

THE UPDATE

ALABAMA REAL ESTATE
COMMISSION
EMPOWER, CONNECT, AND EDUCATE

BRIEFLY LEGAL

By Chris Booth, General Counsel

A Review of Minimum Services Requirements



There seems to be confusion regarding the minimum services requirements that were added to RECAD (Real Estate Consumers Agency Disclosure Act) in 2005 under Section 34-27-84, *Code of Alabama*. These requirements are generally referred to as the Minimum Services Law and are equally applied to all agents. Let us look at these requirements as they affect the listing agent, a seller, and the selling agent.

The listing agent is bound by Section 34-27-84(c) *Code of Alabama* which says:

When accepting an agreement to list an owner's property for sale, the broker or his or her licensee shall, at a minimum, accept delivery of and present to the consumer all offers, counteroffers, and addenda to assist the consumer in negotiating offers, counteroffers, and addenda, and to answer the consumer's questions relating to the transaction.

(Continued on page 4)

THE UPDATE IN THIS ISSUE

- LICENSING REVIEW: How to Avoid Application Denial Due to Fingerprinting Process 2
- New TILA-RESPA Integrated Disclosure (TRID) Rules Became Effective October 3, 2015 3
- License Update 4
- EDUCATION CORNER: The Importance of Continuing Education Course Evaluations 5
- New License Law Book Available 5
- TECHNOLOGICALLY SPEAKING: Changes Made to Online Services Login to Streamline Process ... 6
- Be Our Guest... 2016 Commission Meetings Scheduled 6
- DISCIPLINARY ACTIONS 7
- Other Administrative Actions 7
- Commission Receives ARELLO® Communication Award 8



How to Avoid Application Denial Due to Fingerprinting Process



As many are already aware, fingerprints are required for individuals who are seeking a new real estate license in Alabama as a part of their criminal history background check. This includes not only those seeking to obtain a salesperson license but also those licensed salespersons who complete prelicense coursework, pass the broker's examination and apply for an Alabama broker's license. Fingerprints are also required from those with a problematic background who are seeking a determination of eligibility from the Commission.

Blank fingerprint cards will be supplied at Alabama test centers to candidates who successfully pass an examination at an Alabama test center as part of their application materials. ONLY candidates taking an examination at a testing center outside of Alabama or those seeking a determination of eligibility from the Commission should contact the Commission and request that a fingerprint card be mailed to them.

All should be aware; we are denying and returning licensing applications and requests for determination of eligibility for failing to do the following:

1. Ensure fingerprints are taken by an authorized official at a law enforcement agency.
2. Ensure the fingerprint card is filled out completely at the top and signed by the person being fingerprinted and the official who took the fingerprints.
3. Ensure the fingerprint card contains quality fingerprint impressions that are in accordance with the examples given on the back of the card.
4. Include a properly executed Application to Review Criminal History Record Information WITH the fingerprint card.

Have the official taking the fingerprints review the card with you to make sure it is filled out completely and fingerprint impressions are adequate before you leave.

As a reminder, fingerprints ARE NOT REQUIRED for:

- ▶ Individuals with a temporary salesperson's license who are applying for an original salesperson's license
- ▶ Individuals who already hold an active Alabama real estate license
- ▶ Individuals activating a current Alabama real estate license
- ▶ Individuals who are renewing a license

If you are an instructor, qualifying broker or any individual that has knowledge of someone who is in the process of obtaining their Alabama real estate license we hope you will share this article with them.

New TILA-RESPA Integrated Disclosure (TRID) Rules Became Effective October 3, 2015

TRID and Complying with License Law

Some of you have already gained some experience working with the new **federal** TILA-RESPA Integrated Disclosure (TRID) Rules which have been in effect since October 3, 2015. The former Good Faith Estimate and the initial Truth-in-Lending Disclosure have been replaced by the Loan Estimate. The Loan Estimate is required to be provided to a borrower within three business days of a lender receiving an application from that borrower. The new Closing Disclosure replaces the HUD-1 and the final Truth-in-Lending Disclosure. Borrowers must receive the Closing Disclosure Form three days prior to closing on the selected mortgage loan. These forms and the related procedures associated with these new rules are required of those qualifying transactions when the loan application was received on or after October 3, 2015.

The Consumer Financial Protection Bureau (CFPB) has developed several pieces of related information directed to consumers and other interested parties. These may be found on their website at: consumerfinance.gov. Also, the CFPB has developed material specific to real estate licensees which may be found at: consumerfinance.gov/know-before-you-owe/real-estate-professionals/. We encourage each of you to familiarize yourself with this information.

The TRID rules have very specific requirements for lenders and settlement agents regarding the delivery of both the Loan Estimate and the Closing Disclosure to the buyer and the seller. There is no requirement that either of these be provided to the real estate agent(s) involved. We understand that this is disconcerting to agents when they are trying to serve the best interests of their clients. The Commission is aware that real estate agents, lenders and settlement agents are reacting to the CFPB's changes in various ways. Our legal division is receiving calls from licensees regarding how the License Law and rules apply in light of the new federal rules.

The Alabama Real Estate License Law requirements of Section 34-27-36(a)(22) *Code of Alabama* and Administrative Rule 790-X-3-.04 are still in effect along with the TILA-RESPA disclosures. Section 34-27-36(a)(22) requires that real estate licensees inform the buyer or seller at the time an offer is presented that the buyer or seller will pay certain closing costs and the approximate amount of those costs. The TILA-RESPA requirement for



the Loan Estimate is triggered by a buyer applying for a mortgage loan and not by the making of an offer to purchase real property. Thus all real estate licensees will still be expected to provide an estimated closing statement when preparing an offer and to maintain a copy of it in their records.

The Commission recommends that you continue to provide as much accurate information to the consumer as you can to assist them in making decisions appropriate for them. Should a question arise regarding proper disclosures of financial information the Commission will review not only the letter of the law but the efforts of licensees to fulfill their obligations to consumers. You should document these efforts to fulfill their obligations to the consumer.

Finally, the Closing Disclosure Form references costs related to Homeowners Associations (HOAs). Licensees should know that a new law became effective that will require HOAs formed on or after January 1, 2016, to be organized as a nonprofit corporation. Furthermore they are required to file with the Secretary of State's office their Articles of Incorporation; governing documents; and original covenants, conditions, and/or restrictions for publication on the Secretary of State's website. The Secretary of State will maintain an electronic database of these Associations that are accessible to the public. Existing HOAs are not required to file their documents with the Secretary of State's office but may choose to do so in order to make them readily available to consumers.

This is interpreted by the Commission to mean that there are two services that listing agents are required to offer. First, when written offers are delivered to the listing agent, the listing agent must present the offer to the seller.

Second, under Section 34-27-84(c) listing agents must answer the seller's questions related to the transaction. The listing agent cannot refuse or become unavailable to answer questions from a seller regarding a real estate transaction for the listed property.

A seller of real property has several options when listing a property. Please remember that the Commission does not gain authority over a seller because he lists property with an agent. Sellers may negotiate listing agreements that reflect their individual knowledge, experience and/or wishes. Owners of listed property may choose to receive purchase offers directly from a selling agent. Sellers may instruct their listing agent to make the owner's contact information available for direct transmittal of a written offer from a buyer or selling agent. Such a choice by the seller would minimize the occasions when a listing agent would be in receipt of any offers and, therefore, required to present the offer to a seller. Remember, that when an offer on a single-family residential property does come through the listing agent, Section 34-27-36(a)(22) and Administrative Rule 790-X-3-.04 require that the listing agent prepare and furnish to the seller a complete estimated closing statement. The estimated closing statement is expected to inform the seller that he or she will be expected to pay certain closing costs and the approximate amount of those costs.

We are also seeing sellers choosing a variety of options with regard to signage. License law doesn't require a licensee to put a yard sign on listed property. Sellers have the right to control the use of their property even if the property is listed with an agent. Therefore, a seller may choose to put up his own sign, to have the listing agent put up the listing company's sign, to have both signs in the yard, or to have no signs.

Selling agents need to be aware of their obligations and the options that are available to them. In those instances where a seller has chosen to receive offers directly, a selling agent who prepares an offer for a buyer may either transmit that offer to the listing agent or directly to a seller. Remember that the same requirement for estimated closing statements is required of the selling agent as is required of a listing agent when the selling

agent is preparing an offer for a buyer. A selling agent that sends an offer to a seller is only transmitting that offer and not presenting the offer to the seller. Since the selling agent is not presenting the offer to the seller, there is no requirement for the selling agent to prepare an estimated closing statement for the seller (the presentation of the offer and the estimated closing statement are the listing agent's responsibility). With regard to the second minimum service, the selling agent is under no obligation under license law to answer a represented seller's questions regarding the transaction. As part of business practice, the selling agent may choose to do so but there is no requirement for such.

As always, there may be situations where licensees must use their own judgement in the course of their brokerage activities. In those cases licensees will certainly want to consult with their qualifying broker to ensure office policies are being followed.



LICENSE UPDATE

As of December 21, 2015

■ Total Salespersons	15,139
(including Reciprocal)	
Active	9416
Inactive	5723
■ Total Brokers	8389
(including Reciprocal)	
Active	6778
Inactive	1611
■ Total Companies/Branches	3958
Active	3815
Inactive	143
■ Total Temporary Licensees	828
Active	667
Inactive	161

TOTAL LICENSES **28,314**



The Importance of Continuing Education Course Evaluations



In addition to a successful career, one of the other advantages of being a real estate licensee is continuing education (CE). So many licensees look forward to taking CE courses every two years, right? Of course, there are some complaints regarding CE courses based on the instructor, the course content, or the credit that was offered for the course.

Since the Commission approves all instructors and courses, we look forward to hearing from licensees who attend the courses so we can verify that the proper information is being shared in the proper manner. This information can easily be shared with the Commission through the Course Evaluation feature available to all licensees. How do you access this course

evaluation? Most, if not all, licensees log in to their record through the Commission's Online Services to verify that credit has been received for completed CE courses. For a period of 30 days after the completion of a course, an electronic evaluation is available. Licensees are free to share any information regarding a completed course whether it is positive or negative. This information goes directly to the Commission without the instructor seeing it. Therefore, licensees can be as free and open as needed when evaluating a course.

We ask that you take advantage of the online course evaluations. Positive comments let us know that the instructors are doing a great job of teaching the approved courses. Negative comments will let us know how we might help an instructor make the course more meaningful to licensees. The Commission will investigate negative comments and take appropriate action to make necessary corrections. We can't do this without your feedback so share your opinions on the real estate courses that you attend.

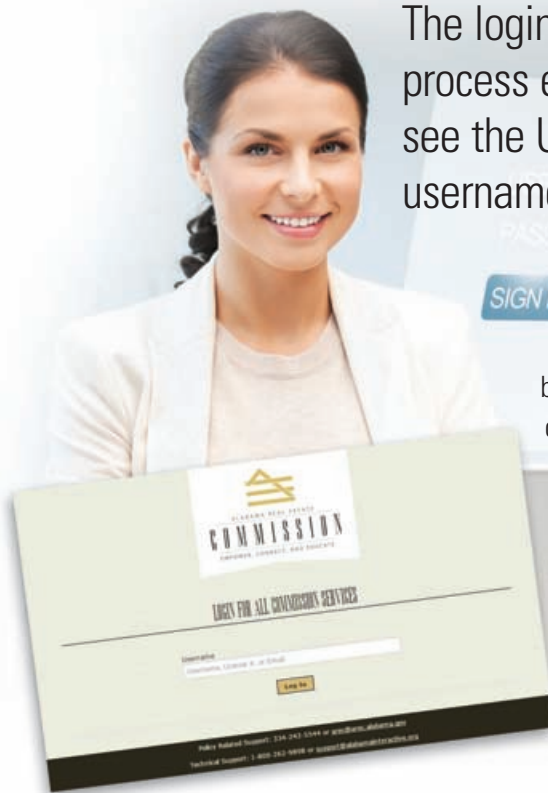
New License Law Book Available

Qualifying brokers should have received a complimentary copy of *License Law, 24th Edition Revised 2015*. The new edition includes all current revisions from the 23rd edition and its supplement. Qualifying brokers are encouraged to keep a copy of the License Law handy and regularly refer to it in sales and training meetings. Also encourage the salespeople and brokers licensed with your company to order their own copy. The order form is on the Commission's website, arec.alabama.gov, under the Laws tab.





Changes Made to Online Services Login to Streamline Process



The login for Online Services has changed to make the login process easier. Once on the login screen, licensees will now see the Username field only and they will have to enter their username, license number OR email address to proceed.

If this is the first time the licensee is attempting to log in to Online Services, the license number can be entered into the username field. Then the licensee will be directed to a registration page where a username and password can be created. After creating a username and password, the licensee will then have to confirm or update the email address. There is also a checkbox giving the choice to opt in to allow the email address to be included on the lists that can be purchased from the Commission's website.

If a licensee has already set up a username and password for Online Services, they can enter their username or license number and the password field will appear. Once the password is entered, the available online services will be accessible.

Licensees always have the option to change their passwords. If the licensee cannot remember the password, or just wants a new one, there is an option in the Online Services menu to reset it. For questions about accessing Online Services, contact the Commission office.



2016 Commission Meetings Scheduled

The Alabama Real Estate Commission is scheduled to meet at 9:00 a.m. at the Commission offices in Montgomery, 1201 Carmichael Way, on the following dates in 2016.

- **January 21**
- **February 25**
- **March 24**
- **April 21**
- **May 26**
- **June 23**
- **July 21**
- **August 25**
- **September 29**
- **October 27**
- **December 1**

The meeting dates and locations are subject to change. Please check the Commission's website (arec.alabama.gov); Facebook ([facebook.com/ARECalabamagov](https://www.facebook.com/ARECalabamagov)); or Twitter (twitter.com/ARECalabamagov) for the most current information. Meeting dates are also posted on the Alabama Secretary of State's website at sos.alabama.gov in accordance with the Alabama Open Meetings Act. Commission meetings are always open to licensees and the public.

Be Our Guest...



DISCIPLINARY ACTIONS

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(16) for presenting to the Alabama Real Estate Commission, as payment for a fee or fine, a check which was returned unpaid by the bank upon which it was drawn.

Shannon Adele (Missy) Hayes

License No. 000098880

Qualifying Broker; Mobile, Alabama

Date of Hearing: July 23, 2015

Fined \$250

Erica K. Whitt

License No. 000103646

Salesperson; Huntsville, Alabama

Date of Hearing: September 24, 2015

Fined \$250

DISPOSITION

The below was found guilty on Count 1 of violating Section 34-27-36(a)(23)a. for entering a plea of guilty to a felony charge; guilty on Count 2 of violating Section 34-27-36(a)(19) for failing to comply with Section 34-27-31(j) in that he failed to notify the Commission within 10 days after notice to him of the institution of a criminal prosecution against him; and guilty on Count 3 Section 34-27-36(a)(19) for failing to comply with Section 34-27-31(k) in that he failed to notify the Commission within 10 days of the disposition of a criminal prosecution against him.

William R. Miller

License No. 000067130

Qualifying Broker; Spanish Fort, Alabama

Date of Hearing: September 24, 2015

Count 1 - Fined \$2,500

Count 2 - Fined \$1,000

Count 3 - Fined \$1,000

DISPOSITION

The below was found guilty on Count 1 of violating Section 34-27-36(a)(19) for failing to comply with Section 34-27-31(j) in that he failed to notify the Commission within 10 days after notice to him of the institution of a criminal prosecution against him and guilty on



Count 2 of violating Section 34-27-36(a)(31) for failing to keep in his files a copy of the original listing agreement and failing to obtain and keep a copy of the confirmation of the ending of a listing for a period of three years.

Hong K. Park

License No. 000040929

Qualifying Broker; Huntsville, Alabama

Date of Hearing: September 24, 2015

Count 1 - Fined \$250

Count 2 - Fined \$250

DISPOSITION

The below was found guilty on Count 1 of violating Rule 790-X-3-.03(2) through Section 34-27-36(a)(19) for failing to pay over to his qualifying broker all funds coming into his possession in trust for other parties immediately upon receipt of same; guilty on Count 2 of violating Section 34-27-31(j) for failing to notify the Commission within 10 days after notice to him of the institution of a criminal prosecution against him; and guilty on Count 3 of violating Section 34-27-36(a)(26) for exhibiting conduct which constitutes or demonstrates dishonest dealings, bad faith or untrustworthiness.

James Edward Baker

License No. 000072162

Associate Broker; Huntsville, Alabama

Date of Hearing: February 19, 2014

Count 1 - License revoked

Count 2 - Found guilty

Count 3 - Fined \$2,500 and license revoked

DISPOSITION

The below were found guilty of violating Section 34-27-36(a)(8)(b) for failing to deposit and account for at all times all funds being held for others in a separate federally insured account by having a shortage of funds in the escrow accounts.

Judy R. Ramey

License No. 000068368

Qualifying Broker; Orange Beach, Alabama

Date of Hearing: April 23, 2015

Fined \$2,500 and License revoked

Caribe Realty, Inc.

License No. 000072113

Company; Orange Beach, Alabama

Date of Hearing: April 23, 2015

Fined \$2,500

DISPOSITION

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

Michael Patrick Barbour

License No. 000066506

Salesperson; Mobile, Alabama

Date of Hearing: October 22, 2015

OTHER ADMINISTRATIVE ACTIONS

MAY - NOVEMBER 2015

APPLICATION FOR LICENSURE

Approved 19

Denied 3

DETERMINATION OF ELIGIBILITY

Approved 7

Denied 5

COMPLAINTS AND INQUIRIES HANDLED BY LEGAL AND INVESTIGATIVE STAFF

From Licensees 1936

From Public 1164

Anonymous/Commission 89

THE UPDATE

ALABAMA REAL ESTATE

COMMISSION

EMPOWER, CONNECT, AND EDUCATE



EMPOWER Empowering the real estate professional and the consumer.



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



EDUCATE Educating the real estate professional and the consumer.

COMMISSIONERS

Bill Watts, Birmingham, *Chairman*
Carole J. Harrison, Auburn, *Vice Chairman*
Steve Cawthon, Huntsville
J. Reid Cummings, Mobile
Cindy Denney, Tuscaloosa
Clifton Miller, Huntsville
Dorothy P. Riggins-Allen, Montgomery
Danny Sharp, Dothan
Nancy Wright, Cullman

ALABAMA REAL ESTATE COMMISSION

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

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

arec.alabama.gov
arec@arec.alabama.gov



THE UPDATE

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

COMMISSION MEETINGS OPEN TO THE PUBLIC

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

REAL ESTATE LICENSES EXPIRE SEPTEMBER 30, 2016

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

Presort Standard
U.S. Postage
PAID
Montgomery, AL
Permit 286

Commission Receives ARELLO® Communication Award

The Alabama Real Estate Commission received the Association of Real Estate License Law Officials (ARELLO®) Communication Award in September at ARELLO's 2015 Annual Conference in Washington, D.C. The Commission was recognized by ARELLO® for its website series of instructional videos to assist licensees and consumers.

The four instructional videos are: Introduction: *The Alabama Real Estate Commission*; *Step-by-Step: Setting Up Your New Login for Online Services*; *Failed Transaction Files, Who Needs Them:-You Do!*; and *Disclosure of Relationships: Family Defined*. The videos are in the Media section of the Commission's website.



This highly regarded ARELLO® Communication Award, along with the Education Award, is presented each year in recognition of outstanding systems and programs that contribute to the real estate industry, promote public protection and that might be adapted to benefit licensees and consumers in other ARELLO® member jurisdictions. ARELLO® member organizations represent nearly every continent on the globe.