

Advertising In General and Internet Advertising Specifically

FROM THE DIRECTOR

By D. Philip Lasater, Executive Director

All advertising regulation is rooted in the principles of clearly identifying the advertiser and to whom consuming members of the public can find accountability when engaging the services offered if they respond to any given ad. Advertising regulation is intended to

thwart deceptive or misleading advertising. It is intended to preclude one from flagrantly pursuing a course of false promises and misrepresentations.

Under current law and license structure qualifying brokers are responsible for all actions of those licensed under them. All licensees are responsible for compliance with the requirements, but it is the qualifying broker that is primarily accountable. That is why the legislature placed the size of letter requirements to highlight this differentiation in responsibility and accountability. A licensee may be held accountable for publishing or causing advertising that deceives or is likely to deceive or in any manner creates a misleading impression. The qualifying broker will be held accountable for all actions of a licensee and subject to disciplinary action for being found guilty of not supervising activities like that of advertising. It is a good bet that Commissioners will assess a broker's office policy and practice for supervising licensee activity in this regard. For a formal complaint to be initiated that could result in such disciplinary action, the Commission would have to show how a

member of the public had been harmed or have a very strong case for how that harm would likely result.

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Not since problems arose from franchisees when their advent nationwide occurred have there been any complaints from members of the public to the Commission on how licensees and companies advertise. It is no stretch to say virtually all-advertising complaints and inquiries from the past ten years have been derived from other licensees about licensees.

Observation over the last number of years has yielded to me that many brokers very much value the size of letter differentiation and have strong expectation that it be strictly enforced. Likewise, there are many brokers that believe those licensed under them are independent contractors and should be allowed to market themselves fully without respect to the relation of broker and company. This from time to time presents some interesting considerations for those involved in enforcement and Commissioners who are often called on to make rulings because a new twist or angle doesn't exactly fit down on what we have been given by the legislature to go by.

While the law may not explicitly prohibit it; for example, "team or associate" advertising a licensee is responsible to advertise in the name he or she is licensed. If they are not qualifying brokers it is required to have the name of the qualifying broker or company in letters at least as large as those of their own. If it were determined that a member of the public may have been misled or deceived because of how an ad was worded, formatted, or otherwise appears could cause violations to be alleged and a formal complaint filed for Hearing.

The medium does not effect the requirements that must be adhered to or the principles it represents. Whether a business card, newspaper ad, billboard, letter, radio, television, magazine, Web site, email, or MLS; the person placing or causing an advertisement to be placed must be identified. The ad must not make false promises. The ad must not be deceptive or misrepresentative or in any manner have the poten-

Whether you or any one you know is interested in marketing real estate outside Alabama or North America, be assured there are many people outside Alabama that will be marketing their services and property to Alabamians electronically.

tial to create a misleading impression.

The INTERNET is another medium. What makes it different is how readily and with such ease members of the public can access information and by the same manner how licensees can market themselves. It is no different than other media except for the characteristics that make it what it is. But the principles of advertising regulation will apply in the same manner as to other media without the more dimensional characteristics.

The INTERNET allows for a greater possibility of anonymity. Because currently there are varying levels of understanding about the INTERNET by licensees and the public alike, Commissioners agreed with the ARELLO Board of Directors and put forth a model rule. The rule didn't really create new regulation but extended the regulatory principles of advertising to electronic media. Granted there were problems in some third party owned systems and out of date technology meeting the requirements of identifying the "advertiser" on each page and there is a current debate without legal clarification as of this writing on just what constitutes a "cyber page". We

are not going to strain over that until a more universally accepted definition is determined. The statement that a licensee's name, broker or company name must be on each page was the largest issue. The requirement is not inherently new but because of the unique characteristic of the Internet, regulators were saying to licensees, "if you want to be sure that you are in compliance with the basic principles of advertising regulation, then you will identify each page that is on a Web site or in an email or an electronic listing service". It was deemed appropriate to expand advertising rules with the hope no one would be confused about the expectations or requirements. The new model rule was not creating the obligation but clarifying it. The absence of an expanded rule does not eliminate the requirements or expectations of the law or responsibility to the public. It is currently left unsaid and understood, or not, compliance is still required. The motivation was to make sure everyone knew that the requirements that applied to the more familiar media also applied to electronic as well. While that was not fully appreciated in any jurisdiction that I could tell and a period of review for additional study and input is currently underway. ARELLO will, I believe, put forth a model set of guidelines on how licensees should and can comply with the generally accepted principles of regulatory advertising criteria.

The emerging nature of a global economy and reciprocal licensing make regulators interested in more standardized universal advertising regulation. Whether you or any one you know is interested in marketing real estate outside Alabama or North America, be assured there are many people outside Alabama that will be marketing their services and property to Alabamians electronically. It is in Alabamian's best interest to have all real estate licensees worldwide subject to the same regulation. Remember the unique

characteristics of the INTERNET that were previously referred? Without licensees from other jurisdictions being subject to similar, if not the same requirements, will make it virtually impossible for regulatory jurisdictions like the Alabama Real Estate Commission to regulate the electronic advertisement of real estate. It further minimizes the effectiveness of our efforts to curb unlicensed activity if

those who are licensed do not clearly and consistently identify themselves and their companies when electronically advertising on the INTERNET.

Enforcement of these regulations on the INTERNET will go as they do with other media. We do not have the resources to surf via all search engines but will rely on other licensees to report the obvious blatant discrepancies, whether the occurrence is advertent or not. If and when a member of the public is harmed by an electronic advertisement is when one could expect a formal complaint and Hearing to result.

There has been a great deal of anxiety about the regulation of email. If an email is intended to market or advertise, it must clearly identify the person placing or causing the advertisement to be placed. We do not intend to summarily require licensees to download personal correspondence or communication. We do not regulate personal communication accomplished through other media but we do if that communication constitutes advertising. The objective of advertising is to create a value by identifying a service or product that can be delivered for a fee. Logically, if that advertisement is to have value, it must identify the person placing the advertisement. Every email program allows for a default signature setting with name, company, address, phone number, fax number, and Web site address. This can be preset and will not have to be input manually with each email advertisement. No one would consider distributing an anonymous solicitation by a hardcopy letter on plain white paper and neither should it be considered permissible in cyberspace. A good rule of thumb when thinking about advertising on the INTERNET is if you would not do it in another media do not do it electronically.

No where in license law does it say that a qualifying broker must have an office policy on anything in particular except for RECAD. But it would be prudent practice to have written office policy on any num-

ber of aspects of how supervision is accomplished in one's business, including advertising and how the qualifying broker reviews and approves the placement of advertisements. There may or may not be more explicit regulation adopted in the near future but do not mistake that current law does apply to advertising on the INTERNET. ■

Alabama Real Estate Advertising Law

§34-27-36(a)(6), Code of Alabama 1975, as amended: Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed broker or salesperson.

§34-27-36(a)(15), Code of Alabama 1975, as amended: If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing on the advertising in letters at least as large as the name of the salesperson or associate broker; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing on the advertising in letters at least as large as the name of the salesperson or associate broker.



Ruth T. Whitley

Commission Member Serves Second Term

Ruth T. Whitley has been appointed by the Governor and confirmed by the Senate to serve another five-year term on the Alabama Real Estate Commission. Commissioner Whitley serves in the seventh Congressional District and has been an industry member of the Commission since 1995. She began her real estate career in 1977 and currently is broker and owner of Ruth Whitley Realty, Inc. in Tuscaloosa, Alabama.

EDUCATION CORNER

By Pat Anderson, Education Director

Have You Heard? CE Has Changed

The new course on the block is Risk Management — Course Code 500

In an effort to provide you with the most current information which will serve to protect both consumers and licensees, the Commission amended Rule 790-X-1-.09 to require a 3-hour course in Risk Management. The course was authored by Alabama educator and broker, Peggy Powell under the direction of the Alabama Real Estate Research and Education Center at the University of Alabama.

- **Who has to take it?** Effective on September 1, 1999, Risk Management became required for all licensees as a condition for renewal in August 2000 except for those who completed all 12 hours of CE before September 1 or who are exempt from meeting CE requirements. Additionally, it will be required each license period thereafter for all licensees except for those who are exempt from CE.
- **What if I completed my 12 hours of continuing education before the requirement became effective?** If you met all CE requirements for license renewal in 2000 by September 1, 1999, then you do not have to take the new Risk Management course until next license period. Even so, it has great information so you may wish to take it now.
- **If I am currently exempt from CE do I have to take the new Risk Management course?** No. Those who are exempt from continuing education requirements do not have to complete the course. Here again, please give it strong consideration. You will receive a course manual containing valuable information that will help you reduce your risks as you practice real estate.
- **Where can I take it?** All approved instructors who take the instructor training in Risk Management will be eligible to teach it. Check with any approved continuing education provider.
- **I have already taken a course in Risk Reduction this license period. Does this count as the required Risk Management course?** No. The required Risk Management course is the one prescribed by the Commission. That course was developed under the direction of the Alabama Real Estate Research and Education Center. Other courses in Risk Management or Risk Reduction count as elective CE credit only.
- **Is the Risk Management course in addition to the required 12 hours?** No. Twelve hours is all that is required to renew your license in August 2000.
- **If I have to take the new Risk Management course, what other courses do I have to take to satisfy the 12-hour continuing education requirement?** In addition to the required 3-hour Risk Management course, licensees must complete another 3 hours from the following list of mandatory courses: License Law/Trust Funds; RECAD; or Fair Housing/Equal Opportunity/ ADA. The remaining 6 hours may be in elective courses.
- **Hasn't this list changed?** Yes. License Law and Handling Trust Funds have been combined into one course. RECAD I (the RECAD law) and RECAD II (Practical Application) have been combined into one course. Fair Housing has been expanded to include Equal Opportunity and the American with Disabilities Act.
- **What if I have already completed courses from the previous list such as RECAD I and RECAD II?** Will I be able to keep my 6 hours of CE credit? Yes. Any credit that you earned prior to September 1, 1999, may be used for the 2000 renewal. In this case, one of the RECAD courses would satisfy the 3-



hour mandatory course requirement and the other will count as elective credit.

- **What if I completed 6 hours in mandatory courses prior to September 1, 1999, but did not have my full 12 hours? Do I still have to take the new Risk Management course by August 31, 2000?** Yes, no matter what other courses you had completed by September 1, 1999, if you had LESS than 12 hours, then you must take the new Risk Management course by August 31, 2000. Extra mandatory hours may be used as elective credit.
- **How can I check my continuing education credit on file with the Commission?** All qualifying brokers will be mailed a list of continuing education

credit as of September 1, 1999, for each licensee in their company. Also, you may check your continuing education credit at any time free of charge on the Commission's Web site at www.arec.state.al.us. If you call the Commission office, you will be asked to submit a written request and a \$10.00 check for printing your record and mailing it to you. CE credit will not be given out over the telephone.

- **When is my continuing education due for the next renewal period?** All continuing education must be completed and sent to the Commission no later than August 31, 2000, in order to receive an active license on October 1, 2000.

- **What happens if I do not turn in my CE credit to the Commission until September 2000?** Your license will be issued to inactive status on October 1, 2000 and you will be out of business until you activate your license. Remember, that requires a \$25.00 transfer fee and it cannot be done by certified mail. Take your CE early!

- **REMEMBER:** If you did not complete your 12 hours of CE before September 1, 1999, then you must take 6 hours of elective credit, 3 hours of mandatory credit and the 3-hour required Risk Management course to renew your license on active status for the upcoming renewal period in August 2000. ■

The Education Task Force Gets it Done!

Over the past several months, several Alabama educators who are members of the Alabama Real Estate Educators Association, have been diligently working on developing and updating course outlines for the post license course and the mandatory continuing education courses. The new mandatory courses (effective September 1, 1999) are 1) License Law/Trust Funds; 2) RECAD; and 3) Fair Housing Equal Opportunity and ADA (Americans with Disabilities Act). The group has met numerous times and worked very hard on this project. The Commission wishes to express sincere appreciation to our volunteer Task Force members:

- **Jeri Gray**, Chair, Birmingham
- **Pat Anderson**, Commission
- **Emil Ankermiller**, Lacey's Spring
- **Pam Beedy**, Daphne
- **Debbie Coe**, Montgomery
- **Jim Gillespie**, Birmingham
- **Bo Goodson**, Montgomery
- **Lynn Kronk**, Huntsville
- **Marcia Norris**, Birmingham
- **Donnis Palmer**, Birmingham
- **Peggy Powell**, Fairhope
- **Fraser Sparkman**, Montgomery



Task Force Chair, Jeri Gray, presented the outlines at the Commission meeting held in Huntsville on July 23, 1999. Also present were Task Force members Emil Ankermiller, Donnis Palmer and Lynn Kronk. The Commission voted unanimously to accept the outlines and thanked Jeri and all members of the Task Force for their hard work, dedication and commitment to this project. The Commission then asked the Task Force to continue their work and develop PowerPoint presentations and overheads for each of the courses. The Task Force accepted the challenge and plan to have those prepared in time for the Annual Instructors' Seminar in October. Their work will assist instructors in formulating and presenting beneficial courses for all licensees. ■

BRIEFLY LEGAL

By Charles R. Sowell, General Counsel

TALES FROM BEYOND

*Space Aliens Land . . .**Man Bites Dog . . .**No RECAD in
Commercial Deals . . .*

I have no documentation on the man bite or space alien stories, but I do have some to disprove the last one. The problem is there is some considerable popular belief that the so-called “commercial exemption” to RECAD makes the last story true. It is not true. There is no commercial exemption. RECAD applies to commercial practitioners and transactions just the same as it does to residential transactions. So where does this tale come from? As I said, I have the goods on this one.

Effective August 1, 1998, an amendment to the RECAD law was put into place by the legislature. That amendment appears as §34-27-82(d) *Code of Alabama* 1975, as amended. If I quote it and you read it, your eyes will glaze over, and your head and stomach will hurt. I will just translate for you. First, some background is in order. Remember the RECAD disclosure that must be done

with consumers as soon as reasonably possible? This disclosure is done using the Real Estate Brokerage Services Disclosure form. I refer to this as the “up front” disclosure. The law amendment says that certain consumers do not have to receive the “up front” disclosure. These consumers are anyone acting in a capacity for any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, (including any partnership created under the Uniform Partnership Act) real estate investment trust, business trust, charitable trust, family trust, or any governmental entity.

If you are dealing with any of these, the “up front” disclosure is not required. The “commercial exemption” label comes from the fact that these entities are commonly involved in commercial transactions. The logic behind the law is that these persons are more sophisticated than individuals, and do not need the disclosure. Individuals, though, still need it, and by law must get it. Here are some examples.

Example 1: The vice-president of a national corporation comes to your office. He is interested in having your company list and sell one of their plants located in your county. The meeting results in you getting the listing. You do not have to present or go through the disclosure form with him. The next week a prospective buyer views the plant with you. He is a prominent businessman in town, who individually

owns many properties. You do have to present and go through the disclosure form with him.

Example 2: A member of an LLC that owns and develops commercial property meets you at a shopping center. You have a listing on all the spaces being built there, either to sell or lease them. Her LLC is interested in purchasing the property in total. You and her spend half the day looking at plans, the site, etc. You do not have to present or go through the disclosure form with her. Her LLC does not buy the property. Later, a retired couple meets you at the property. They are interested in purchasing it as an investment. You do have to present and go through the disclosure form with them.

Example 3: A partner in a partnership that develops residential property meets you at a residential development under construction. You have a listing on all the homes being built there. He and his partner are interested in purchasing the development in total. You spend half the day looking at plans, the site, etc. You do not have to present or go through the disclosure form with him.

As you can see, the kind of property involved has nothing to do with RECAD requirements. It is the people, the consumers, and who they are. It is your responsibility to know whether you are dealing with an individual, or a representative of one of the entities listed in the law. Ask them if you do not know, then proceed accordingly. ■

PROPERTY TRANSFERS AND UNDERGROUND STORAGE TANKS

*By Anthony Scott Hughes, Chief, UST Compliance Section,
Alabama Department of Environmental Management*

Personnel in our Underground Storage Tank (UST) Program frequently receive telephone calls related to the transfer of real estate where underground storage tanks (UST) are located. In some of these instances, the personnel of our UST Compliance Section or our UST Corrective Action Unit can provide the needed assistance to allow the real estate transaction to be completed. However, there are cases where our UST personnel cannot provide the needed assistance due to the short notice or lack of information. Hopefully, the information outlined in this article will assist the professionals in the real estate industry when they are conducting a real estate transaction and underground storage tanks are involved.

The federal regulations that govern underground storage tanks became effective in September of 1988 and Alabama's state regulations, which are very similar to the federal regulations, became effective in April of 1989. These regulations

required owners of UST systems to comply with several requirements which included notification to the Alabama Department of Environmental Management (ADEM) of the existence of all active UST systems. The regulations also required monitoring UST systems on a daily basis for the presence of leaks, upgrading all steel portions of the UST system to prevent corrosion and providing spill/overflow equipment to prevent spillage during the time product is being delivered to the UST system. In addition, the regulations required UST owners to conduct a closure site assessment during the removal of a UST system and take corrective actions to assess and remediate any soil and/or groundwater contamination caused by the UST system.

Therefore, since 1988 the ADEM has maintained records of the activity of underground storage tank systems in Alabama. These records generally include the name of the UST owner, the address of the property where the UST system is

located and the number of USTs that are currently in use at the facility. The records can also include the number of USTs that have been permanently closed at the facility, the date the USTs were permanently closed and the results of any soil/groundwater sampling conducted during the permanent closure. The ADEM also maintains records of any reported releases that might have occurred at a facility and a record of any remediation that has taken place at the facility. These records can play a vital role during a real estate transaction by providing a history of the UST activity at a facility.

The requests for information from real estate professionals vary from basic information about the number of USTs located at a facility to actual copies of information from our UST files. However, there are two (2) requests that are received more often than all other requests. These are requests for a copy of the "No Further Action Letter" or a copy of the "Alabama

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DISCIPLINARY ACTIONS TAKEN

March 1999 through July 1999

Name: Kimberly Realty Company, Inc., and Austin S. Kimberly, Jr., Qualifying Broker, Anniston, Alabama

Date of Hearing: March 19, 1999

Disposition: Mr. Kimberly was found guilty and fined \$500 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 his own funds and failing to deposit and properly account for at all times money coming into his possession which belonged to others.

Name: Carl Milton Parrish, Qualifying Broker, Sylacauga, Alabama

Date of Hearing: March 19, 1999

Disposition: Mr. Parrish was found guilty and reprimanded on Counts 1, 2 and 3 for violation of the Code of Alabama 1975, as amended, Count 1: Section 34-27-36(a)(19) in that he failed to have in the closed sales files and the one pending sale on single family residential property, estimated closing statements; Count 2: Section 34-27-36(a)(19) by not using the proper RECAD agency disclosure language in written contracts as prescribed in Section 34-27-8(c); and Count 3: Section 34-27-36(a)(19) by failing to have in company files, Real Estate Brokerage Services Disclosure forms required by Rule 790-X-3-.13.

Name: Phillip C. Ledbetter, Qualifying Broker, Anniston, Alabama

Date of Hearing: March 19, 1999

Disposition: Mr. Ledbetter was found guilty and reprimanded on Counts 1 and 2 for violation of the Code of Alabama 1975, as amended, Count 1: Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. by failing, within a reasonable



time, to deposit in a separate federally insured account or accounts located in Alabama, and to properly account for at all times, all funds coming into his possession that belonged to others in a separate federally insured account or accounts; and Count 2: Section 34-27-36(a)(19) by failing to comply with Section 34-27-83 in his failure to have RECAD office policy in place in his office.

Name: Renee J. Chisholm, Salesperson, Daphne, Alabama

Date of Hearing: March 19, 1999

Disposition: Ms. Chisholm 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: Sherry K. Lewis, Inactive Salesperson, Birmingham, Alabama

Date of Hearing: March 19, 1999

Disposition: Ms. Lewis 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: Kristy V. Burke, Inactive Salesperson, Birmingham, Alabama

Date of Hearing: March 19, 1999

Disposition: Ms. Burke 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: Carolyn R. Blozik, Salesperson, Birmingham, Alabama

Date of Hearing: March 19, 1999

Disposition: Ms. Blozik 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 Winds Realty Inc., Cherine M. Bystedt, Qualifying Broker, and Betty J. Reichart, Salesperson, Gulf Shores, Alabama

Date of Hearing: April 23, 1999

Disposition: Ms. Bystedt was found not guilty. South Winds Realty Inc. and Ms. Reichart were found guilty and fined a total of \$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: Julian J. Graddick, Jr., Qualifying Broker, Gulf Shores, Alabama

Date of Hearing: April 23, 1999

Disposition: Mr. Graddick was found guilty and fined \$1,000 and his license suspended for 60 days for violation of the Code of Alabama 1975, as amended, Section 34-27-2(a)(11)b. via Section 34-27-36(a)(19) for a real estate licensee located within the city limits of a municipality to fail to maintain a place of business as defined in the statute.

Name: Kent A. Sanderson, Qualifying Broker, Gulf Shores, Alabama

Date of Hearing: April 23, 1999

Disposition: Mr. Sanderson was found guilty and fined \$1,000 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 failing, within a reasonable time, to properly account for and remit money coming into his possession that belonged to others in a separate federally insured account or accounts.

Name: Charles W. Williams, Jr., Qualifying Broker, Gulf Shores, Alabama

Date of Hearing: April 23, 1999

Disposition: Mr. Williams was found guilty and fined \$500 for violation of Code of Alabama 1975, as amended, Section 34-27-36(a)(17) for a real estate licensee to establish an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee.

Name: James J. Accursio, Inactive Broker, Jupiter, Florida

Date of Hearing: May 21, 1999

Disposition: Mr. Accursio 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.



Yaaahoo! We're Searching For Your E-Mail Address

To provide timely and important information to you faster, please e-mail us your e-mail address to **arec@arec.state.al.us.**

Name: Carl Ray Estes, Qualifying Broker, Eclectic, Alabama

Date of Hearing: May 21, 1999

Disposition: Mr. Estes was found guilty and fined \$500 for violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(6) for a real estate broker to publish or cause any advertisement that fails to identify him as a licensed broker; and Section 34-27-36(a)(19) for a real estate broker to operate his business by engaging in activities requiring an active license while his license is on inactive status in violation of Section 34-27-35(k).

Name: Richard E. Deloney, Inactive Broker, Birmingham, Alabama

Date of Hearing: June 23, 1999

Disposition: Mr. Deloney 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: Thomas C. Rosenblum, Jr., Qualifying Broker, Huntsville, Alabama

Date of Hearing: July 23, 1999

Disposition: Mr. Rosenblum was found guilty and fined \$500 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 his own funds and failing to deposit and properly account for at all times money coming into his possession which belonged to others.

Name: Bernadette Watts Burroughs, Salesperson, Mobile, Alabama

Date of Hearing: July 23, 1999

Disposition: Ms. Burroughs 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: Darrell N. White, Qualifying Broker, Huntsville, Alabama

Date of Hearing: July 23, 1999

Disposition: Mr. White was found guilty and reprimanded 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 his own funds and failing to deposit and properly account for at all times money coming into his possession which belonged to others.

OTHER ADMINISTRATIVE ACTIONS

APPLICANTS

Approved	11
Denied	3

ALABAMA REAL ESTATE RESEARCH & EDUCATION CENTER

NEWS UPDATE

Buyer Brokers: Do They Make a Difference?

By Leonard V. Zumpano

Residential real estate markets, and the role that brokers play in these markets, have seen significant changes in recent years. Before the rush of these events, the residential real estate broker's role in the real estate market was clear: a broker was an agent representing the seller's interests in the marketing of property. Changes in this market, however, have clouded this role. The origins of these changes vary; some arise from new public policies, others from new demands made by homebuyers. In many cases, the agency relationship has been redefined. Passage of mandatory agency disclosure statutes at the state level and the concomitant increase in consumer awareness of brokerage services and responsibilities have encouraged the creation of new brokerage contracts that attempt to abrogate the common law of agency as well as limit broker liability. Examples of these types of contracts include designated agency, disclosed dual agency and non-agency, facilitator arrangements. The most striking development, however, has been the rise in the use of buyer representatives.

Seller/sub-agent and non-exclusive brokerage contracts have come under fire from consumer advocates such as the Consumer Federation of America and Ralph Nader. These groups claim that consumers can receive adequate representation only through exclusive agency arrangements.

Nader, in particular, has charged that non-agency and dual agency contracts compromise consumers' rights and limit the services that can be provided buyers. Similar arguments are the central theme of the marketing efforts of a national franchise organization that asserts buyer brokers can save homebuyers money and reduce search time. Traditional brokers have argued that these promotional activities are inaccurate and misleading, and have challenged these claims. The Buyer's Agent franchise organization has asserted in a promotional pamphlet that buyer agents can save homebuyers money as well as reduce search time for their clients. These statements have recently been disputed by traditional brokers, who argue that this pamphlet, "The Buyer's Agent Gives You An Edge," contains false and deceptive material. The Oklahoma Real Estate Commission has, in part, agreed with traditional brokers by ruling that some statements in the buyer brokers brochure are misleading or cannot be substantiated. This issue has been litigated. The Oklahoma Supreme Court recently reversed two earlier lower court decisions, finding in favor of the buyer agents.

Despite the conflicting claims, up until now, little empirical evidence has been available to evaluate the impact of buyer brokerage. As part of a joint research effort, the Real Estate Research Center was involved in a study aimed at ascertaining the actual effects, if any, that buyer brokers have on the home selling prices and buyer search time.

This study, which will be published in a forthcoming issue of *Real Estate Economics*, uses data from a 1996 nationwide survey of recent transactions by homebuyers and sellers conducted by the Research

Division of the National Association of Realtors. The information contained in the survey was used to estimate econometric models that were directed at answering the three questions listed below, which summarize the results of our study.

Q Who Uses Buyer Brokers?

Search and information costs are the most important factors in the decision to use a broker. First-time homebuyers (less experienced), and distance movers (less knowledgeable buyers) are more likely to use a broker, no matter the type of brokerage arrangement. However, high-income buyers, with high opportunity costs of search, are significantly more likely to employ a buyer agent. The variable used to represent agency disclosure also proved highly significant, statistically, in all the buyer broker models. The results indicate that *disclosure does not discourage buyers from using brokers, and, significantly, buyers who receive agency disclosure as part of a broker-assisted transaction are more likely to choose a buyer broker.*

Q Do Buyer Brokers Obtain Lower Home Prices for Their Clients?

The selling price equations reveal that real estate brokers, regardless of type, do not have any independent effect on price. *Despite arguments to the contrary, there is no evidence that buyer brokers are able to negotiate lower prices for their principals than buyers who work with traditional bro-*

kers or negotiate directly with sellers. From a pragmatic standpoint, our results imply that consumers should use a broker to locate a home, since broker-assisted sales do not appear to carry a premium price relative to FSBO sales.

Q How Long Do Buyer Brokers Search for Their Homes?

It is also true, however, that the role of the buyer broker is not played out solely in the price dimension. We found that real estate brokers, no matter the type, can and do reduce buyer search time compared to non broker-assisted FSBOs transactions. **Buyer brokers, however, appear to be more effective at reducing buyer search time than other types of brokers.** Non-broker assisted buyers were estimated to search for 18.6 weeks; buyers using a traditional broker are predicted to search for

15.1 weeks and buyers assisted by a buyer's agent are predicted to search for 12.7 weeks. Search time with buyer brokers is, therefore, approximately 2.5 weeks shorter than with other types of brokers.

"To the extent that search costs are reduced as search duration falls, then claims that buyer agents can save their clients money have some empirical support. The validity of such a statement, however, rests upon the twin and very important assumptions that buyers do not pay fees to agents for services rendered and that broker-assisted sales do not carry higher prices than FSBO transactions."

The results of this and earlier studies suggest that the latter assumption is valid, while current industry practice is for brokers, regardless of type, to look to the transaction for compensation. So long as sellers continue to pay the full sales commission, buyers can save money with exclusive buyer agents. If compensation arrangements

change, as anecdotal evidence seems to suggest may be happening, buyer broker services may no longer be costless for homebuyers in the future. Then another question will have to be addressed; whether the services of buyer brokers are commensurate with their cost.

Given that the size of the data sample used in this study was relatively small and the search duration estimates sensitive to how the models are specified, the conclusions regarding the efficacy of buyer brokerage warrant further corroboration.

The results reported here are taken from the journal article "Buyer Brokers: Do They Make a Difference? Their Impact of Selling Price and Search Duration" to be published in Real Estate Economics, the Journal of the American Real Estate and Urban Economics Association. The authors are Leonard V. Zumpano, Harold W. Elder, from the University of Alabama and Edward A. Baryla, assistant professor at East Tennessee State University. ■

ARELLO NEWS

The Association of Real Estate License Law Officials (ARELLO) is an organization comprised of real estate regulatory officials from the United States, Canada, Australia, Bermuda, Philippines, and South Africa. ARELLO's primary function is to promote better administration and enforcement of licensing and regulatory laws in member jurisdictions. The major responsibility of ARELLO is to prepare its members to fulfill their roles as regulators. Their role is to properly administer licensing laws that serve to protect the public.

Governor Proclaims Real Estate Regulator Days in Alabama

The Alabama Real Estate Commission hosted the Southern District meeting of the Association of Real Estate License Law Officials (ARELLO) in Mobile June 24-27. Alabama Commissioners hosted over 100 attendees from the southeastern licensing jurisdictions. Historical downtown Mobile provided the backdrop for hospitality and networking while inside the Adam's Mark, information and issues common to all jurisdiction were addressed.

The program included Lieutenant Governor Steve Windom who spoke to the group at breakfast. Kentucky's General Counsel, Jeff Blair, presented a session on Probable Cause Determinations (what makes an investigation a formal complaint). Diane Simpson facilitated a luncheon session that explored the Association's history in an obscure but interesting jurisdiction trivia. Randy McKinney led a session that explored issues that make up our everyday world as practitioners and regulators which included interactive analysis of whether this represented obstacles or opportunities. Dr. Leonard Zumpano gave an overview of the real

(Continued on page 12)

estate research conducted at the University of Alabama Real Estate Research and Education Center and highlighted recent works entitled "Understanding the Affinity Puzzle", "Implications for Residential Real Estate Brokerage", and "Legal Liability and the Real Estate Salesperson" and a very recent study on "Buyers Brokers: Do They Make A Difference?". Each jurisdiction gave an update of activities, issues, challenges and successes.

This was the first time since 1979

Alabama had hosted the Southern District Conference. President-elect Larry Lyngstad of South Dakota and Treasurer Richard Strader of West Virginia represented ARELLO officers. Sue Teegarden of Kentucky presided as District Vice-President. Alabama Commissioner **Starke Irvine** was nominated to serve another term as Director and **Philip Lasater** was endorsed in his bid for president-elect. New officers and directors will be elected during the annual Conference at Savannah in October. ■

On the International Front . . .

Last October, Alabama Real Estate Commission Education Director, **Pat Anderson**, was appointed by ARELLO president Mike Gorham to chair the newly formed Distance Education Council. President-elect Larry Lyngstad has asked her to continue through October 2000.

Ms. Anderson's international leadership in the area of Distance Education began in 1996 when she served on ARELLO's original Distance Education Task Force. The Distance Education Council was formed in 1998 and continued the groundbreaking work of the task force. These groups have created significant work products including:

- The first comprehensive set of international standards for the evaluation of distance education courses
- Development and implementation of a Distance Education Certification Program
- Establishment of the Distance Education Council Policies and Procedures to provide ongoing oversight of the program.

As Chair of the Council, Pat and her committee have worked closely with ARELLO's Distance Education consultant and Fulbright Scholar, Dr. Robert Meyer of St. Petersburg, Florida. Together, through the establishment of standards and a comprehensive certification process, they have positioned ARELLO as the industry leader in the explosive and exciting new world of distance education. To date, twenty-nine U.S. jurisdictions and Canadian provinces recognize and accept the ARELLO-developed, Distance Education Standards.

The commitment of Pat Anderson to quality real estate education, regardless of delivery method, has included development and presentation of workshops for educators and regulators on the Standards and Certification program. She has also been a speaker at numerous ARELLO conferences, actively served as a member of ARELLO's Distance Education Marketing Committee and is a faithful supporter of the Alabama Real Estate Educator's Association.



Alabama's Statewide Parenting Day

For the first time in Alabama, a day will be set aside as a "Statewide Parenting Day" for parents of school-aged children to learn about their children's education. Many schools will participate in the statewide effort on October 11, 1999. They will provide on-going sessions to inform parents of Alabama's challenging educational standards.

Businesses and community leaders are asked to support this effort by allowing employees time off to visit schools to encourage parents' participation in the Statewide Parenting Day. Media is a vital part of this effort in getting the message to the parents.

Over thirty years of research indicate the correlation between parental involvement in a child's education and success in school.

If you have questions regarding Alabama's Statewide Parenting Day or would like to help your community participate, please call Betsy Taff at the State Department of Education at 334.242.8199.

From *The Advisor*, by David G. Bronner

The Newest Oldest Salesperson Applicant: DR. BENNIE D. MAYBERRY

By Chris Porter, Education Specialist

Dr. Bennie Douglas Mayberry, age 87, recently passed the Alabama real estate salesperson's examination given on July 17, 1999, becoming our newest, oldest salesperson applicant. Dr. Mayberry completed his real estate prelicense course at American Real Estate Institute under the instruction of Lorren Perdue. According to Mr. Perdue, Dr. Mayberry is the oldest student to have gone through his prelicense course and passed the real estate examination.

In 1937 Dr. Mayberry graduated with a Bachelor of Science degree in Vocational Agriculture from Tuskegee Institute in Tuskegee, Alabama. After graduation, he had the opportunity to attend classes where Dr. George Washington Carver, a great agricultural chemist, was guest lecturer. Dr. Mayberry obtained his Master of Arts degree and Ph.D. from Michigan State University. He was hired at Michigan State as an instructor in the Horticulture Department.

Returning to Alabama in 1950, Dr. May-



Dr. Bennie D. Mayberry

berry accepted a position as head of the Horticulture Department at Tuskegee Institute that gave him the opportunity to become heavily involved in teaching and conducting research. During this time, he wrote several books, developed a project to

improve methods for canning sweet potatoes, and designed several projects that examined the absorption and translocation of strontium in plants and the effects of maleic hydrazide in tea. Along with his research program, Dr. Mayberry was very instrumental in developing programs to encourage Alabama's youth to pursue a career in science.

Later, Dr. Mayberry became the Dean of the School of Agriculture at Tuskegee Institute. He worked diligently and devoted years to developing and writing proposals for land-grant funding in Tuskegee from the local, state and federal agencies. With dedication and hard work from him and his colleagues, the program continued to be successful.

After retiring in 1981 with fifty years in education as a professor and dean at Tuskegee Institute, Mayberry's desire now at age 87 is to pursue a new career. As Dr. Mayberry enters his second career as a real estate salesperson, we congratulate and wish him well. ■

Property Transfers and Underground Storage Tanks

Continued from page 7

Tank Trust Fund Eligibility Letter." The Department issues a "No Further Action Letter" after the review of soil and/or groundwater analytical data that indicates the facility does not require any remediation. Also, in the event remediation is required and the UST owner is in compliance with the regulatory requirements, the Department issues an "Alabama Tank Trust Fund Eligibility Letter" that indicates most of the remediation costs will be paid for by the Alabama Under-

ground/Aboveground Storage Tank Trust Fund. The presence of either of these two (2) letters during a real estate transaction can provide purchasers, sellers and lenders the assurance they need to proceed with the transaction.

The key to successful real estate transactions involving underground storage tanks is to plan ahead, know who to contact and know what types of information to request. In many instances, the personnel in our UST Program can provide the needed assistance when given the proper information. Also, the ADEM has recently produced a publication entitled "Real Estate Professionals and Underground

Storage Tanks" which is available from the Department at no cost. However, there are times when in depth file reviews are required to determine the status of a UST facility. In these cases, an environmental consulting company should be contacted to conduct the file reviews.

The information outlined above is provided in an attempt to assist real estate professionals who are conducting real estate transactions where underground storage tanks are involved. For further information concerning underground storage tanks you may contact the ADEM Groundwater Switchboard at 334.270.5655. ■

The Numbers on E&O

By D. Philip Lasater, Executive Director

What do the numbers say about Group E&O? For the entire group history period St. Paul has paid out \$1.66 for every dollar it has collected in premium and combined with expense (primarily defense of claims) the St. Paul payout totals \$2.04 for every premium dollar collected.

When the Alabama group program began in 1993, Alabama had no prior

claims experience on which insurance companies based its proposals for premiums. Consequently, Alabama premiums started at \$73 per year for the basic coverage. This was comparable to other southeastern states with similar programs. Now Alabama has actual claims history and data to be reviewed and on which the Group will be rated. In anticipation of the

invariable market pressure to increase premiums, based on the claims paid and losses the insurance company has incurred, the legislature increased the existing premium cap from \$100 per year to \$250 per year. Commissioners will be studying and diligently working this fall to see how a viable program can be sustained and continued in Alabama. ■

E&O STATISTICS (As of August 1, 1999)

■ Licensees

Total Active14,999
(Company, Brokers, Sales)
Total Inactive7,867

■ E&O Insurance Certifications

Group10,476
(Administered by Williams
Underwriting and policy
with St. Paul)

Optional (all others)5,502

■ Group History

Combined totals
10/1/93 through 6/1/99

Total Claims706
Open193
Closed513

■ Total Amount Paid loss

\$2,919,409.00

■ Total Amount Paid Expense

\$2,733,912.00

■ Open Expense Reserve

\$1,120,320.00

■ Open Loss Reserve

\$2,926,583.00

■ Recovery/Salvage

\$-489,486.00

How claims allegations break out by category and percentage

- Failure to disclose hidden defects18%
- Misrepresentation - termites and other infestations ...10
- Misrepresentation - flooding and other water problems .9
- Fraud9
- Misrepresentation - size of property/boundaries8
- Misrepresentation - septic tank - non disclosure6
- Breach of contract6
- Misrepresentation - plumbing, heating, air conditioning5
- Misrepresentation - sewer lines - non disclosure4
- Misrepresentation - roof leaks
- Property management - various ...4
- Wrongful conveyance4
- Deed/Zoning4
- Misrepresentation - electrical3
- Discrimination & Employment Practices2
- Commission disputes2
- Miscellaneous2



Charita Pinkston

AREC Welcomes New Auditor

Charita Pinkston recently joined the Investigative and Legal department at the Alabama Real Estate Commission. She is now working as an auditor to assist with the random examination of real estate company trust accounts and other real estate license law requirements.

Welcome aboard Charita!

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