



by Starla Van Steenis, Deputy Attorney General

WHEN IS TOO MUCH MONEY NOT A GOOD THING?

When an overage is found in your trust accounts – that’s when. Recently, our auditors have encountered many companies that have overages in these accounts and no explanation as to why the money is there or from where it originated. If the source of the money is unknown, then the intent of a trust account is nullified. Escrow is defined by the *New Oxford American Dictionary* as a deposit or fund held in trust or as a security. In plain language people are trusting you to keep their money safe. A trust account should only hold escrow funds (other people’s money) – not your own.

The most certain way to accomplish this goal is to reconcile your trust accounts every month. In an advisory opinion regarding trust accounts the Commission asserts that *the goal of all trust fund records of the qualifying broker shall be to identify, individually and collectively, the total amount of all trust funds held for others and where those funds are being held by the qualifying broker at the time of a monthly account reconciliation of trust accounts.* This advice necessitates a quick refresher on reconciliation. Please remember to not only reconcile your bank statement with your checkbook, but it must also be reconciled against your liability. Further, disputed contracts are still a liability if you are holding earnest money from them. For as long as earnest money is still being held in trust for a failed transaction that contract/file should be retained.

An overage negates this goal of monthly reconciliation because it is impossible to make sure all funds are being held only for others. An overage may indicate that monies in the trust account are being commingled. Commingling is defined in the *New Oxford American Dictionary* as mixing or blending. This simply occurs by your money and others’ money remaining in the same account.

I use the word may because there is a very simple explanation and defense to excess funds in a trust account. That explanation is disputed funds. These funds can remain in trust until the parties or a court determine to whom they are owed. It is very important to keep an ongoing log as to the disputed funds you are holding for the public. When an overage is found by an auditor, the Commission will send you a letter asking for an explanation of the overage. If you can demonstrate that the overage is disputed funds, it is not an overage and no further action is taken.

Beyond the scenario I just described an overage can result in a violation of license law just as quickly as a shortage can. Let me paint a picture of how an overage can lead to a violation. One of the most

common reasons for overages is not drawing out management fees. Additionally, an overage occurs when a property management company owns its own properties and the rents from those properties are left in the trust account instead of removed. Failure to remove management fees or rental income in a timely manner creates commingling. Section 34-27-36(8)a. clearly states that it is a violation of license law to commingle funds “belonging to others with his or her own funds.” A clearer example of this violation does not exist than the ones listed above.

To avoid this situation the advisory opinion states that *the qualifying broker, as part of their accounting of trust funds, should once monthly or within 30 days of receiving or disbursing trust funds, withdraw from the trust funds all commissions earned, rental management fees earned, interest earned, and other company or broker monies that may be maintained.* If this advice is followed, an overage due to commingling can easily be avoided.

So how much is too much? In any given trust account, the amount in excess of trust monies should not exceed \$1,000 above the minimum balance required by the financial institution for the account.

Please know that if you need any assistance in understanding your trust accounts you can contact one of our auditors or the legal division.



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How Should Qualifying Brokers Assist New License Applicants?

If you are a qualifying broker taking responsibility for new licensees, it is important and expected that you make yourself familiar with the application process by reviewing the information on the Commission's website. From the website menu, you can review a sample of the applications that applicants receive at the testing center after passing the exam. By selecting "Consumer" and "Become a Licensed Real Estate Professional" from the website menu, you will be able to review the sample applications for each license type. To view detailed instructions for applicants you can go to the "Professionals" and "Licensing" menu and select "License Applications Instructions." Make sure applicants have read this section as well since it contains essential information on completing the fingerprint/background check process and specifics about the materials they are required to submit with their application.

Before you sign their application accepting responsibility, review the application with them and ensure they have completed it fully and legibly. Make sure they have attached all required documentation. If they have a criminal or license discipline record in their past, inform them that they must include a complete explanation with the application. We cannot discuss an individual's arrest record with anyone other than the individual so, rather than calling on their behalf, encourage them to communicate with the Commission themselves. Finally, make sure that the check or money order is filled out properly and signed by the authorized individual.



Make sure you have signed the application in the appropriate place and the company name and address are correct. If you cannot sign the original application page that requires your signature, we will accept a copy of the application page and your signature or digital signature.

When applications are received with incomplete information or missing the required documentation or fees, processing is delayed and they are subject to be returned by the Commission. Your assistance in reviewing these applications helps you, the applicant, and the Commission by ensuring each application is complete and correct.

Qualifying Broker Transfer Form

Because qualifying brokers are often responsible for other licensees, they cannot conduct online transfers to another company or go inactive. Also, associate brokers cannot conduct online transfers to become the qualifying broker for a company or branch. Therefore, we have a Qualifying Broker Transfer form that can be mailed to the Commission office to complete these types of requests. In a situation where a qualifying broker will transfer to another existing or new company or branch, they will mail all appropriate forms and fees to the Commission with the Qualifying Broker Transfer form.

In a situation where an associate broker will become the qualifying broker of an existing or new company or branch, they will submit all documents and fees with this form. All forms are available on the Commission's website under the "Forms" menu.

For all other licensees, who do not fall into this category, use our online transfer process since it is efficient, secure, and provides immediate confirmation of your transfer.



Understanding Your License Status

Alabama License Law uses several different terms when addressing license status. The following provides an explanation of the various forms of license status, the correct terminology, and the requirement of continuing education (CE) courses.

ACTIVE

An active license is simply one that has been renewed prior to the license renewal deadline of August 31 along with satisfaction of the 15-hour CE requirement prior to the September 30 deadline. Both license renewal and CE requirement satisfaction must be completed in order to have an active license on October 1 of a license renewal year.

INACTIVE

An inactive license has either not been renewed prior to the deadline or has been intentionally placed on inactive status by the licensee. Either way, an inactive license is being held by the Commission and the licensee cannot be actively involved in the practice of real estate. The CE requirement does not have to be satisfied until the licensee is ready to activate the license.

CURRENT

A current license is one that has satisfied all license renewal requirements. This current license can be active or inactive.

RENEWED

A renewed license has satisfied all license renewal requirements. It can be renewed on either active or inactive status.

NOT RENEWED

A license that has not been renewed expires on October 1 in even-numbered years. Do not mistake this status as “inactive” because this does not simply require a license activation. This license cannot be activated for immediate use until all renewal and CE requirements have been satisfied. Once the license has been renewed and the CE requirement has been satisfied, the license can then be activated for use. Another option is renewing the license but not activating it until it needs to be used. The term “expired” conveys a needed urgency if a licensee plans to renew. The late renewal deadline for expired licenses could possibly be overlooked if a licensee is considering the license to be simply inactive. The opportunity to renew late expires October 1 of odd-numbered years.

LAPSED

A lapsed license basically ceases to exist. The licensee with a lapsed license is not able to renew or activate it and must start from the beginning of the licensing process and complete all requirements to be licensed once again.

These terms addressing license status can be found in various statutes and rules in Alabama License Law. They can be easily identified using the License Law app on IOS/Apple devices and Android/Google devices. Take advantage of this free app for easy access to License Law and the ability to search for these specific terms so you can see how they are used and better understand your license status.

Commission Videos: A Resource to Help Answer Your Questions

Here at the Alabama Real Estate Commission we want licensees and consumers to have every tool and resource available, in a convenient and beneficial way.

This is why we create videos that highlight everything from license deadlines to rules and regulations to general everyday tips that you may find useful. Videos on topics such as audits, earnest money, and advertising exist to help licensees gain more knowledge in these areas.

Videos are released on our YouTube, Facebook, and Instagram social media sites. These videos can also be found on our website, arec.alabama.gov, under the “Media” menu.

These videos are made with you in mind to give you the most current information. Keep checking in with us as we add more videos and content. We want you to be equipped and ready for anything that might come your way. So please use our videos as a resource.



Company Audit Requirements



Commission auditors look for specific items to be included in your company pending files.

- For Sellers, each pending file should include the listing agreement, the contract, a RECAD form, and an estimated closing statement for contract price and each offer presented.
- For Buyers, each pending file should include the contract, a RECAD form, and an estimated closing statement (prepared by the sales agent to the best of their ability) for contract price and each offer made.
- The pending file should also contain any other forms required by the qualifying broker, the federal government, or the local board or association of REALTORS®.

As a qualifying broker, ensure your sales agents fill out the Agency Disclosure part of the contract completely. This includes the listing company, the selling company, and marking the type of representation for each client. If you have a "For Sale by Owner" contract, the only requirement for seller representation is the presentation of a RECAD form. You would be representing the seller as a transaction broker.

Furthermore, as a qualifying broker, you must make sure your contract is clear as to who is actually holding the earnest money. The contract may state the listing company is holding earnest money when in fact the selling company, a title company, or a closing attorney may be holding the earnest money. **Always** have a copy of the earnest money check in the pending file and a validated deposit slip from the financial institution.

If you have salespersons who are involved in property management, as the qualifying broker, YOU are responsible for all trust accounts that your salespersons may have for property management and should have a copy of all lease agreements. Essentially, Rule 790-X-3-.03 states "each qualifying broker is responsible for the deposit of all funds belonging to others coming into his or her possession or of a salesperson or associate broker licensed under him or her where such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing."

Lastly, on the topic of trust account checks, keep a record of all checks written on the trust account. This includes written checks and voided checks. **Never throw away a trust account check.** Keep all voided checks in a voided check folder for reference when balancing the trust account.



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 was found guilty of violating Section 34-27-36(a)(8)a. for failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.

James S. Collins IV

License No. 000018966

Qualifying Broker; Opelika, Alabama

Date of Hearing: November 19, 2020

Fined \$1500



Why does my bank account or credit card statement say "State of Alabama" when I make an Online Payment to the Commission?

Chances are you've probably made an online payment to the Commission, or you will in the future. Whether you make that payment with a credit card or with a debit card, your bank statement or credit card statement will show you made a payment to "State of Alabama," not Alabama Real Estate Commission. Have you wondered why that is?

All online payments made to the Alabama Real Estate Commission are processed through Alabama Interactive. Alabama Interactive is the contracted vendor for all government agencies in Alabama. When an online payment is made to the Commission, Alabama Interactive processes it; therefore, your bank or credit card statement will show that a payment was made to "State of Alabama" **not** Alabama Real Estate Commission. Please, don't worry; your payment will still be received at the Commission and there is no need to cancel the transaction.

You can always contact the Commission if you have concerns about any online payment you have made and we will gladly verify the amount you paid and the status of your payment.

DECEMBER 2020 – FEBRUARY 2021

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).

APPROVED 11
DENIED 0

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.

APPROVED 5
DENIED 0

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

FROM LICENSEES 1,143
FROM PUBLIC 631
ANONYMOUS/COMMISSION 25

Commission Providing Resources for Qualifying Brokers

The job of qualifying broker is not one to be taken lightly. The Commission is launching an initiative to provide information and resources designed to help qualifying brokers successfully navigate the many duties that are required of them. We are providing qualifying brokers-focused tutorials, videos, articles and other resources that will be available on our website for easy reference. Planned tutorials will cover topics such as how to set up a real estate business and how to manage continuing education. New qualifying brokers will receive information explaining their responsibilities and the resources that are available to them.

This spring, a special issue of *The Update* newsletter will be published with articles that focus solely on the duties of a qualifying broker. In addition, this information will be shared with real estate schools giving instructors the option to reference these resources in their classes.

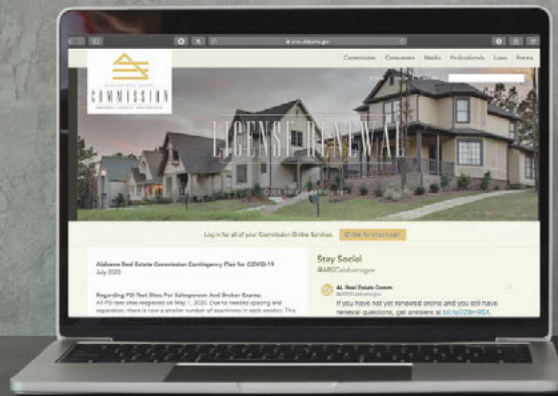
The success of a salesperson and a company depends heavily on the leadership of the qualifying broker. The Commission is committed to assisting qualifying brokers in successfully doing their jobs. More information will be coming as these resources become available.

KEEP CURRENT WITH YOUR CONTACT INFORMATION

MAKE SURE THESE ARE CORRECT WITH THE COMMISSION:

- RESIDENCE ADDRESS • BUSINESS ADDRESS
- EMAIL • PHONE NUMBER

VISIT OUR WEBSITE: AREC.ALABAMA.GOV



USE THE ONLINE SERVICES LOGIN [Online Services Login](#) TO UPDATE YOUR INFORMATION

THE COMMISSION MUST BE NOTIFIED OF THIS CHANGE WITHIN **30 DAYS**

SECTION 34-27-35(H)

Alabama Real Estate Commission Rates 'Good' in Consumer Information Availability Report

In a report from the Consumer Federation of America (CFA), the Alabama Real Estate Commission was given the highest rating where availability of consumer information was concerned. The report was written by Stephen Brobeck, a Senior Fellow of the Federation.

The CFA is a national organization of more than 250 nonprofit consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.

The report involved all 50 states and Washington D.C. and encompassed a study of consumer information for real estate on the commissions' websites. The criteria for evaluating these websites included:

- Whether an agent is licensed.
- Whether an agent has been disciplined by regulators and the infraction.
- What roles an agent may play in relation to their customer – as a loyal representative, a dual agent, the agent for another party, or the agent for neither party. Earlier CFA research identified more than 50 terms used by different states to identify these relationships and also revealed that the relationship can change during the course of the sale.
- How a consumer can complain if they feel they have been treated unfairly by an agent.

- General information about consumer protections and the whole sales process, and advice about how consumers can receive good value from agent services.

Each state's real estate website was ranked as Poor, Fair, or Good. The Alabama Real Estate Commission was one of only 11 states that received the highest rating of Good. We are honored to receive this rating and to be an example of consumer information availability.

Brobeck even went so far as to mention the Alabama Real Estate Commission by name in his report, citing that the Commission's website "was one of the most informative and easiest to use." On our website, consumers can verify a real estate professional and file a complaint against a real estate professional. There is also information on agency/brokerage services, environmental issues, and community resources for people who may be new to Alabama.

Consumer information has always been an important aspect to the Alabama Real Estate Commission. We strive to make sure our information and content is not only available but also accessible to consumers and licensees alike. We know that real estate can sometimes be a confusing and complicated subject, but we want to ensure that consumers are able to access information that can help them help themselves.



TECHNOLOGICALLY SPEAKING

By Steven Brown, IT Systems Specialist

Hard Drive Failure... It Can Happen to You

There's a famous quote that has been attributed to almost everyone from Ben Franklin to Mark Twain, "The only two certainties in life are death and taxes." While that may be true, if those two had only lived a couple hundred years later, they could have added one more thing to that list: hard drive failure.

If there is one thing that I can be sure of it's that every hard drive ever made will eventually fail. From the drive in your desktop computer, to your laptop, to the flash storage in your iPad, to your thumb drive that you carry around on your keychain; given enough time they all will cease to work.

I'm sure it's happened to you already. You've got that presentation that you need to give, you spend hours perfecting every slide, and you plug in your thumb drive and...nothing. It's a sinking feeling in your gut. I know; I've been there. We've all been there. Now imagine if that was your home computer with years' worth of pictures, tax records...everything. These days our entire lives are digital and we trust all of it to a few magnetic platters that are read by static electricity. Pretty scary stuff if you ask me.

The only thing you can do to mitigate the risk of hard drive failure is to

have a backup. Most operating systems have a built-in way to back up your data. All you need is a device to store your backups on. That device can be an external hard drive, flash drive, or a host of other options. Another great option is cloud storage. There are some great companies out there that offer online incremental backups so that when your computer crashes everything is already backed up and ready to be restored.

If you don't want to back up everything you can also use a service that offers online storage for smaller backups. Products like DropBox and Google Drive allow you to save your data in "the cloud" and access it from almost anywhere through a web browser. Storage size is limited with these services, so I wouldn't suggest using them for a full backup option. However, for moving certain files here that you may want to access elsewhere it is a great tool.

When you have a storage drive failure it can be an utter and complete disaster — or a minor inconvenience. It all depends on if you have a solid backup plan.

THE UPDATE

ALABAMA REAL ESTATE

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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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THE UPDATE

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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.

REAL ESTATE LICENSES EXPIRE SEPTEMBER 30, 2022

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

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