFolks Cattle Company LLC which produces both registered and commercial Brangus cattle. He is also a Cyber Security Engineer for The University of Alabama in Tuscaloosa, where he is currently completing a Ph.D. program in the field. Poe is a member of numerous professional organizations, such as the Federal Bureau of Investigation (FBI) InfraGard and Information Systems Security Association (ISSA). He has developed his skills with many current certifications, including Networks +, Global Security Leadership Certification (GSLC) and Information Assurance

Manager (DoD IAM). His social activities include skydiving, cattle farming, traditional English fox hunting, debate, and white-hat hacking.

Commissioner Poe says, "I constantly remind myself that I'm here to do the right things, for the right reasons, every day. Leadership is about people; motivating people to have the courage to do the things that they otherwise could not do."

Capt. Poe joins current Commissioners, **Reid Cummings** (District 1), **Danny Sharp** (District 2), **Carole Harrison** (District 3), **Nancy Wright** (District 4), **Steve Cawthon** (District 5), **Bill Watts** (District 6), **Cindy Denney** (District 7) and **Clif Miller** (Industry Member-at-Large).



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# Failure to Collect Earnest Money

There has been a disturbing increase in contact from consumers and licensees regarding a particular earnest money issue in brokerage transactions. This issue involves the failure to collect earnest or binder funds in a sales transaction. Since this issue is firmly based in consumer protection, it is important that licensees representing both sides of a sales transaction know how to handle the issue.

The reports that we have been getting are that earnest monies agreed to in purchase agreements by purchasers are not being paid to either licensee involved in the transaction. Unless the purchase agreement has an alternative timeframe for the payment of these funds, then the earnest money should be collected when the contract is formed. A buyer that agrees to pay earnest money in a purchase agreement, and then fails to do so, could be considered in breach of the purchase contract. The following is why this issue is important and how it should be handled.

If you are working with a buyer and you are aware that the buyer has not paid the agreed earnest money, then it is your obligation under Section 34-27-84(a)(1) and (2) *Code of Alabama 1975* to inform the seller or the seller's licensee that the funds have not been paid. This subsection of the Alabama Real Estate License Law is an obligation all real estate licensees have to all parties, whether the licensee is assisting or representing the party or not. Section 34-27-84 states:

**Licensees shall have all the following obligations to all parties in a real estate transaction:**

- (1) To provide brokerage services to all parties to the transaction honestly and in good faith.
- (2) To exercise reasonable skill and care in providing brokerage services to all parties.

If a buyer's licensee fails to inform the seller within a reasonable time after the funds are due to be paid that the buyer has not paid the earnest money, then the licensee could be in violation of Section 34-27-84.



The licensee who knows that their buyer has failed to pay earnest money would not be performing their brokerage services honestly and in good faith and would, perhaps, be failing to exercise reasonable skill and care. If you, as a buyer's licensee, find yourself in this situation I would recommend that you inform the seller and/or the seller's licensee in writing that your buyer has failed to fulfill one of the agreed upon terms of the contract. I would also send a copy of the written notice to the buyer so that they can be put on notice that the seller is aware of the situation.

If you are the licensee working with a seller and you are informed that a buyer has failed to pay earnest money, then you have several obligations. First, you need to make sure the seller knows that the buyer has failed to fulfill one of their obligations under the purchase agreement. Again, I recommend that you make sure this notice is given to the seller in writing so there can be no questions regarding the notice. Second, you need to ask the seller how they would like to respond to this situation and if the seller is unsure then refer the seller to an attorney for advice.

Remember that Section 34-27-84 includes obligations of all licensees to all parties in real estate transactions. This means that even if you are working with a buyer, you still have the obligation to provide brokerage services honestly and in good faith, and to exercise reasonable skill and care to the seller in a real estate transaction. These obligations also apply to a buyer from a licensee working with a seller.

# Had a Lawsuit Filed Against You? The Commission Must Know

By Mandy Lynn, Assistant General Counsel

As a licensee you have an ongoing obligation to notify the Commission of certain legal proceedings. The Commission must know about all lawsuits filed against you. Section 34-27-31(j) of the Alabama Real Estate License Law requires that at the beginning or institution of a criminal matter, a licensee must notify the Commission within ten days. Additionally, you must notify the Commission at the beginning or institution of a civil matter if the subject of this suit involves a real estate transaction or the goodwill of an existing real estate company. If you have any questions as to whether your suit meets these requirements, contact the Commission's legal division for guidance. Your notice must be sent within ten days by certified mail and must include the civil summons and complaint or, if a criminal matter, the charge, indictment or information.

The second notification requirement is at the conclusion or disposition. Notice must be made to the Commission within ten days after a criminal verdict or civil judgment or dismissal of the criminal or civil action. Notification must include a copy of the court order or any other documentation. This requirement is found in Section 34-27-31(k). Again, if there are any questions about this Section, please contact our legal division.



## EDUCATION CORNER

By Ryan Adair, Education Director

# An Easy Item to Cross Off Your To-Do List

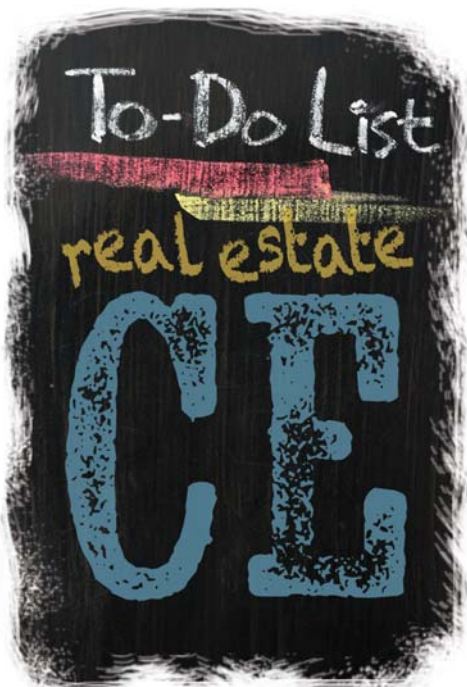
Many Americans eagerly make challenging goals for their to-do lists only to see them fade away as time progresses. For example, the commitment to healthy meals and daily exercise quickly deteriorates into eating mega-sized fast food meals and walking around the block two days a week at most. Sound familiar?

It is time to replace those out-of-reach goals with a more attainable resolution involving something less challenging but just as beneficial. Real estate continuing education (CE), which is required for an active license, can easily be placed at the bottom of the all-important to-do list, remaining unaddressed until a month before the actual CE deadline. Make real estate CE a new resolution with these goals:

1. Start taking CE now to satisfy the 15-hour CE requirement early.
2. Take the required six hours of Risk Management courses and then keep checking the Commission's website for other scheduled courses of interest.
3. Take courses that you know will provide needed information instead of just taking whatever is available at the last minute.

Finding courses is easy using the course search tool on the Commission's website. This feature is located under the Professionals menu on the Education submenu. Use it to narrow down your courses by city, course name and course type.

Now is the time to begin taking CE courses. Instead of leaving this at the bottom of your to-do list, take CE courses now and cross that requirement off your list for both 2017 and 2018. Not only will that be one less thing to do, it may also result in a better real estate practice and better sleep, both of which will inevitably put a smile on your face.





## ATTENTION QUALIFYING BROKERS: Review New Licensee Applications Before You Sign

By Anthony Griffin, Licensing Administrator



After individuals pass a license examination, such as the Temporary Salesperson, Reciprocal, or Broker exam and you are asked to sign an application to become their Qualifying Broker, please be sure to double-check the information. Before you sign, review the application with them and ensure that they have completed it as required. Make sure they have all documentation attached and requested fees as stated on the instructions page.

To further assist, please have them read the License Application Instructions on the Commission's website under the Professionals menu. In this section on the website they can also view instructions regarding the fingerprint process and specifics about the additional materials they are required to submit. When applications are received with incomplete information or missing the required documentation, processing is delayed and they are subject to be returned by the Commission.

Additionally, when Temporary Salespersons ask you to sign an application for their Original Salesperson's license, please ensure that they have completed the 30-hour post license course and have the correct fee amounts as directed on the application. Reviewing first helps you, the licensee, and the Commission by ensuring that applications are complete and correct.

# LICENSE LAW DEADLINES

## 90 DAYS

- ▶ **Persons who pass the licensing examination** must file the license application with the Commission within 90 days after passing the exam.

## 6 MONTHS

- ▶ **Temporary salesperson licensees** must complete the post license course and submit an application for an original salesperson's license within six (6) months of issuance of a temporary license. If this requirement is not met, the temporary license expires and is placed on inactive status. The six (6) months begins counting on the first day of the month following the month the temporary license was issued and concludes on the last day of the sixth month.
- ▶ **Students** must take and pass the salesperson's exam within six (6) months of completing the 60-hour prelicense course.

## 1 YEAR

- ▶ **A temporary salesperson's license** lapses if the post license course is not completed and an original license issued within one year of issuance of the temporary salesperson's license. The one year begins counting on the first day of the month following the month the temporary license was issued and concludes on the last day of the twelfth month.
- ▶ **Students** have one year after enrolling in a prelicense course to complete it or the student will receive no credit for classes completed and must begin the course again.

# Beyond Protected Classes: HUD Addresses “Limited English Proficiency” Fair Housing Concerns

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The U.S. Department of Housing and Urban Development, Office of General Counsel, has issued a guidance document warning of potential Fair Housing Act (FHA) liabilities that may arise from unlawful discrimination against persons with “Limited English Proficiency” (LEP).



In an earlier guidance paper examining criminal history-based housing discrimination, HUD's Office of General Counsel acknowledged that the existence of a criminal record is not one of the seven protected characteristics under the FHA [i.e., race, color, religion, sex, disability, familial status and national origin] but concluded that certain housing-related practices based on a person's criminal past may have an unlawful disparate impact on minorities. Similarly, HUD acknowledges in its new LEP guidance that persons with limited ability to read, write, speak, or understand English are not a protected class under the FHA, but may be protected by its prohibitions against discrimination based on national origin or race.

HUD observes that the link between national origin and LEP is “fairly intuitive,” but is also supported by statistics. Over twenty-five million persons in the United States, approximately nine percent of the population, are LEP. Approximately 16,350,000 speak Spanish, 1,660,000 speak Chinese, 850,000 speak Vietnamese, 620,000 speak Korean, 530,000 speak Tagalog, 410,000 speak Russian, and other LEP persons speak dozens of other languages. Citing statistics comparing LEP rates among various segments of the U.S. population, HUD concludes that English language-based housing discrimination generally relates to race or national origin, both of which are FHA-protected classes.

The new HUD guidance examines language-based housing

discrimination in the context of both intentional discrimination and practices that have an unlawful discriminatory effect. Intentional discriminatory practices may include, for example, applying a language-related requirement to people of certain races or nationalities; posting advertisements such as “all tenants must speak English.” or turning away housing applicants, such as potential tenants, who are not fluent in English. HUD also explains that lack of English proficiency is often used as a “proxy” for prohibited race or national origin discrimination, thus courts have held that justifications for language-based discrimination warrant close scrutiny. For example, LEP persons may speak English well enough to conduct essential housing-related matters or have a household member who can provide assistance, “...so a blanket refusal to deal with LEP persons...is likely not motivated by genuine communication concerns.” And, says HUD, if a housing provider or resident can access free or low-cost language assistance services, any cost-based justifications for refusing to deal with LEP persons would also be “immediately suspect.”

FHA liability also can arise from policies or practices that have an unjustified discriminatory effect, or “disparate impact,” on protected classes; even absent any intent to discriminate. HUD notes that, unlike language requirements that have been upheld in some business/employment cases, English proficiency is likely unnecessary in the context of a real estate purchase and

*(Continued on page 6)*

## **Beyond Protected Classes: HUD Addresses “Limited English Proficiency” Fair Housing Concerns**

*Continued from page 5*

sale transaction, for example, because there is no ongoing relationship between the buyer and seller. HUD adds, “Nor is it likely necessary in the landlord-tenant context where communications are not particularly complex or frequent or where, for example, a landlord employs a management company with multilingual staff or otherwise can access language assistance.” Similarly, says HUD, refusing to allow an LEP borrower to have mortgage documents translated, restricting a mortgage borrower’s use of an interpreter, and requiring that an English speaker cosign a mortgage, are all examples of practices that are unlikely to survive FHA scrutiny.

HUD’s guidance paper also suggests examples of reasonable alternatives to discriminatory LEP practices; such as allowing a reasonable amount of time to take a transaction document to be translated, obtaining written or oral translation services, drawing upon the language skills of a housing provider’s staff members, or agreeing to communicate with an English-speaking family member or other person instead of refusing to deal with a person who does not speak English.

Much of the information in the new HUD guidance document is supported by citations to court decision, census data and other resources that have been omitted here, but are available through the “new LEP guidance” link <https://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>. — ARELLO®  
*Boundaries* editor

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## Logging in to Online Services is a Spring Breeze

It is a breeze to access the Commission’s Online Services. However, if you are having trouble logging in, please look over these steps to make sure everything is correct.

To log in, you must have first created a valid username and password. If you have never done this, click on Online Services Login from the main page and enter your license number in the username field. When you enter your license number make sure you enter it without the dash zero or number which follows the nine-digit number. For example, if your license number is 000045555-2 then you should enter it as 000045555 or 45555. You will then be directed to a registration page where a username and password can be created. Once your username and password have been created you can immediately log in to the available services.

If you have already created a username and password and cannot remember your login credentials, you can reset your password by selecting the option at the bottom of the login application. Begin by entering your username; however, if you have forgotten your username, you can enter your license number or email address and proceed. You should receive an email within thirty minutes of submitting your request with instructions on completing the resetting of your password. If you do not find the email in your inbox, check to make sure that it is not in your spam or junk mail folder. If you do not receive an email after completing these steps, or you are having trouble with any other part of the process, then you should contact the Commission for assistance. We are happy to help.





# DISCIPLINARY ACTIONS



*Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Update, a complete description of the facts cannot be reported below.*

## DISPOSITION

The below were found guilty of violating 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.

### Erica Lee Roebuck

**License No. 000107765**

Salesperson; Gadsden, Alabama  
Date of Hearing: March 23, 2017

**Fined \$250**

### Steven McDaniel

**License No. 000109962**

Salesperson; Huntsville, Alabama  
Date of Hearing: February 14, 2017

**Fined \$250**

### John Fletcher Elkington

**License No. 000095870**

Salesperson; Memphis, Tennessee  
Date of Hearing: November 30, 2016

**Fined \$250**

## DISPOSITION

The below was found guilty of violating Rule 790-X-3-.01 through Section 34-27-36(a)(19) for changing the address of his place of business as set out on his numbered license certificate and failing to notify the Commission in writing within thirty (30) days after such change was made.

### John R. Park

**License No. 000058572**

Qualifying Broker; Atlanta, Georgia  
Date of Hearing: February 14, 2017

**Fined \$250**

## DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)a. for failing within a reasonable time, to properly account for or remit money coming into their possession which belongs to others, or commingling money belonging to others with their own funds.

### Renee S. Higginbotham

**License No. 000076194**

Qualifying Broker; Oneonta, Alabama  
Date of Hearing: January 19, 2017

**Fined \$500**

### M & R Realty LLC

**License No. 000093400**

Company; Oneonta, Alabama  
Date of Hearing: January 19, 2017

**Fined \$500**

### Perry Richard Mason

**License No. 000084001**

Qualifying Broker; Orange Beach, Alabama

Date of Hearing: October 20, 2016

**Fined \$2,500**



# OTHER ADMINISTRATIVE ACTIONS

## NOVEMBER 2016 - FEBRUARY 2017

### APPLICATION FOR LICENSURE (Includes Applications for Temporary, Broker or Reciprocal licenses.)

These numbers represent persons who have come before the Commission requesting hardship extensions to renew licenses, complete exams or submit applications past the deadline. They also represent those who request applications for change in status (i.e. salesperson to broker).

<b>APPROVED</b> .....	<b>4</b>
<b>DENIED</b> .....	<b>0</b>

### DETERMINATION OF ELIGIBILITY (Applications for Licensing Eligibility Determination)

These numbers represent persons who come before the Commission requesting approval to be licensed, mainly persons who have criminal prosecutions show in their criminal background checks. They have an opportunity to explain to Commissioners the circumstances surrounding these incidences and be granted permission to proceed with the licensing process or not, based on the Commissioners' ruling.

<b>APPROVED</b> .....	<b>4</b>
<b>DENIED</b> .....	<b>1</b>

### COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

<b>FROM LICENSEE</b> .....	<b>1,161</b>
<b>FROM PUBLIC</b> .....	<b>558</b>
<b>ANONYMOUS/COMMISSION</b> .....	<b>148</b>

# THE UPDATE

ALABAMA REAL ESTATE

## COMMISSION

EMPOWER, CONNECT, AND EDUCATE



**EMPOWER** Empowering the real estate professional and the consumer.



**CONNECT** Connecting the real estate professional and consumer to the resources they need.



**EDUCATE** Educating the real estate professional and the consumer.

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**Nancy Wright**, Cullman

### ALABAMA REAL ESTATE COMMISSION

**Patricia Anderson**, Executive Director  
**Teresa D. Hoffman**, Asst. Executive Director  
**Vernita Oliver-Lane**, Editor  
**Lori Moneyham**, Associate Editor

1201 Carmichael Way  
Montgomery, Alabama 36106  
Phone: 334.242.5544  
Fax: 334.270.9118

[arec.alabama.gov](http://arec.alabama.gov)  
[arec@arec.alabama.gov](mailto:arec@arec.alabama.gov)



### THE UPDATE

is published for the benefit of the Alabama Real Estate Industry by the Alabama Real Estate Commission.

### COMMISSION MEETINGS OPEN TO THE PUBLIC

All Commission meetings are open to the public and that includes real estate licensees. Commissioners welcome and encourage attendance and observation by any licensee in any location. Locations, dates, and times can be found on the Commission's website at [arec.alabama.gov](http://arec.alabama.gov).

### REAL ESTATE LICENSES EXPIRE SEPTEMBER 30, 2018

Remember to renew all broker, salesperson, and company licenses in every even-numbered year.

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Permit 286

## COMING SOON

### Applicants for Temporary Salesperson or Broker License to Utilize Digital Fingerprint Service

By Teresa D. Hoffman, Assistant Executive Director



Currently, applicants seeking to obtain a salesperson license; those already licensed salespersons who complete pre-license course work, pass the broker's examination and apply for an Alabama Broker's license; and those applicants with a problematic background who are seeking a determination of eligibility from the Commission prior to taking their coursework must find a law enforcement office to roll their prints and submit them, through the Commission, for a State of Alabama background check. Coming soon, applicants will utilize a more convenient and efficient digital fingerprint collection service to submit to a fingerprint-based federal and state criminal background check, mandated by Section 34-27-32 *Code of Alabama*.

We are pleased that soon we will be able to offer our license applicants the services of 3M Cogent. We believe that applicants will find the approximately 57 fingerprint scanning sites to be more convenient, the scans to be more fail proof and the processing time to be significantly improved. Additionally, background searches will not only be Alabama records but will include the federal records of the FBI as well. **Because of the efficiencies of this new service, license issuance will not proceed until the Commission has received the criminal history record information.**



**PLEASE NOTE: This procedure will continue to affect only those who are currently required to submit fingerprints. It does NOT include individuals with a Temporary Salesperson's license who are applying for an Original Salesperson License and those who are already licensed who must simply renew a license.**

Because this innovation requires coordination between 3M Cogent, the Alabama Law Enforcement Agency, the FBI and the Commission it is unclear, at this time, when this service will launch. We will update you through our prelicense schools, our website and various communications through our office. Stay tuned!