

ALABAMA LICENSE LAW & TRUST FUNDS

PRESENTED BY MARK YARBROUGH OF



REAL ESTATE SCHOOL
Licensing is our specialty

*THE OLDEST AND LARGEST PROVIDER
OF REAL ESTATE IN ALABAMA*

www.alabamarealestateclass.com

FEES

\$25.00	Criminal records search
	Change of company name, licensee's name, company address
	Change of status from inactive to active (not active to inactive)
\$30.00	Recovery fund fee, when obtaining temporary active license
	Education & research
\$85.00	Salesperson and company license fee per year
\$95.00	Broker's license fee per year
\$150.00	Penalty for non-renewal after August 31 or licensing period
	Temporary license fee for one year
	Initial broker's license fee
\$200.00	Party appealing decision shall post appeal bond

Miscellaneous fees are as follows:

- Disciplinary action fees are no less than \$100 nor exceeding \$2500.00
- Witness in hearing pay
 - \$6.00/day
 - \$0.20/mile

LICENSEE STUDY GUIDE

WHO MUST BE LICENSED?

Any person, partnership, corporation or branch office with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration from another to:

1. Sell, exchange, purchase, rent or lease real estate
2. Offer to sell, exchange, purchase, rent or lease real estate
3. Negotiate or attempt to negotiate the listing, sale, exchange, purchase, or leasing or real estate
4. List or offer or attempt to agree to list real estate for sale, rent, lease, exchange or trade
5. Auction, offer or attempt or agree to auction real estate
6. Buy or sell or offer to buy or sell, or otherwise deal in option on real estate
7. Aid, attempt or offer to aid in location or obtaining for purchase, rent or lease any real estate
8. Procure or as in procuring of prospects for the purpose of affecting the sale, exchange, lease or rental of real estate
9. Procure or assist in procuring of properties for the purpose of affecting the sale
10. Present them, or be presented, as being able to perform an act for which a licensee is required

Auctioneers

The law requires that one who auctions, or offers or attempts or agrees to auction real estate must be licensed. Persons commonly referred to as “ground men” are not required to be licensed, provided their activities shall be limited to relaying crowd participation bids to the auctioneer.

WHO DOES NOT NEED TO BE LICENSED?

1. An owner in the managing of or in consummating a real estate transaction involving their own real estate or the real estate of their spouse, child or parent
 - a. The term “owner” is defined as the individual owner themselves or in the case of a corporation or partnership, a partner or corporate officer who has the authority of and does make management decisions affecting the overall policy of the corporation or partnership
2. An attorney-at-law performing their duties as an attorney-at-law
3. Persons acting without compensation and in good faith under a duly executed power of attorney authorizing the consummation of real estate transaction

4. Persons or a state of federally chartered financial institution acting as a receiver, trustee, administrator, executor or guardian, or acting under a court order or under authority of a trust instrument or will
5. Public officers performing their official duties
6. Persons performing general clerical or administrative duties for a broker
 - a. The duties of clerical or office employees of a real estate company shall be limited to the duties normally attributed to such positions. No such employee of a licensee or any other person shall physically show listed property, solicit or accept listing, negotiate sales or leases, hold themselves out as engaged in the real estate business or perform any other act for which a licensee is required unless properly licensed
7. Persons acting as the manager for an apartment building or complex However, this exception shall not apply to a person acting as an on-site manager of a condominium complex
8. Persons licensed as time-share sellers performing their duties
9. Transactions involving the sale, lease or transfer of cemetery lots

LICENSE PERIOD

That period of time beginning on October 1 on a year designated by the commission to be the first year of a licensing period and ending on midnight, September 30 of the year designated by the commission as the final year of that licensing period.

The current licensing period is from October 1 of each even numbered year through September 30 of the next even numbered year. License should be renewed by August 31 and CE completion provided by September 30. Failure to comply with these requirements will result in a \$150.00 late penalty and inactivation of the license until the issue has been corrected.

APPLICATIONS FOR EXAMINATIONS AND LICENSES

1. Should any applicant for a real estate salesperson's or broker's license falsely answer any questions on either the exam or license application, or misrepresent any facts relating to either application, it may be rejected by the commission, returned to the applicant and more than likely be charged with a Class A misdemeanor. Anyone whose application is not deemed acceptable may request a hearing before the commission relative to such rejection. The person who is rejected has 15 days to request a hearing.

2. The exam fee and the application for the exam must be submitted to the testing agency. You may also schedule your exam online at www.goamp.com or call AMP at (800)345-6559. Be prepared to provide your name and student ID#. After the appointment is made, the applicant will be scheduled a time to report to the center. Please make a note of it as you will NOT receive an admission certificate. Bring 2 forms of ID. You will only be allowed to take the examination type you have applied for; no changes of the examination type will be made at the testing center.
 - a. *Unscheduled candidates (walk-ins) will not be admitted!* The passing grade for both the salesperson's and broker's exam is 70%. A time limit of 3.5 hours is set and allotted for completion of the required exam.
3. All salesperson and broker applicants must complete all required coursework prior to taking the state exam. Failure to do so will result in the applicant being required to retake and pass the state exam after the coursework has been successfully completed in order to be eligible to receive a real estate license.

CRIMINAL RECORD SEARCH

The commission may charge any applicant a fee for a criminal record search of the applicant in the same amount as is charged by the commission by the Department of Public Safety or any other agency for the search. The current fee is \$25.00.

RETURN OF LICENSE

A corporation, partnership, or individually owned company may withdraw consent for a broker or salesperson to continue doing business in its name by notifying the commission and the broker or salesperson in writing and returning to the commission the license of the broker or salesperson for whom consent is withdrawn.

LICENSE RENEWAL

The renewal form shall be mailed by the commission to the licensee's place of business, if an active licensee or to their residence if an inactive licensee prior to August 1 for the final year of each license period. Each licensee shall notify the commission in writing of any change in their business or residence address within 30 days of the change.

- a. EXCEPTION: A person holding a current Alabama license who moves to and becomes a resident of Alabama shall submit notice of change of address to the commission within 10 days.
- b. If for any reason a licensee fails to receive a renewal form, it shall be the responsibility of the licensee to notify the commission of this failure by August 10 of the renewal period.

RECIPROCAL LICENSE

If you hold a current license in another state, you may obtain a reciprocal license as follows:

1. Complete a 6-hour course in Alabama real estate law as specified in Rule 700-X-1-18.
2. Take and pass the corresponding Alabama portion of the licensing examination.
3. Submit with the application official "Certificate of Licensure" form (license history) documenting that you hold a current license in another state. This certification can be obtained from the Real Estate Commission office in that state and must have been issued within 120 days of our receipt of your reciprocal license application.
4. Exam and dates will receive an application for licensure at the test centers upon passage of the exam.

NON-RESIDENT AND OUT-OF-STATE CO-BROKERAGE

1. A licensed broker of another state may act as co-broker of this state by written agreement specifying each parcel of property covered, if the state in which the non-resident broker is licensed offers the same privileges to licensees of this state.
2. Whenever an Alabama broker enters into a co-brokerage with a non-resident broker to perform in Alabama, the Alabama broker shall file within 10 days a copy of the agreement with the commission. By signing the agreement, the non-resident broker agrees to abide by Alabama law, and the rules commenced against them in any court of competent jurisdiction in any count of Alabama in which a claim may arise.
3. An Alabama licensed broker may enter into a co-brokerage agreement with a broker of another state. The Alabama broker shall require a listing or joint listing of the property involved. The written co-brokerage agreements shall specify all material terms of each agreement, including but not limited to its financial terms.
4. The Alabama broker shall supervise the showing of property located in Alabama and negotiations pertaining there to; all advertising of real estate located in Alabama, the name of the Alabama broker shall appear.
5. The Alabama broker shall be liable for all acts of the out-of-state broker, as well as for their own acts, arising from the execution of any co-brokerage agreement.
6. The Alabama broker shall determine that the out-of-state broker is licensed as a broker in another state.
7. The Alabama broker must hold all earnest money pertaining to a co-brokerage agreement in escrow unless both buyer and seller agree in writing to relieve the Alabama broker of this responsibility.

Requirements for Salesperson License

A license for a broker or a salesperson shall be registered to a specific real estate office and shall be issued only to and held by a person who meets all of the following requirements:

- Is trustworthy and competent to transact the business of a broker or salesperson in a manner that safeguards the interest of the public.
- Is a person whose application or license has not been rejected or revoked in any state within 2 years' prior on any grounds other than failure to pass the exam.
- Is at least 19 years old
- Is a United States citizen or is an alien with permanent resident status
- Has proof of high school graduation/diploma or equivalent
- Has proof of completion of a real estate course approved by the Alabama Real Estate Commission, which shall be a minimum of 60 clock hours.
- Any other information required by the AREC

Time Requirements for Completing Course & Licensing Exam

- A student has one year to begin and finish the required 60-hour course. This includes all course work and proctored course exam.
- After completing the course, a student then has 6 months to take and pass the state licensing exam.

After Passing the Exam

A person desiring an **ACTIVE** license:

- Within 90 days of passing the exam, find a company to work for and secure the Q Brokers signature on the application for a temporary active license. Once AREC processes the application, the temporary license is sent to the company. The applicant is not officially licensed until their qualifying broker receives the active temporary license. It will be valid only for a period of 6 months following the first day of the month after its issuance. From that point, you will have 6 months to finish the 30-hour post license course. If you do not complete it in the first 6 months, your license is placed on an inactive status. You cannot practice real estate with an inactive license. You then have an additional 6 months to complete the post license course. If you do not complete it within that timeframe, your license will lapse and you must retake the pre-license course and pass the state exam again.

A person desiring an **INACTIVE** license

- Within 90 days of passing the state exam, you will apply for an inactive license. AREC will process the application and send you notice of your inactive license. You will have one year to complete the post license course or risk your license lapsing, requiring you to restart the process.

Requirements for a Broker's License

A person desiring to be a real estate broker in Alabama shall apply for a broker's license that will specify the real estate office to which they are registered. Along with the application, they will need to submit all of the following:

1. Proof that they had an active real estate salesperson's license in any state for at least 24 of the 36 month period that immediately precedes the date of application.
2. Proof of completion of a course in real estate approved by the AREC, which shall be a minimum of 60 hours.
3. Any other information requested by the commission

If you hold a reciprocal salesperson's license, then you must either get a broker's license in the state you were originally licensed in and then get a reciprocal broker's license in Alabama, or take the 60-hour pre-license course in Alabama before taking the broker's exam.

The license of a salesperson (after being issued a broker's license) automatically terminates upon the issuance of the broker's license certificate. The salesperson's license shall be returned to the commission in order for a broker's license to be issued.

Qualifying Broker

A broker may serve as a qualifying broker for a salesperson or associate broker only if licensed in Alabama. Their principal business is that of a real estate broker, and they shall be in a position to actually supervise the real estate activities of the associate brokers' or salespersons' on a full time basis.

A qualifying broker shall be held responsible to the commission and to the public for all acts of a salesperson and associate broker licensed under them and of each company for which they are the qualifying broker.

A qualifying broker will be responsible to an injured party for the damage caused from any violation by any licensee engaged by the qualifying broker.

The qualifying broker's supervisory responsibilities should not be construed as creating an employer-employee relationship contrary to any expressed intent of the qualifying broker and licensee.

A person who wishes to terminate their state as qualifying broker for a licensee may do so by notifying the licensee and the commission in writing and sending the licensee's license to the commission, or verifying in writing that the licensee has been lost or destroyed.

A person who wishes to terminate their status as a qualifying broker shall pay all funds over to their qualifying broker coming into their possession in trust for other parties immediately upon receipt.

Qualifying Broker for more than one company at the same location?

Someone desiring this must submit a letter of consent from all officers of both companies and file said acknowledgement with AREC.

Deposit Funds

Each real estate salesperson or associate broker shall pay over to their qualifying broker, or the person designated by the broker, all funds coming into their possession immediately upon receipt. If past normal business hours, next business day is acceptable.

Qualifying brokers are allowed to hold the earnest money during the negotiations, but is responsible for the immediate deposit of the earnest money into a federally insured bank that is in Alabama once a contract is furnished. Such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing. *Cash funds are to be deposited immediately.* In the instance of a large amount of earnest money, the purchaser could demand the monies to be placed in a money market account of the like for the duration of the negotiations.

Funds to be held in trust under a contract for sale involving more than one qualifying broker, ideally shall be held and deposited by the listing company. The law is ok with any of the qualifying brokers involved in the sale depositing money.

Each qualifying broker shall promptly disburse to the appropriate party any trust monies owed within 7 days of the consummation of the transaction for which the funds were deposited. If, for any reason, the transaction is not consummated or there is a disagreement where one or both parties refuse to sign the release, the broker can turn those trust monies over to the courts. This is called an interpleader action.

Death or Disability of Qualifying Broker

If the qualifying broker dies or becomes disabled within 30 days, the company must designate another qualifying broker. As an alternative, they may designate someone who has had an active salesperson's license for at least one year, to be the temporary qualifying broker for up to 6 months from the date of death or disability of the former qualifying broker. The fee for the temporary broker is \$150.00

Company License

An application for a company license for a corporation, partnership, or branch office shall be made by a qualifying broker on a prescribed form. The qualifying broker need be an officer, partner or employee of the company. An applicant for a company or broker shall maintain a place of business.

If the applicant for a company or broker license maintains more than one place of business in the state, they shall have a company license for each separate location of the branch office and the name of its qualifying broker. Each branch office shall be under the direction and supervision of a qualifying broker licensed at the address.

Place of Business

The primary requirement is that a real estate office be located in an area zoned for business of a police jurisdiction. There are two exceptions:

- licensed broker living in a rural area of this state MAY operate a sole proprietorship from his/her home provided that they set up and maintain an office for the conduct of the real estate business. This may not be used for living purposes or occupancy. The office need be used by the BROKER ONLY, and not as a place of business from which any additional licensee operates. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.
- A handicapped broker, who is a sole proprietor, can enjoy the same exception as above regardless of zoning, police jurisdiction, etc.
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All licensees located within the city limits (or police jurisdiction of a municipality) shall operate from a separate office located in the city limits. The office must have a designated business telephone and meet all other regulations of the commission, as well as being properly identified as a real estate office. Hardship cases may be subject to waiver of this regulation upon approval by the AREC. All business records and files shall be kept at the place of business as required by law.

Continuing Education

The holder of an original license who has satisfactorily completed the post license course and whose original license has been issued will not be subject to the continuing education requirements for the first renewal of their original license.

Every licensee will expire at midnight on September 30th of the final year of each license period. A licensee who fails to renew before the end of the 12-month period following the license period has a lapsed license and will be subject to all requirements applicable to persons who have never been licensed.

On or before September 30th of the final year, each applicant for renewal of an active license is responsible for completing not less than 15 clock hours of approved continuing education course work. Our school will submit the hours you have completed to the Alabama Real Estate Commission electronically. Of the 15 hours of continuing education required, 6 hours must be the prescribed Risk Management course while the remaining 9 may be electives.

Exemptions from Continuing Education

- Continuing education requirements do not have to be met in order for a license to be renewed on an inactive status; however, in order to activate the license, the licensee must complete 15 hours of CE.
- In order to receive continuing education credit for legislative service, licensee members of the Alabama legislature should obtain an official record of their service during each license period from the clerk of the House of Representatives or Senate. This documentation must be filed in the commission office no later than August 31 of the final year of the license period.

Research and Education Fund Fee

The original research and education fee will be \$30.00 and will be paid at the time of all applications for original broker's license, and all applications for temporary salesperson's license. This is in addition to the original and temporary license fee.

Renewal Research and Education Fee is \$7.50 per year of license period (\$15.00 for license period).

Offers

A real estate licensee who is acting as an agent for a principal shall transmit it to their principal all written offers received regarding the property, as soon as possible and in the order received (in the case of multiple offers).

Closing Statements

The licensee who procures a written offer from a buyer or presents a written offer to a seller in a residential transaction shall prepare and furnish them with a completed estimated closing statement at the time the offer is signed. This statement must contain the licensee's best estimates of all costs they are expected to have at closing and the approximate amounts of those costs. The licensee will also furnish an actual detailed closing statement showing all receipt of both statements by signature on the form.

Misrepresentation

A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made by the client to the broker.

A licensee shall not be liable for providing false information to a party in a real estate transaction if the false information was provided to the licensee by a client or customer of the licensee or by another licensee, unless the licensee knows or should have known that the information was false.

The duties of licensees as specified by the AREC shall supersede any duties of a licensee to a party to a real estate transaction that are based upon common law principles of an agency to the extent that those common law duties are inconsistent with the duties of licensees as specified in this article.

Disciplinary Actions

The AREC or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The AREC may issue subpoenas and compel the testimony of witnesses and the production of records during an investigation. If probable cause is found, a formal complaint will be filed and the AREC will hold a hearing. The AREC shall revoke or suspend the license or impose a fine of not less than \$100.00 or more than \$2,500.00, or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts:

1. Procuring or attempting to procure a license for him/herself or another by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a license.
2. Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of their own or of a spouse, child or parent.
3. Making a material representation, or failing to disclose to a potential purchaser or lessee any latent structural defect of any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects, but refer to those that would be significant factor to a reasonable and prudent person in making a decision to purchase or lease.
4. Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contractual agreement.
5. Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising or otherwise.
6. Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public or which 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.
 - A licensed person may advertise property they own in the same way as any private party. However, the licensee must abide by all of the other provisions of the law in any and all real estate transactions that they are involved in, whether the subject property is their own, the property of a spouse, child or parent, or is the property of a member of the public.
 - If a licensed person chooses to advertise their own property as if they are licensed, then all such advertising as well as all other activities must be conducted strictly in accordance with the rules of the AREC.

7. Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom they act.
8. Failing within a reasonable time to properly account for or remit money coming into their possession that belongs to others, or commingling money belonging to others with their own funds.
 - Failing to deposit and account for (at all times) funds belonging to or being held for others in a separate federally insured account at a financial institution in Alabama.
 - Failing to keep (for at least 3 years) a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information.
 - IF the transaction is not consummated or if there is a disagreement about dispersal, the qualifying broker shall not disburse any trust funds, except pursuant to a written agreement signed by all parties or pursuant to a court order. If the funds are to be disbursed, this should happen within 7 days.
9. Placing a sign on any property offering it for sale, lease or rent without the consent of the owner.
10. Failing to voluntarily furnish a copy of each listing contract, lease and other document to each party executing the document with reasonable promptness.
11. Paying or dividing any profit, compensation, commission or fee to or with anyone other than licensee or multiple listing services.
12. Paying or receiving any rebate from any person in a real estate transaction.
13. Inducing any party to a contract to break the contract, for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.
14. If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a licensee is required from any person except their qualifying broker.
15. Any advertising the salesperson may participate in, the company name must also be present and prominently displayed.
16. Presenting to the AREC, as payment for fee or fine, a check that is returned unpaid.
17. Establishing an association by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee or aiding, abetting or conspiring with a person to circumvent the requirements of this chapter.
18. Misrepresenting or failing to disclose to any lender, guaranteeing agency or any interested party, the true terms of a sale of real estate.

19. Failing to inform the buyer or seller at the time an offer is presented that they will be expected to pay certain closing costs and the approximate amount of those costs.
20. Having entered a plea of guilty or nolo contender to or having been found guilty of or convicted of a felony or crime involving moral turpitude.
 - Having a final money judgement rendered against them which results from an act or omission occurring in the pursuit of their real estate business or involves the goodwill of an real estate business.
21. Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.
22. Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.
 - Listing contracts shall contain no provision for automatic extensions
23. Conduct that constitutes or demonstrates dishonest dealings, bad faith or untrustworthiness.
24. Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.
25. Failing or refusing on demand to produce a document book or record in their possession concerning a real estate transaction conducted by them for inspection by the commission or its authorized personnel or representative.
26. Failing within a reasonable time to provide information requested by the AREC during an investigation or after a formal complaint has been filed.
27. Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into their possession.
28. If a qualifying broker or company fails to keep in their files copies of all contracts, leases, listings and other records pertinent to real estate transactions for a period of 3 years.

If it appears that a person, firm, corporation or any business entity has engaged, or is about to engage, in any act or practice constituting a violation of this chapter; the AREC, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with this chapter or any rules or order of the AREC.

Formal Complaints

Staff of the AREC may, in response to a complaint from an outside party or upon its own initiative, develop a formal complaint charging a licensee or timeshare seller with any violation of AREC rules or regulations where there is probable cause to believe such a violation occurred.

A formal complaint drawn by the AREC shall include at least the following:

1. The name of the party against whom the complaint is being made
2. The legal authority and jurisdiction under which the charge is made
3. The type of licenses held by the accused party and the date each license was issued and/or in the case of a charge of violation by a timeshare developer or owner, the date the respective timesharing plan was registered.
4. The particular section(s) of the law and/or the specific rule or order alleged to have been violated
5. A brief description of the act(s) or omission(s) upon which each allegation of violation is made.

The AREC shall notify the licensee and qualifying broker in writing regarding the complaint. The AREC shall notify the complainant, licensee and qualifying broker in writing regarding the disposition of the complaint.

Hearings

A hearing officer appointed by the AREC shall conduct all hearings on contested cases before the AREC. If a formal complaint is filed against a licensee, the AREC may proceed to hold a hearing at its discretion if the party or parties initiating the complaint and the party or parties against whom the complaint was made reach a settlement and wish the complaint withdrawn.

An action against an accused shall begin by serving them, either personally or by certified mail, with a copy of the formal complaint against them. The accused will be given at least 15 days' notice of the time, date and place of hearing. If the AREC refuses to license an applicant, notice of the refusal will be given and they may, within 15 days, file a request for a hearing.

The applicant or accused will have an opportunity to be heard in person or by counsel to offer testimony on their behalf and to examine witnesses.

Hearing will be held in the county in which the applicant resides or where they maintain their principal place of business unless they agree to be heard in another county. If they do not maintain their place of business in Alabama, then the hearing will be held in their county of residence. If they neither reside nor maintain a place of business in Alabama, the hearing will be held in Montgomery County.

The AREC will render a written order within 39 days for the final date of hearing. If the matter alleged in the complaint is the subject of an action pending in court, the AREC may withhold rendering its order pending deposit of the court action. A subpoenaed witness who appears in a proceeding will receive \$6.00 per diem, and \$0.20 per mile from home to the place of hearing and return.

An accused who is aggrieved by a final decision may file for re-hearing within 30 days of receiving notice of the decision. Within 30 days from the filing, the AREFC will set a hearing date, will enter an order without a hearing, or will grant or deny the application. If the applicant is granted a re-hearing, the AREC will schedule it as soon as practicable. If the AREC does not enter an order within 30 days from the filing, the application will be denied.

Appeals

Findings of the commission are final unless within 30 days' the applicant files a notice of appeal. A party appealing a decision will post a \$200.00 appeal bond with the circuit clerk of the circuit court.

The appeal will be conducted by the court without a jury and will be confined to the record. The AREC's decision will be taken as prima facie just and reasonable and the court shall not substitute its judgement for that of the AREC as to the weight of the evidence on questions of fact.

Any person or company who violate any provision of this chapter commits a Class "A" misdemeanor and; on conviction, shall be punished accordingly. The AREC may impose a fine of not less than \$100.00 or more than \$2,500.00 or revoke or suspend the license or give a written reprimand.

Real Estate Commission

The Alabama Real Estate Commission consists of 9 members:

- One from each congressional district (7)
- One at large who must be black
- One at large who represents consumers

The Commissioners

- Must have been a real estate broker or salesperson for at least ten years
- Must have been a resident of Alabama for at least ten years
- Will not be liable for damages, etc.
- Are paid \$300.00 per month plus the same per diem and travel allowance paid to state employees for each day they meet to conduct official business.
- Are appointed by the governor with the advice of the Senate
- Serve five year terms
- Cannot serve more than two consecutive terms
- Appointments expire on September 30 of the final year of the term

In the event of an office inspection of a real estate company, its qualifying broker shall ensure that the business records required to be kept under state law are made available to AREC representatives. The AREC representatives at the AREC's expense may take photocopies of records that the licensee required to maintain by the Alabama License Law or by the Rules and Regulations of the AREC.

Recovery Fund

The Recovery fund was established as a new way for the public to recover damages from licensees when they have obtained a judgement against a licensee and are unable to collect otherwise.

- When a person makes an application for a temporary license as a broker or salesperson, they shall pay in addition to all other fees a \$30.00 deposit into the Recovery Fund.
- Payment for a claim based on a judgement or settlement against any one person will not exceed \$25,000.
- Payments for multiple claims arising out of the same transaction will not exceed \$25,000 per instance, or \$50,000 in the aggregate (total paid out), regardless of the number of claimants.
- A salesperson, upon obtaining a broker's license, will not be required to pay an additional Recovery Fund fee.
- When the balance remaining in the Recovery Fund is less than \$500,000, each active licensee shall, on order of the commission, pay a fee of \$30 per license for deposit into the Recovery Fund.
- A licensee on inactive status shall NOT be required to contribute to the fund. A fee of \$30.00 shall be paid at the time the license is activated.

When an aggrieved person commences an action for a judgement that may result in collection from the Recovery Fund, the aggrieved person shall notify the AREC in writing, certified mail with return receipt requested, to this effect at the time of the commencement of the actions. When the AREC receives the notice, it may settle or compromise the claim. Any expenses incurred by the AREC in defending, satisfying, or settling any claim shall be paid from the Recovery Fund. When an aggrieved person recovers valid judgement in a court against a licensee, the AREC may terminate all licenses of the licensee. The AREC may refuse to issue a new license to the former licensee until they have repaid in full, plus 12% interest, the amount paid from the Recovery Fund. A discharge in bankruptcy will NOT relieve a person from the penalties and disabilities provided in this section.

The AREC may transfer funds one time only from the Recovery Fund to the University of Alabama Real Estate Research and Education Center. The amount of the transfer may not reduce the Recovery Fund below \$600,000. Each licensee shall notify the AREC within 10 days after notice to them of any criminal prosecution against them, or of a civil summons and complaint against them, if the matter involved a real estate transaction or the goodwill of an existing real estate business. The notification shall be in writing, by certified mail, and shall include a copy of the summons and complaint. If a licensee receives notice that a verdict has been rendered against them, or that a criminal or civil action has been dismissed, the licensee shall notify the AREC in the same way stated above.

RECAD
(Real Estate Consumer Agency Disclosure Act)

*****TO MYRES' PRE-LICENSE STUDENT, THIS INFORMATION GOES WITH CHAPTERS 9 & 10 AND WILL NOT MAKE SENSE TO YOU UNTIL YOU HAVE COMPLETED THOSE CHAPTERS.*****

While Agency Statutes around the country are different from each other, the spirit is the same in all and there are only slight variations from state to state.

Below you will find RECAD, Alabama's Agency Statutes, explained. As a student, just understand that the primary differentiations from state to state and within each state's Agency Statutes are simply how each state handles the conflict of interest. As you will learn, Alabama allows the conflict of interest (Company representing both buyer and seller in same transaction) with certain caveats and Alabama refers to this situation as a Limited Consensual Disclosed Agency. While some other states refer to this conflict of interest, and allows with certain caveats, a Designated Agency. Under a Designated Agency model, the company still provides full representation to both buyer and seller, essentially designating in house a salesperson to represent the buyer and a salesperson to represent the seller. Again, with each salesperson providing whatever full representation is in that state. Under a Limited Consensual Disclosed Agency in Alabama, the company, with consent from both parties, becomes neutral. NOT providing full representation, but effectively at that point, but just becoming a facilitator.

AREC Rules Governing Agency Disclosure

Each offer to purchase prepared after August 1, 1998, shall have prominently displayed the following Agency Disclosure clause that shall be completed and initialed as indicated:

The Listing Company _____ is:

(2 blocks may be checked)

☐ **An Agent of the Seller**

☐ **An Agent of the Buyer**

☐ **An agent of both the seller and buyer and is acting as a Limited Consensual Dual Agent**

☐ **Assisting the buyer/seller as a Transaction Broker**

Terms & Definitions, relating to RECAD

Agency Agreement – A written agreement between a broker and a client that creates a fiduciary relationship between the broker and a principal, who is commonly referred to as a client.

Broker – Any person licensed as a real estate broker.

Brokerage Agreement – specific written agreement between a brokerage firm and a consumer that establishes a brokerage relationship.

Brokerage Services – Any service, except for rental or property management services, provided by a broker or licensee to another person and includes all activities for which a real estate license is required.

Consumer – A person who obtains information, advice, or services concerning real estate from a real estate licensee.

Client – A person who has an agency agreement with a broker for brokerage service, whether they are a buyer or a seller.

Customer – A person who is provided brokerage services by a broker or licensee but who is not a client of the broker.

Dual Agency – An agency relationship in which the same brokerage firm circumstances, which establish a dual agency, include but are not limited to one of the following:

- When two or more licensees licensed under the same broker each represent a different party to the transaction
- When one licensee represents both the buyer and seller in a real estate transaction.

Informed Consent – A consumer's agreement to allow something to happen which is based upon full disclosure of facts needed to choose appropriate brokerage services.

Licensee – Any broker, salesperson or company.

Limited Consensual Dual Agent – A licensee who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as an agent for both the buyer and seller.

Material Fact – A fact that is significant to a reasonable party that affects the party's decision to enter into a real estate contract.

Qualifying Broker – A broker under whom a corporation, partnership or branch office is licensed, or a broker licensed to do business as a sole proprietorship that is responsible for supervising the acts of all real estate licensees licensed therewith.

Real Estate Transaction – the purchase, sale, lease and rental option or exchange of an interest in real estate.

Single Agent – A licensee who is engaged by and represents only one party.

Sub Agent – A licensee who is empowered to act for another broker in performing real estate brokerage tasks for a principal, and who owes the same duties to the principal as the agent of the principal.

Transaction Broker – A licensee who assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.

Roles & Duties of Licensees

- When engaged in any real estate transaction, the licensee may act as a single agent, sub agent, a limited consensual dual agent, or as a transaction broker.
- At the initial contact between a licensee and the consumer, and until such time a broker enters into a specific written agreement to establish an agency relationship with one or more parties, the licensee shall not be considered an agent of that consumer. An agency relationship shall not be assumed, implied or created without a written bilateral agreement establishing the terms of the agency relationship.
- The licensee shall provide a written disclosure form (RECAD) to consumer, a form describing alternative types of brokerage services that are provided by their company as SOON AS REASONABLY POSSIBLE after first contact, and before any confidential information is disclosed to any other person by licensee. A broker shall not be required to offer or engage in any one of the alternative brokerage arrangements specified. **The licensee is required to sign this form.** The consumer is asked to sign, but are not required to.
- A licensee shall not be required to comply with the provisions of the paragraph above when engaged in transactions with any company or governmental entity versus a person in transactions involving real estate.
- After disclosure, the consumer may make a choice of specific type of brokerage arrangement that is available from the real estate company. The agreement shall contain a statement of the terms and conditions of the services that the broker will provide in the absence of a signed agreement so that the transaction brokerage relationship will remain in effect.
- As a transaction broker, the duties of the licensee are limited. A signed brokerage agreement, or in the absence of an agreement, the continuation of the transaction brokerage relationship shall constitute informed consent by the consumer as to the services they will receive from the broker.
- Disclosure forms shall be provided to buyers and sellers. All real estate firms operating within the state of Alabama will use the same agency disclosure forms. Disclosure forms describing the alternative types of brokerage services identified above shall be written by the Alabama Real Estate Commission.
- A broker who represents more than one client in a transaction owes the duties specified above to each client except where the duties to one will violate the fiduciary duties of the licensee to other clients. A broker may provide brokerage services as a limited consensual dual agent only with prior written informed consent of all clients.

Agency Disclosure Office Policy

Any broker acting in a real estate transaction shall adopt a written agency disclosure office policy that specifically enumerates the types of brokerage service arrangements a licensee may offer or accept. Any format for the office policy is acceptable including the use of devices such as loose-leaf ring notebooks.

- The qualifying broker for each brokerage company shall provide every licensee a copy of the agency disclosure policy regarding the types of brokerage services offered by their company. This policy shall be explained to all licensees at least once a year.
- Each licensee shall sign a form acknowledging receipt of the office policy statement and a satisfactory explanation of its contents, and a copy retained by the brokerage company for 3 years.
- Under RECAD, a qualifying broker may choose to offer the following services to the public: single agency, sub agency, limited consensual dual agency, and transaction brokerage. Under RECAD, a qualifying broker is not limited to offering only one of these and is not required to offer all of these services.
- All qualifying brokers shall include in their office policy a copy of the disclosure form required by the Alabama Real Estate Commission

Obligation of Licensees

Licensees has the following obligations to all parties in a real estate transaction:

- To provide brokerage services to all parties honestly and in good faith.
- To exercise reasonable skill and care in providing services to all parties.
- To keep confidential information given to the licensee in confidence, or any information obtained by the licensee that they know a reasonable person would want to keep confidential; unless disclosure of this information is required by law, violates a fiduciary duty to a client, becomes public knowledge or is authorized by the party in writing.
- To account for all property coming into their possession that belongs to others.
- When assisting a party in the negotiation, to present all written offers in a timely and truthful manner and in order received.
- To act on behalf of the licensee or their immediate family, or on behalf of any other individual in which the licensee has a personal interest, only with prior timely written disclosure of this interest to all parties.
- A licensee may provide requested information that affects a transaction to any party who requests the information, unless disclosure is prohibited by law or in this article.

Services Licensees are Required to Provide Clients

- Loyal represent the best interests of the client by placing their interest ahead of the interests of any other party, unless loyalty to the client violates the duties of the licensee to other parties or is prohibited by law.
- Disclose to the client all information known by the licensee that is material to the transaction and not discoverable by the client through reasonable investigation and observation, except for confidential information. A licensee will have no affirmative duty to discover the information.
- Fulfill any obligation required by the agency agreement and any lawful instructions of the client that are within the scope of the agency agreement that are not inconsistent with other duties as enumerated in this article.

REAL ESTATE BROKERAGE SERVICES DISCLOSURE

*Alabama law requires you, the consumer, to be informed about the types of services which real estate licensees may perform. The purpose of this disclosure is to give you a summary of these services.

A **SINGLE AGENT** is a licensee who represents only one party in a sale. That is, a single agent represents his or her client. The client may be either the seller or the buyer. A single agent must be completely loyal and faithful to the client.

A **SUB-AGENT** is another agent/licensee who also represents only one party in a sale. A subagent helps the agent represent the same client. The client may be either the seller or the buyer. A subagent must also be completely loyal and faithful to the client.

A **LIMITED CONSENSUAL DUAL AGENT** is a licensee for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to the client, except where the duties owed to the clients conflict with one another.

A **TRANSACTION BROKER** assists one or more parties, who are customers, in a sale. A transaction broker is not an agent and does not perform the same services as an agent.

*Alabama law imposes the following obligations on all real estate licensees to all parties, no matter their relationship:

1. To provide services honestly and in good faith;
2. To exercise reasonable care and skill;
3. To keep confidential any information gained in confidence, unless disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is authorized in writing;
4. Present all written offers promptly to the seller;
5. Answer your questions completely and accurately.

Further, even if you are working with a licensee who is not your agent, there are many things the licensee may do to assist you. Some examples are:

- Provide information about properties
- Assist in making a written offer;
- Provide information on financing;
- Show properties

You should choose which type of service you want from a licensee, and sign a brokerage service agreement. If you do not sign an agreement, by law the licensee working with you is a transaction broker.

The licensee's broker is required by law to have on file an office policy describing the company's brokerage services. You should feel free to ask any questions you have.

The Alabama Real Estate Commission requires the real estate licensee to sign, date, and provide you a copy of this form. Your signature is not required by law or rule, but would be appreciated.

Name of Licensee _____

Signature _____ Date _____

Consumer Name _____

Signature _____ Date _____

(Acknowledgment for Receipt Purposes, Only)



LICENSE LAW DEADLINES

Applicants

90 days Persons who pass the licensing examination must file the license application with the Commission within 90 days after passing the exam.

6 months Temporary salesperson licensees must complete the post license course and submit application for an original salesperson's license within 6 months of issuance of a temporary license. If this requirement is not met, the temporary license expires and is placed on inactive status. The 6 months begins counting on the first day of the month following the month the temporary license was issued and concludes on the last day of the sixth month.

1 year A temporary salesperson's license lapses if the post license course is not completed and an original license issued within 1 year of issuance of the temporary salesperson's license. The 1 year begins counting on the first day of the month following the month the temporary license was issued and concludes on the last day of the twelfth month.

1 year Students have one year after enrolling in a prelicense course to complete it or the student will receive no credit for classes completed and must begin the course again.

6 months Students must take and pass the salesperson's exam within 6 months of completing the 60-hour prelicense course.

6 months Students must take and pass the broker's exam within 6 months of completing the 60-hour prelicense course.

15 days If an applicant is denied eligibility for licensing, the applicant may request a hearing before the Commission within 15 days of the denial.

Address

10 days A person who holds a current Alabama license and who moves to and becomes an Alabama resident shall within 10 days notify the Commission of change of address.

30 days For change of business address, must submit letter and a \$25 fee for each license, including the company license, within 30 days after changing the address.

30 days For change of residence address. There is no fee for this change and it can be done online at www.arec.alabama.gov by logging in under online services. You can also email, fax or mail the information to the Commission office.

Transfer

10 days After 10 days a transfer sent by certified mail is declared null and void if all documents required for the transfer have not been received.

Renewals

August 10 of even years Date by which licensees must notify the Commission if a renewal form has not been received.

August 31 of even years All licensees, both active and inactive, must file renewal forms and fees with the Commission on or before August 31 of the even years.

September 30 of even years Active licensees must complete 15 hours of continuing education on or before midnight September 30 in order to have an active license issued on October 1.

September 1 of even years through September 30 of odd years Late renewals incur a \$150 penalty.

September 30 of odd years If not renewed, the licenses lapse and applicants must begin as though never licensed.

September 30 of odd years All schools, instructors and courses must renew online on or before midnight.

December 31 of odd years School, instructor and course approvals lapse if not renewed by midnight.

Cobrokerage

10 days Cobrokerage agreements must be filed with the Commission by the Alabama broker within 10 days of entering into the agreement with a nonresident licensee.

Lawsuit/Criminal Prosecution

10 days Notify the commission in writing within 10 days after the institution of any criminal prosecution or of a civil summons and complaint if the subject matter involves a real estate transaction or the good will of a real estate company.

10 days Notify the commission in writing within 10 days after receiving notice that any criminal verdict has been rendered or dismissed or that civil action that involves a real estate transaction or the goodwill of a real estate business has resulted in a judgment or been dismissed.

Formal Complaints

15 days Commission must give an accused licensee at least 15 days' notice of the time, date and place of hearing.

Appeals

30 days Length of time during which an appeal must be filed to appeal any Commission action following a contested case hearing.