

BRIEFLY LEGAL

Disclosing Special Relationships

By Charles R. Sowell, General Counsel

A subsection of RECAD requires written disclosure of what I will refer to as “special” relationships. Here is that subsection:

Section 34-27-84.

Obligations of licensees.

(a) Licensees shall have all of the following obligations to all parties in a real estate transaction:

(6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.

■ **We have already had a case to come before the Commission involving this subsection.**

It concerned the sale of a property owned by two licensees who worked for different companies. Just one of them actually had dealings with the buyers. The other one did nothing but sign the closing documents. The administrative law judge ruled that only the licensee who actually “acted” in the sale process and his qualifying broker were responsible for the disclosure.

■ **This subsection applies to sales and leases.** This is because of the RECAD definition of a real estate transaction. It also applies no matter what your relationship is with any party to the transaction. This means it applies whether you are a transaction broker or any kind of agent for anybody. The disclosure must come before the other party becomes bound by the contract, or it is worthless and not “timely.”

(Continued on page 2)

You do not need to be a lawyer to write a disclosure.

Let your conscience be your guide.

Nobody will be hurt if you do a disclosure that perhaps was beyond what the law intended.



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LICENSING TIDBITS

When You Become a New Qualifying Broker

- If you just passed the broker’s exam and are going to be the qualifying broker of a company when you have your initial broker license issued, you should sign your broker license application in both the place where it says “Signature of Applicant” and “Signature of Qualifying Broker”.
- If anyone is transferring into the company at the same time as you are becoming qualifying broker, please sign their transfer form as the new qualifying broker although you do not yet have license in hand.
- When a company gets a new qualifying broker, the Commission is sometimes not notified as to what to do with the previous qualifying broker’s license. The options for the previous qualifying broker are to: 1) remain with the company as an associate broker; 2) place the license inactive; 3) transfer the license to an existing company; or 4) transfer the license to a new company as either an associate broker or a qualifying broker. If the previous broker is going to open a new company and become the qualifying broker, then the company application must be submitted along with the license transfer. ■

Keep up With Commission News on Facebook and Twitter

Current news and information from the Commission can be found on Facebook and Twitter. We post Commission meeting dates, rule changes, legislative updates, and more. Go to the Commission’s Web site at www.arec.alabama.gov and access the links under the News and Events section.

If you have not signed up for Facebook and Twitter, registration for both is free and easy. Click on the Facebook and Twitter links from the Commission’s Web site. When you reach the respective sites, click the sign-up button and follow the prompts to set up your free account.

License Statistics (as of 01-28-10)

Active Licensees	23,116
Inactive Licensees	10,236
Total Licensees.	33,352

- 3,962 of the total are Reciprocal Licensees
- 5,481 Lapsed licensees as of 9-30-09
(Note: This number is usually around 4,000.)

Disclosing Special Relationships

Continued from page 1

- **Pay attention to how broadly it is written.** There is a reason for this. It is impossible to list in the statute all the relationships that might be covered. Many of us have friends that are just as close as family, or perhaps you used to be a business partner of a party, but your partnership recently dissolved. Do not try to split frog hairs about to whom this applies. Let your conscience be your guide. Nobody will be hurt if you do a disclosure that perhaps was beyond what the law intended.
- **You do not need to be a lawyer to write the disclosure.** Just use plain language. Let’s say your name is Betty Buyer and you are one of the four members of ABC, LLC. You are approaching a property owner to discuss the possibility that ABC, LLC would buy the owner’s property. Use your common sense about a verbal disclosure, but this section requires at minimum that you do a disclosure in the written offer something like this: “The seller understands that Betty Buyer is a member of ABC, LLC and Betty is acting on behalf of ABC, LLC in the purchase of this property.”
- **Take note that the example above is on the buying side, which is easy.** This is because you can use the contract form to write the disclosure into the offer to purchase. The property owner has the disclosure when considering the offer, and before becoming contractually obligated. When you are on the selling side you have to be more creative, since the buyers will generate their own offer. You may not accept their offer until you have given the buyer the required written disclosure. This is because the buyer would be contractually obligated before getting the disclosure. Probably the best thing to do is to give the buyer or buyer’s representative a written disclosure, and ask them to include it in any offer they make. If you give them the written disclosure like this, it is not necessary that it be repeated in the contract, but most people are more comfortable if it is. It never hurts to be able to prove that you did the disclosure with something other than your memory and your word. ■

EDUCATION CORNER

By Ryan Adair, Education Director

New Training for Reciprocal Licensees

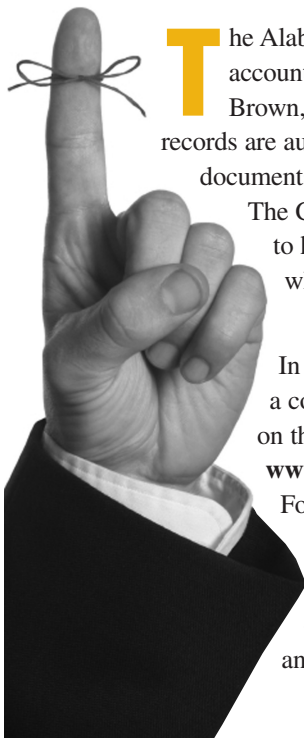
The last issue of the *Update* newsletter addressed recent changes in legislation. One of those changes involved reciprocal license applicants. Prior to this legislative change, reciprocal applicants could be licensed by completing an application and paying an application fee. There was no preparation or training for these applicants to represent buyers and sellers in Alabama. Reciprocal salesperson and broker applicants are now required to complete six (6) hours of coursework in Alabama license law and also pass the state portion of the Alabama real estate examination.

Why is this so important? As you know, qualifying brokers are responsible for all of the actions of individuals licensed with his or her company. If you are a qualifying broker and a new reciprocal licensee wants to work for your company, you have the responsibility for all actions of that licensee. Do you feel com-

fortable being responsible for a licensee who has had no training in Alabama license law? Would you not feel better about allowing a new licensee to join your company having received proper training prior to being issued a license? I'm sure the answer to that question is "yes."

The new requirement of coursework and examination will benefit multiple parties. The Real Estate Commission hopes to see fewer formal complaints issued for reciprocal licensees who eventually appear before commissioners and tell them "I didn't know." Qualifying brokers will feel more comfortable with the responsibility of these reciprocal licensees knowing proper training has been required. Consumers will be better protected and served by a licensee who is familiar with the requirements of Alabama license law. This is another example of proper education playing an important role in the area of real estate. ■

OFFICE AUDITS: Are You Ready?



The Alabama Real Estate Commission's three trust account auditors are Denise Blevins, Anthony Brown, and Vicki Shackelford. When your records are audited, they will be looking for certain documents that you should have on hand.

The Commission provides a handy checklist to help ensure that licensees are ready when their company is audited.

Keep the Audit Checklist as a reference. In addition to being provided in this article, a copy of the checklist can also be found on the Commission's Web site at www.arec.alabama.gov under the Forms and Information tab and in the License Law on page A-4.

If you ever have questions about office auditing, please contact the Legal and Investigative Division. ■

Audit Checklist

Requested Items for Office Audit

- Place of Business Signage
- Real Estate Licenses
- RECAD Office Policy (*Acknowledgement of policy signed by all licensees.)
- Location of closed contracts for past three (3) years
- All pending sales files
- Location of all lease contracts, management agreements, and rental records
- Copies of past six (6) months bank statements with canceled checks for all escrow accounts
- Copies of latest bank reconciliation performed on all escrow accounts, if available
- Checkbook and or computer check register for all escrow accounts
- Duplicate deposit tickets with validated bank receipt for all escrow accounts
- Any lists or ledgers documenting the funds held for escrow purposes

Note: "Escrow Funds" include sales binders, security deposits, rent receipts, and/or any other funds held for members of the public.

Enhanced License Status Verification Available on the Commission Web Site

Check out the IMPROVED License Status Verification features on the Commission's Web site at www.arec.alabama.gov. License Status Verification has been redesigned to be more user-friendly for licensees and consumers. This is a quick and easy way to verify real estate licenses.

- Use the new Advance Search feature to perform searches on specific types of licenses to check the status of licenses or approvals.
- Use the License Status Verification to search for license information on individuals, companies, real estate schools, and instructors that are regulated by the Alabama Real Estate Commission.
- View the most recent dates for license transactions such as when a licensee obtains his/her original license, transfers a license to another company, or renews a license.
- Check the renewal expiration date on licenses.

New License Status Verification Search Features

NEW Exact and Contains Name Results - Callout pointing to search fields for First Name, Last Name, Company Name, and License Number.

Exact 9 Digit License Number with or without preceding "0"s - Callout pointing to the License Number field.

NEW Advance Search - Callout pointing to the Advance Search button.

Search options: Licensee Company Both

All New Advanced Search Options

NEW Options added to narrow Search Results - Callout pointing to the License Type and License Status sections.

Criteria: Contains Exact

License Type:

- Real Estate
 - Qualifying Broker
 - Associate Broker
 - Salesperson
 - Temporary
- Company
- Branch
- Education
 - School Administrator
 - CE Instructor
 - Pre/Post Instructor
- School
- Select All

License Status:

- Active
- Inactive
- Suspended
- Revoked
- Lapsed
- Deceased
- Select All

Search button: Search

Detailed Search Results

NEW More detailed Information in Search Results - Callout pointing to the search results table.

	Name	License#	Extension	Extra Name
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL
Select	XYZ REALTY INC	0000000000		DBA XYZ REALTY ANYTOWN AL

New Search button: New Search

Licensee Detailed Search Results




License Status Verification

License Number	00000000
Name	JOHN DOE
License Type	Temporary Salesperson
License Status	Active
Original Paid Date	07/08/2009
Transfer Paid Date	
Renewal Paid Date	
Renewal Expires	N/A
License Expires	08/09/2010
Company Name	XYZ REALTY INC
Company	000000000

[Back](#)

Company Details with Licensee Search Results



License Status Verification

License Number	00000000
Name	XYZ REALTY INC
	DBA XYZ REALTY INC 1
License Type	Company
License Status	Active
Original Paid Date	N/A
Transfer Paid Date	05/06/2007
Renewal Paid Date	10/11/2008
Renewal Expires	09/30/2010
License Expires	09/30/2010
Company Name	
Company	

License Number	First Name	Last Name	Suffix	License Type	License Status	License Expires	Renewal Expiration Date
00000000	JOHN	DOE		Qualifying Broker	Active	09/30/2010	09/30/2010

[Show Branches](#) [Show Licensees](#)

NEW View Expanded View Options

License Status Verification

	License Status	License Type
INC 1	Active	Branch
INC 2	Active	Branch
INC 3	Active	Branch
INC 4	Active	Branch
INC 5	Active	Branch
INC 6	Active	Branch
INC 7	Active	Branch
INC 8	Active	Branch
INC 9	Active	Branch
INC 10	Active	Branch

License Number	First Name	Last Name	Suffix	License Type	License Status	License Expires	Renewal Expiration
00000000	MARY	DOE		Salesperson	Active	09/30/2010	09/30/2010
00000000	JANE	DOE		Associate Broker	Active	09/30/2010	09/30/2010
00000000	BOB	DOE		Salesperson	Active	09/30/2010	09/30/2010
00000000	TOM	DOE		Temporary Salesperson	Active	09/30/2010	09/30/2010
00000000	BILL	DOE		Salesperson	Active	09/30/2010	09/30/2010

DISCIPLINARY ACTIONS TAKEN

August 2009 through December 2009

DISPOSITION

The below were found guilty of violating 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.

Elizabeth Ann Wood Weas

License No. 000086182

Salesperson; Alabaster, Alabama

Date of Hearing: October 9, 2009

Reprimanded

Rose Hinton Jones

License No. 000077427

Salesperson; Birmingham, Alabama

Date of Hearing: November 20, 2009

Fined \$250

Nancy Ellen Malone

License No. 000090340

Salesperson; Mobile, Alabama

Date of Hearing: November 20, 2009

Fined \$250

Gary D. Skipper, Jr.

License No. 000053032

Qualifying Broker; Foley, Alabama

Date of Hearing: November 20, 2009

Fined \$250

Sandra Stanton

License No. 000094460

Salesperson; Birmingham, Alabama

Date of Hearing: November 20, 2009

Fined \$250

DISPOSITION

The below were found guilty of violating Rule 790-X-3-.01 through Section 34-27-36(a)(19) for failing to notify the Commission in writing within 30 days after



changing their place of business as set out on their numbered license certificate.

Linda H. Evans

License No. 000080787

Qualifying Broker; Moulton, Alabama

Date of Hearing: August 14, 2009

Fined \$250

Christi Black Reese

License No. 000063591

Qualifying Broker; Montgomery, Alabama

Date of Hearing: August 14, 2009

Fined \$250

Sherlyn Lindsey Waghalter

License No. 000087639

Qualifying Broker; Gulf Breeze, Florida

Date of Hearing: September 11, 2009

Fined \$250

DISPOSITION

The below were found guilty of Count #1 for violating Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for failing to deposit and account for funds belonging to others and by commingling their funds with those belonging to others in the rental payment trust account and Count #2 for violating Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for failing to deposit and account for at all times all

funds being held for others by having a shortage of funds in the rental security deposit trust account.

David Lawrence Adams, Jr.

License No. 000047034

Qualifying Broker; Troy, Alabama

Date of Hearing: September 11, 2009

Reprimanded

Mary P. Adams

License No. 000061824

Salesperson; Troy, Alabama

Date of Hearing: September 11, 2009

Fined \$1,000 and license suspended for six months with the suspension stayed for six months for completion of the Risk Management continuing education course. If the continuing education is completed, then the suspension is permanently stayed.

Adams Property Management, LLC

License No. 000072421

Company; Troy, Alabama

Date of Hearing: September 11, 2009

Fined \$1,000

DISPOSITION

The below were found guilty of Count #1 for violating Section 34-27-36(a)(8)a. and Section 34-27-36(a)(8)b. for failing to deposit and account for funds belonging to others and by commingling their funds with those belonging to others in the security deposit escrow account.

Martha B. Cassels

License No. 000012670

and

Martha Cassels Real Estate

License No. 000012669

Qualifying Broker; Montgomery, Alabama

Date of Hearing: November 20, 2009

Reprimanded

DISPOSITION

The below was found guilty of violating Section 34-27-31(e)(6) as the Commission paid from the Recovery Fund an amount in settlement of a claim or toward a satisfaction of a judgment against the licensee.

John C. Wilson

License No. 000085744

Salesperson; Decatur, Alabama

Date of Hearing: November 20, 2009

Revoked

DISPOSITION

The below was found guilty of violating Section 34-27-36(a)(23)a. by entering a plea of guilty to a felony offense.

Dana R. Dyer

License No. 000094024

Salesperson; Dothan, Alabama

Date of Hearing: September 11, 2009

License Revoked

DISPOSITION

The below was found guilty of Count #1 for violating Section 34-27-36(a)(4) for making false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement; Count #2 for violating Section 34-27-36(a)(14) for accepting a commission or other valuable consideration for per-

forming an act for which a license is required from any person except his qualifying broker; and Count #3 for violating Section 34-27-36(a)(10) for failing to voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document with reasonable promptness.

Greg Urbanski

License No. 000092467

Salesperson; Mobile, Alabama

Date of Hearing: July 24, 2009

License Revoked; Fined \$3,000 (\$1,000 for each count)

DISPOSITION

The below surrendered their license for alleged license law violations in lieu of a formal complaint and hearing.

Jeffrey Forrest Lipscomb

License No. 000088021

Associate Broker; Statham, Georgia

Date of Hearing: October 9, 2009

Mark Wayne Maddox

License No. 000079758

Salesperson; Baileyton, Alabama

Date of Hearing: October 9, 2009

Vanessa Michele McGregor

License No. 000091017

Salesperson; Decatur, Alabama

Date of Hearing: October 9, 2009



2010 Commission Meeting Schedule

The Alabama Real Estate Commissioners will meet on the following dates in 2010. The Montgomery meetings are usually held at the Commission offices at 1201 Carmichael Way. The meeting dates and locations are subject to change. Please check the Commission's Web site at www.arec.alabama.gov for current information. Meeting information can also be found on the Commission's Facebook and Twitter pages.

All meeting dates are posted on the Secretary of State's Web site at www.sos.alabama.gov in accordance with the Alabama Open Meetings Act. Commission meetings are always open to licensees and the public.

March 10	Montgomery	9:00 a.m.
April 23	Montgomery	9:00 a.m.
May 21	Montgomery	9:00 a.m.
June 25	Montgomery	9:00 a.m.
July 30	Montgomery	9:00 a.m.
August 27	Montgomery	9:00 a.m.
September 24	Montgomery	9:00 a.m.
October 22	Montgomery	9:00 a.m.
November 19	Montgomery	9:00 a.m.

OTHER ADMINISTRATIVE ACTIONS

DETERMINATION OF LICENSURE

Approved	24
Denied	9

DETERMINATION OF ELIGIBILITY

Approved	4
Denied	0

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees	1,617
From Public	911
Anonymous	18



1201 Carmichael Way • Montgomery, AL 36106

OUR MISSION

To serve the public through the licensing and regulating of Real Estate licensees.

OUR VISION

To insure public confidence in real estate transactions.

OUR VALUES

Excellence in stewardship, service, innovation, and integrity.

COMMISSIONERS

Jewel D. Buford, Tuscaloosa

Steve Cawthon, Huntsville

Robert S. Hewes, Dothan

Sheila S. Hodges, Gulf Shores

Clifton Miller, Huntsville

Janet R. Morris, Montgomery

Dorothy P. Riggins-Allen, Montgomery

Bill Watts, Birmingham

Nancy Wright, Cullman

D. Philip Lasater, Executive Director

Patricia Anderson, Asst. Executive Director

Vernita Oliver-Lane, Editor

Lori Moneyham, Associate Editor

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

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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 Web site at

www.arec.alabama.gov.

REAL ESTATE LICENSES EXPIRE

September 30, 2010

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

Presort Standard
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AREC Wins 2009 ARELLO Best Web Site Award

ARELLO (Association of Real Estate License Law Officials) honored the Alabama Real Estate Commission with the Communication Award for Best Web site at its annual conference held in Miami, Florida in October 2009.

The ARELLO Communication Award recognizes outstanding communication tools that contribute to the real

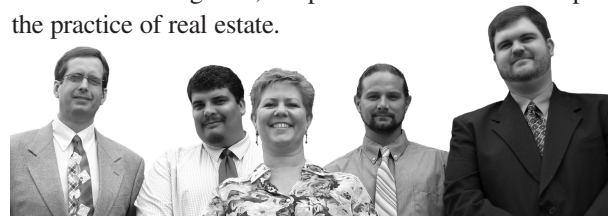
Accepting the ARELLO award for Best Web Site are (l-r): Vernita Oliver-Lane, Commissioner Nancy Wright, and Lori Moneyham.



estate industry, promote the protection of the public, and increase the awareness among ARELLO jurisdictions of outstanding communication systems.

The award recognition criteria were based on program design, communication system standards, innovation, resources, and benefit. The Commission strives to maintain quality services by providing current, helpful information to licensees, educators and consumers. The Public Relations and Information Technology Divisions work hard to ensure that our Web site is an effective communication tool for both the public and real estate licensees. This award for Best Web site is indicative of the Commission's efforts for greater exposure, convenience, and service to people worldwide.

ARELLO is a global, nonprofit association made up of entities involved in regulating the practice of real estate.



Meet the Alabama Real Estate Commission Information Technology Division (l-r): Brett Scott, Steven Brown, Nancy Barfield, Codey Cherry and Matt Davis.