

Update

Nonresident Alabama Licensees Can Change License to Reciprocal License

From the Director

By: D. Philip Lasater, Executive Director

Before reciprocal licensing became law, some nonresidents applied for and received Alabama licenses. These persons are required to get 12 hours of Alabama continuing education in order to renew their licenses on active status. If they also hold a license in another state, they are required to meet that state's continuing education too. After reciprocal licensing became law, those persons who applied for and received Alabama reciprocal licenses can meet Alabama continuing education requirements simply by providing the appropriate documentation of their active license in another state at renewal time. They are not required to

meet continuing education requirements in both states.

If you are one of those persons who are being required to meet continuing education requirements in both states, you may wish to replace your Alabama license with a reciprocal license. If you receive a reciprocal license, then you will be treated the same as other reciprocal licensees and can meet Alabama continuing education requirements by supplying a Certification of Licensure or a certified copy of your active license obtained from your Real Estate Commission office between June 1, 1998 and August 31, 1998 (or within the 90 days prior to license renewal).

Oversight authorities in Alabama have ruled that there is no conversion means provided by statute short of offering all nonresident license holders the option to apply for and obtain a Reciprocal license if they so choose. Or, affected licensees may continue with their license "as is" by meeting the Alabama 12 hour continuing education requirement.

All nonresident licensees who do not already hold reciprocal licenses will be receiving correspondence and the appropriate application form from the commission office. ■

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BRIEFLY LEGAL

By: Charles R. Sowell, General Counsel

Caveat Emptor vs. Seller Disclosure

A Dilemma for Brokers, Buyers and Sellers



We all know caveat emptor, i.e. “buyer beware,” is the law in our state in the selling of used homes. Simply stated, this means that neither the seller nor the seller’s agents, unless asked, are required to disclose defects, except those which might pose a health or safety risk to the buyers. Many brokers list and sell homes relying on the principles of caveat emptor. Seller disclosure is almost the exact opposite. Brokers who practice seller disclosure require the seller at the time of the listing a form which details items known to the seller to be defective. This list is then shared with buyers, and even with cooperating brokers. This article is to help brokers and consumers understand the consequences of their choice.

Caveat Emptor

The Alabama Supreme Court has held caveat emptor to be the law in a consistent line of cases. Everyone should be on notice that there is no warranty which comes with the sale of a used home. Buyers have a chance to inspect them, and should assume the responsibility of a purchase. A used home is like a used car, when you buy it, it is yours. End of story, right? Not exactly. Too often, the story just begins there.

In most transactions there are no problems. In many, however, used houses have so many things which can be wrong, the result can be unhappy buyers. The lawsuits we see and our E & O experience tells us that property condition problems are the primary cause of suits and claims in our state. Unhappy buyers often react poorly when caveat emptor is explained to them. Many will say bad things about your company. Some will force you to notify your errors and omissions insurance carrier of a potential claim. Some will end up in an attorney’s office, where talk will turn to looking for misrepresentation by the

agents involved. This is because caveat emptor will not allow a successful lawsuit, but misrepresentation will. Besides, misrepresentation can trigger an award for punitive damages. Typically, a plaintiff’s attorney will file the lawsuit alleging negligence in order to get recovery from a possible E & O claim, and will allege misrepresentation. As the suit develops, a decision will be made about which to really pursue. That decision will usually be driven by which nets the most money.

In case you have not heard, our errors and omissions insurance carrier, St. Paul Fire and Marine, has reported to us through Williams Underwriting that our claims in Alabama have been higher than expected. In fact our claims are significantly higher than all other states with mandatory E & O programs. If this continues true, the impact on our mandatory E & O program could become the subject of another article. Maybe too, our higher claims experience is another symptom of what some call lawsuit abuse, and is another illustration of the need for “tort reform” in our state. I will leave that judgment to you.

Seller Disclosure

Because seller disclosure is relatively new and not as widely practiced in our state, lessons are more difficult to draw. Seller disclosure seeks to avoid some of the problems of caveat emptor by requiring disclosure from the best source of information, the sellers. The buyer is told about problems, repairs are done in advance or are negotiated, and everyone lives happily ever after. Right? Well, as you might have guessed, there still are problems.

There will still be some unhappy buyers after a seller disclosure sale, but probably fewer of them. I say probably because we have had few significant consumer complaints, and no resulting lawsuits of which I am aware. Perhaps we can draw lessons from other states. The National Association of Realtors recently reported that misrepresentation claims accounted for 61% of all claims received by their endorsed errors and omissions insurance carrier. Seller disclosure is widely practiced in other states. Caveat emptor as we know it is not the law in other states.

Remember, too, that there appear to be fewer claims and suits in most other states compared to Alabama.

Many things could account for this high percentage of misrepresentation claims. Common sense says one explanation is buyers get disclosure, but later claim it was not truthful, complete disclosure. They and their attorneys then begin the search for misrepresentation based claims. Any resulting lawsuit will be like the one already described, with counts based both upon negligence and misrepresentation.

Conclusion

It seems no wonder that brokers, buyers, and sellers struggle with the issues involving problems with sales of used homes. Consumers, both buyers and sellers, should take enough time to learn the difference between caveat emptor and seller disclosure. No government agency or legal system can substitute for consumers' responsibility for their own decisions.

For brokers the issues are more complicated. The goal in any business is satisfied

customers and clients, with low risk of loss due to suits and claims. The law of caveat emptor is well settled. Brokers know what they are getting when relying on it. With the number of lawsuits and E & O claims we are experiencing, though, it is easy to understand why a broker would opt for seller disclosure. I know a Florida broker who believes that mandatory home inspection such as they have is a good solution. It is not the purpose of this article to push any point of view. We just want brokers to be as informed as possible when making business decisions. ■

NAREB- "Realists" Celebrate 50th Anniversary

The NAREB (National Association of Real Estate Brokers) recently celebrated its 50th anniversary as an organization. NAREB, founded in July 1947, is the oldest and largest minority professional real estate trade association in America. Its members, known as "Realists", realize the mission of NAREB by unifying minority real estate professionals, providing and enhancing opportunities for economic empowerment and prosperity of its membership, and promoting democracy in housing regardless of race, creed or national origin. NAREB has over 65 chapters in 43 states including the Virgin Islands.

In conjunction, the Alabama Association of Real Estate Brokers recently held Realist Week 1997 in Birmingham, Alabama. The week's activities covered real estate education and training opportunities which included continuing education courses, such as License Law and RECAD, workshops and seminars that were offered to participants. Speakers included former NAREB national presidents; Fred Blair - Dallas, Texas, Harold A. Dawson - Atlanta, Georgia and current national president, H. Bernie Jackson - Baltimore, Maryland. ■

RECAD Audit Checklist



This is the Alabama Real Estate Commission's routine audit checklist to be used by auditors to monitor broker compliance with the requirements of the Real Estate Consumer's Agency and Disclosure Act. The following items will be checked thoroughly.

Other items might also be checked when appropriate in a more detailed audit, but this list is designed to let brokers and auditors know what is expected to be produced in a routine audit.



1. Agency Disclosure Office Policy in Section 34-27-83 and Rule 790-X-3-.14.



2. The form acknowledging receipt of the office policy statement, and a satisfactory explanation at least once a year of its contents, which is signed by each licensee, and which is retained by the company for 3 years.



3. Real Estate Brokerage Services Disclosure form. This is the "up front" disclosure required to be made to all consumers. Auditors are directed to be flexible in allowing brokers to design a filing system for keeping these forms. Specifically, the following should be produced by the broker:
 - a. The form presented to sellers in listing presentations or discussions, whether a listing resulted or not.
 - b. The form presented to buyers in showings or discussions, whether a sale resulted or not.



4. The disclosure form required to be in the contract by Section 34-27-8(c).

DISCIPLINARY ACTIONS TAKEN

April Through August 1997

Name: Mary Ann Hampton, Qualifying Broker, Tuscaloosa, Alabama
Name: Brenda D. J. Garrett, Salesperson, Tuscaloosa, Alabama
Date of Hearing: April 11, 1997
Disposition: Ms. Hampton and Ms. Garrett found guilty of shortage of funds to be held in trust for others in violation of Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. of the Code of Alabama 1975, as amended. Ms. Hampton's license was revoked and Ms. Garrett was reprimanded and fined \$250.

Name: W. G. Rhinehart, Associate Broker, Dauphin Island, Alabama
Name: Curtis P. Gordon, Qualifying Broker, Fairhope, Alabama
Date of Hearing: May 9, 1997
Disposition: Mr. Rhinehart voluntarily surrendered his broker's license in lieu of a hearing. The formal complaint had alleged that Mr. Rhinehart failed to deposit and account for at all times, money coming into the branch office possession for which he was qualifying broker in violation of the Code of Alabama 1975, as amended, Sections 34-27-36(a)(8)a. and 34-27-36(a)(8)b. The complaint further had alleged that commissions were paid to other than a licensee or multiple listing service. Mr. Gordon was found guilty of failing to see that all transactions of the branch office qualifying broker, Mr. Rhinehart, complied with the Alabama Real Estate License Law, as amended, pursuant to Section 34-27-36(a)(19) and Sections 34-27-34(a)(2) and 34-27-32(g).

The Commission accepted the surrender of Mr. Rhinehart's license in which he agreed that this surrender be deemed the equivalent of a license revocation. The Commission ordered that Mr. Gordon's broker license be revoked and that he be fined \$1,000. The revocation was stayed for a period of six months, pending Mr. Gordon's successfully completing the



Commission approved 3 hour trust accounting course, the 15 hour broker's course and paying the assessed \$1,000 fine.

Name: Allen J. Tutwiler, Qualifying Broker, Birmingham, Alabama
Date of Hearing: June 13, 1997
Disposition: Mr. Tutwiler found guilty and license revoked for commingling and shortage of funds to be held in trust for others in violation of Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. of the Code of Alabama, 1975, as amended.

Name: Frank J. Poe, Qualifying Broker, Hoover, Alabama
Date of Hearing: June 13, 1997
Disposition: Mr. Poe found guilty of shortage of funds to be held in trust for others in violation of section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. of the Code. His license revoked and fined \$250. The revocation will be stayed six months pending completion of a trust accounting course and payment of the fine.

Name: Carol Pentecost Fleming, Salesperson, Anniston, Alabama
Date of Hearing: July 18, 1997
Disposition: Ms. Fleming was found guilty and fined \$250 for presenting a check to the commission which was returned unpaid by the bank in violation of Section 34-27-36(a)(16) of the Code.

Name: Mary S. Propes, Qualifying Broker, Huntsville, Alabama
Date of Hearing: August 15, 1997
Disposition: Ms. Propes was found guilty in violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. in failing to deposit and account for trust funds at all times. She was ordered to pay a \$250 fine.

Name: Jimmy Frank Richardson, Qualifying Broker, Haleyville, Alabama
Date of Hearing: August 15, 1997
Disposition: Mr. Richardson was found guilty in violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(8)a. and 34-27-36(a)(8)b. in failing to deposit and account for trust funds at all times. He was ordered to pay a \$250 fine.

Name: Joseph F. Cannon, Qualifying Broker, Tuscaloosa, Alabama
Date of Hearing: August 15, 1997
Disposition: Mr. Cannon was found guilty in violation of the Code of Alabama 1975, as amended, Section 34-27-36(a)(16), giving a check to the Commission for a fee which was returned unpaid by the bank on which it was drawn. He was ordered to pay a \$250 fine.

OTHER ADMINISTRATIVE ACTIONS

Salesperson Applications

Approved 4
 Denied 2

Broker Applications

Approved 0
 Denied 0

Determination for Licensing Eligibility

Approved 7
 Denied 4

REGISTER NOW!

BROKER WORKSHOP

TUESDAY · OCTOBER 28, 1997

Embassy Suites Hotel · Montgomery

The Alabama Real Estate Commission is pleased to announce a Broker Workshop on Tuesday, October 28, 1997, at the Embassy Suites Hotel in Montgomery, Alabama.

Registration starts at 8:00 - 8:30 a.m. and is open to the first one hundred.

The workshop will begin promptly at 8:30 and conclude at noon.

The cost is \$60.00 on or before October 17, 1997, and will increase to \$75.00 after this date.

Kay Evans, DREI, GRI, CRB and **Randy McKinney**, GRI, CRB, CCIM will be the feature instructors covering topics on maintaining escrow accounts, property management, broker supervision and other broker management responsibilities, risk reduction, current trends in real estate and more.

The Broker workshop is approved for 3 hours of elective continuing education credit.

Use the registration form below or register on-line at <http://webserver.dsmd.state.al.us/arec>.

Please register now and don't miss this great opportunity!!!

REGISTRATION FORM

BROKER WORKSHOP

October 28, 1997 • Embassy Suites Hotel • Montgomery

This registration form may be duplicated and given to colleagues. Registration open to the first one hundred.

Mr. Ms. Mrs. Dr. Social Security Number _____

Name (Last) _____ (First) _____ (MI) _____

Name & Affiliation Preference on Name Tag _____

Mailing Address _____

City _____ State _____ Zip Code _____

Home Telephone (_____) _____ Work Telephone (_____) _____

Check enclosed made payable to Auburn University:

\$60.00 (Registration on or before 10/17/97)

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Please charge my: Visa MasterCard

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Mail To: Auburn University, Outreach Program, 100 Mell Hall, Auburn, Alabama 36849-5608

Phone: (334) 844-5101 **Fax:** (334) 844-3101

EDUCATION CORNER

By: Pat Anderson, Education Director

Changes in CE Exemption for 65 Year Olds

The Law . . .

Many of you have been calling about the change in Section 34-27-35(j)(2) in the Alabama Real Estate License Law which now reads, "Any licensee upon reaching the age of 65 and having been licensed 10 years prior to that date shall be exempt from this section." ("This section" refers to the statute which requires continuing education.)

The Rule . . .

There has also been a change to Rule 790-X-1-.12(2) which explains who is exempt from CE. It now reads, "Any licensee will be exempt from completing continuing education requirements upon reaching age sixty-five (65) provided said licensee has been continuously licensed during the ten (10) year period immediately prior to reaching age 65. Any person over the age of 65 will be exempt from meeting continuing education require-

ments upon acquiring 10 years of continuous licensure. For purposes of meeting this exemption licensure can be active, inactive, or a combination thereof."

So, What Does This Mean?

It may mean that at one time you were exempt from taking CE, but you no longer are. Here is the test to determine if you are exempt. You will be exempt from meeting CE requirements for the 1998 license renewal provided:

1. You will be at least 65 years old before October 1, 1998

AND

2. You will have been licensed continuously, in Alabama, another state or a combination thereof, from October 1, 1988 - September 30, 1998.

Now, Before You Call the Commission Office, Read This!

Within the next month or two, the Commission will send out notices to all of you who will be 65 or older by October 1, 1998. The notice will tell you if you meet the "10 years continuous licensure" qualification according to our records. If you do not agree with Commission records, please call THEN. If part of your ten years licensure experience was obtained in another state, you will need to notify the Commission so that the information can be extracted from your Certification of Licensure form in your file. The computer records do not show which of you have these certifications on file, so it will be up to you to call and have it put into your computer record. Also, if you do not have the 10 years continuous licensure experience, you will have time to obtain the required 12 hours of continuing education prior to August 31, 1998. That is the deadline for all licensees to turn in their CE for 1998. ■

A Short History of an Alabama Real Estate Tradition

The First Real Estate Salesmanship Conference: A Quality Event

On February 10-11, 1956, a group of Alabama real estate salespeople, brokers and managers participated in the first Alabama Real Estate Salesmanship Conference. Almost 43 years ago in Graves Hall on The University of Alabama campus, Dr. O. C. Carmichael, president of the University of Alabama, welcomed the conference participants, and Mr. Jack W. Jones, president of the Alabama Real Estate Association

presided. The 1 1/2 day conference included a program of quality presentations, designed by a seven person planning committee, that reflected the participants interests, including courses such as Building a Real Estate Business, Creative Selling and The Broker-Salesman Relationship.

Sales Training, Perfect Timing and Panel of Experts

The 1956 conference was so successful it became an annual event. By 1960, it

was recognized by brokers and salesmen in Alabama and neighboring states as a quality educational event. The planning committee, made up of University of Alabama and Alabama Association of REALTORS® members, incorporated several ideas which remain trademarks of the conference to this day. The conference attracted outstanding professionals as presenters; there were panels of experts, forums, and round tables so that participants could get quality advice from a variety of sources.

Growing Diversity of Courses and Nationally Recognized Speakers

The Real Estate Salesmanship Conference continued to grow and prosper in the 1960s. Program sessions became increasingly diverse with a wide variety of offerings reflecting the items such as the Business Outlook and Real Estate, Practical Sales Problems of Real Estate Salesmen, and Tax Problems in Real Estate. The conference began to attract not only regionally acclaimed speakers, but also those with national recognition. For example, in 1961, the keynote speaker was William Nickerson who had written the best selling book *How I Turned \$1,000 into \$1,000,000 in Real Estate in My Spare Time*.

Keeping Up with Change and Networking

By the mid 1960s it was clear that society — and the real estate business — were getting complicated. So the committee added two new conference goals to that of improving salesmanship skills: “To stimulate participants to recognize and understand current developments and trends in Real Estate” and “To provide a medium and opportunity for the personal exchange of ideas and information” — networking in today’s terms. So, in 1965, in addition to courses like *Researching Your Market* and *Keeping Your Salesmen Selling*, there was course entitled *The Real Estate Office of the Future*.

Fun, Sponsored Events, Exhibits and Choice

From 1956 until his retirement in the early 80s, the Salesmanship Conference manager had been Mr. Charles Adams. Much of the success of the conference was due to his and the planning committee’s leadership in keeping quality traditions from the past while continuing to adapt to change. Then in 1985, a dynamic new conference manager appeared on the scene, Francine Marasco. Networking and entertainment values were emphasized as the international buffet was instituted during social hour and the (now famous) Friday night dance added.

(Continued on page 8)



*To accept the award in Scottsdale (pictured from left to right) are course/video author and trainer for instructors and satellite program, **Julie Garton-Good**, DREI, Commission Education Director, **Pat Anderson**, and Program Coordinator from the University of Alabama (now at Cal State Fullerton), **Dr. Francine Marasco**.*

RECAD Receives “Best Single Education Program” Award

The Real Estate Educators Association (REEA) presented the “1997 Best Single Education Program Award” to the Alabama Real Estate Commission for RECAD (Real Estate Consumer’s Agency and Disclosure Act). The award was received during REEA’s 18th annual Conference held in Scottsdale, Arizona, June 5-7, 1997. REEA is an international organization whose members are real estate educators in the United States, Canada, Australia, Bermuda, and Norway. The mission of the organization is to promote professional development in all areas of real estate education.

A 32 member agency task force was appointed by the Commission in 1993 to draft legislation to address agency relationships in Alabama. Specifically, their mission was to include language in the bill to require early disclosure by licensees of agency relationships in real estate transactions and to provide consumers with representation choices. After much work of the task force, RECAD passed in the 1995 legislative session and became effective October 1, 1996.

The Commission spent the year between passage and enactment to launch a series of projects to educate instructors and licensees. These projects included the development of two three-hour continuing education courses with an accompanying course manual, a 6 hour instructor training program complete with a package of 60 overheads for classroom use, a 30 hour satellite workshop broadcast to 16 different cities, a consumer brochure and a special edition of the “Update” newsletter which was dedicated solely to RECAD. It was for these projects that both REEA and ARELLO (Association of Real Estate License Law Officials) have recognized RECAD as the best single education program and best continuing education program, respectively. The Commission is honored to have been recognized by these two prestigious organizations for these educational efforts.

Howard Brinton was brought in as keynoter in 1986, building on the tradition of nationally acclaimed speakers. Sponsors were recruited to underwrite quality conference extras such as the luncheon, continental breakfasts and refreshments. Companies were recruited to provide trade show exhibits of the participants and to help fund the conference to keep registration fees low. The Real Estate Salesmanship Conference had become one of the best conference deals in the country, high quality at a low registration fee.

Continuing Education Hours

By 1988 almost the entire conference consisted of concurrent sessions, which were delivered in time blocks of three hours and fifteen minutes to meet the criterion for continuing education clock hours by the Alabama Real Estate Commission. In 1986, real estate continuing education was made mandatory by law. In 1992, in keeping with the added conference mission of offering Commission approved continuing education, the name

of the conference was changed to the Real Estate Salesmanship & Education Conference. The number of concurrent sessions continued to rise to provide increased choice, and by 1995, participants could choose from ten concurrent sessions. Truly, the Salesmanship Conference had risen to a new level, while incorporating all the best of the past.

The Ultimate Choice: Participant Customization

Francine Marasco left in 1995 and Geri Stone served as interim manager for a year. David Wilson became the new conference manager in 1996. He and the Salesmanship Planning Committee (which now numbers 21 people) continued the move to increased participant choice and customization by increasing the concurrent sessions to fourteen. Two bonus concurrent sessions were added on Saturday afternoon so that participants could attend the keynote speaker session, and still have the opportunity to earn nine clock hours of real estate continuing education.

Continuing the Tradition

Continuing an Alabama real estate tradition, the 1998 conference promises to be the best yet. In addition to what participants have already grown to expect, there will be more choices than ever with twenty sessions from which to choose. The keynote speaker will be one of the most in demand in the country, Bob Wolff. There will be bonus sessions on both Thursday and Saturday afternoons so that participants can: 1) attend the keynote presentation and still earn 12 hours of continuing education if they choose, and 2) have more of an opportunity to take exactly the courses they want, avoiding course conflicts. Plus, we anticipate some 500 attendees this year which will provide ample networking opportunities.

Join us for an Alabama real estate tradition at the Annual Real Estate Salesmanship & Education Conference on February 19-21, 1998. For more information call David Wilson at (205) 348-4260 or Santha Dunn at (205) 348-5355.

**CE
IMPORTANT
REMINDER**

In accordance with the Code of Alabama Rule 790-X-1-.11(8), a Commission prescribed continuing education course certificate must be issued by the instructor, within 10 days after completion of any approved offering. The student must submit the Certificate of Completion to the Commission within 30 days after completing the course. If the Certificate is not received within 30 days, it will no longer be valid and the licensee will not receive continuing education credit of the course(s).



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Web Address:
<http://webserver.dsmd.state.al.us/arec>

BEST WISHES: Real Estate Commission Auditor Retires

Betty B. Beckman retired on September 30, 1997, from the Alabama Real Estate Commission. She obtained a BS/BA in 1983 from the University of Alabama, Huntsville and began work with the Alabama Real Estate Commission in June 1984 where she served 13 years as auditor. Furthermore, during this time she maintained membership in American Society of Women Accountants (ASWA). She traveled extensively throughout Alabama randomly examining Alabama real estate companies for accuracy in their trust accounts and monitoring broker compliance with the recent requirements of RECAD (Real Estate Consumer's Agency and Disclosure Act).

Mrs. Beckman's responsibilities included advising real estate companies about record keeping changes and improvements. She wrote several articles for the Update newsletter publication to help licensees understand trust accounts and attended educational seminars teaching licensees as well as other educators. Mrs. Beckman is commended for her dedicated service to licensees and the public and will be missed by all. Best wishes on her retirement.

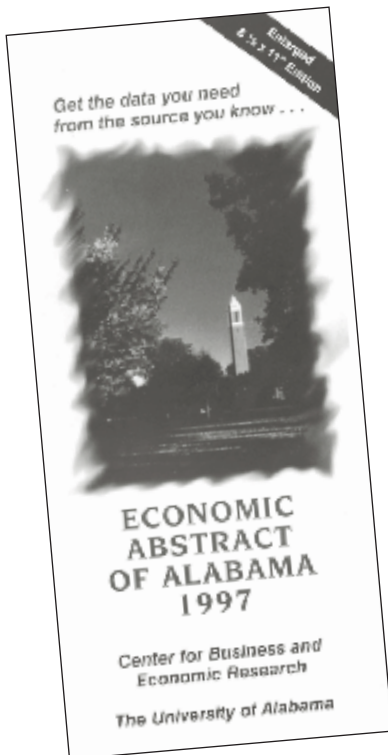
Correspondingly, the Real Estate Commission would like to welcome two new staff members; Linda J. Fuller, Education Assistant and Debbie Schoknecht, Auditor. ■



ECONOMIC ABSTRACT OF ALABAMA 1997

Center for Business and Economic Research
The University of Alabama

A valuable reference for anyone who needs to know about Alabama!



ECONOMIC ABSTRACT OF ALABAMA 1997

Center for Business and Economic Research
The University of Alabama

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PAYMENT

___ Books @ \$30 each \$ _____

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