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THE REAL ESTATE COMMISSION

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The Alabama Real Estate Commission (AREC) was created in 1927 by Legislative Act 1927, No. 344. The Commission's role is to serve and protect the public through the licensing and regulating of real estate professionals. The AREC enforces Alabama license laws which were created to regulate real estate professionals and the practice of real estate business. The AREC also creates and enforces its own rules to further regulate the practice of real estate business in Alabama.

The 1927 Act was expanded by the Real Estate License Law of 1951 and then amended in 1953, 1963, and 1982 to further regulate real estate licensing.

Commission key characteristics

The Commission is made up of nine commissioners who are appointed by the Governor with the advice and consent of the State Senate. The appointments are made from a list of three persons nominated by the Alabama Professional Real Estate Society or trade association. The appointment is to be made within 30 days of receiving the list, or the Society will provide a second list of three persons, giving the Governor six names from which to appoint one commissioner. At least one of the names submitted must not be a member of the Society or trade association.

The nine members of the Commission consist of seven members who must have been residents and citizens of Alabama for at least 10 years and must also have been real estate brokers or salespersons for at least 10 years. Commissioners may not have been convicted of federal or state license law violations. Each member must also be from different U.S. Congressional Districts. Members serve 5-year staggered terms and may not serve more than two consecutive terms. They do, however, remain in office until a successor is appointed and confirmed. Terms expire on September 30 of the 5th year of the term.

The eighth member appointed is to be an African-American member who meets all of the requirements for membership and may be a resident of any

congressional district in the state. Subsequent African-American appointees must be from different congressional districts.

The ninth member appointed is to be a consumer member who serves no more than two consecutive terms and is from any congressional district in the state. Subsequent consumer appointees must be from different congressional districts. The consumer member must meet the following requirements:

- ▶ at least 21 years old
- ▶ a resident and citizen of Alabama for at least 10 years
- ▶ a registered voter in Alabama
- ▶ no felony convictions
- ▶ owner of real property
- ▶ not licensed as a real estate broker or salesperson for at least 10 years prior to appointment
- ▶ not related to by blood or marriage or employed by a real estate licensee

Each time a new commissioner is appointed, the Commission must meet and select a chairperson. Each commissioner receives \$300 per month as compensation plus per diem and travel allowances for each day they meet. The per diem and travel allowance is equal to what other state employees receive.

A majority of the Commission members, equal to five members, constitutes the quorum necessary to conduct Commission business. The function of the Commission is to license and regulate the professional practices of real estate companies, salespersons, brokers, instructors, and schools. Its functions include the following:

- ▶ prescribe rules for licensure and practice of real estate
- ▶ license salespersons and brokers
- ▶ register time-share plans and regulate associated advertising and sales
- ▶ enforce real estate laws, investigate and prosecute complaints, penalize guilty violators
- ▶ establish and maintain a Recovery Fund
- ▶ administer internal operations by managing the agency, finances, human resources, properties, facilities, and resources.

The Commission may employ an executive director, assistant executive director, and other staff as necessary to conduct its duties. The executive director and assistant executive director are hired based on education, experience, and administration and management skills. The Commission sets the duties and salaries for the director, assistant director, and all staff. The Commission may also use advisory committees, working groups, and task forces for recommendations and studies.

The Commission must also adopt a seal for authenticating records and documents. Copies of such documents and records can be used as evidence in all courts and are open to public inspection.

No commissioner can be held liable for damages resulting from acts performed as part of his or her duties as a commissioner.

Definitions

To understand the practice of real estate and the laws that govern it, one must first understand the terms used in the real estate business and in the law. In Alabama, the laws that govern the practice of real estate are found in Articles 1 through 5, Section 34-27 and in Chapter 790-X of the Alabama Real Estate License Law. The following definitions apply to those laws and to the practice of real estate.

Broker is any person who is licensed as a broker under Articles 1 and 2 of the Alabama Real Estate License Law to conduct the business of real estate.

Qualifying (principal) broker is a licensed broker who is responsible for supervising the real estate acts of a sole proprietorship, corporation, partnership, branch office, or lawful business organization and all real estate licensees associated with the company or proprietorship.

Associate broker is any real estate broker other than a qualifying broker.

Salesperson is any person licensed as a salesperson under Articles 1 and 2 of the Alabama Real Estate License Law for the purpose of conducting real estate transactions.

Licensee is any broker, salesperson, or company holding an Alabama real estate license.

Company is any sole proprietorship, corporation, partnership, branch office, or lawful business organization as the Legislature may provide for which is licensed under Articles 1 and 2 of the Alabama Real Estate License Law for the purpose of conducting real estate transactions.

Commission refers to the Alabama Real Estate Commission (AREC) but can also mean the fee paid to a broker or salesperson in relation to real estate transactions.

Engage refers to the contractual relationship between a qualifying broker and an associate broker or salesperson who is licensed under the qualifying broker, whether that associate broker or salesperson is an employee or an independent contractor.

Real estate transaction is the purchase, sale, lease, rental, option, or exchange of an interest in real estate.

License period is the period between October 1 of one year and September 30 of the year designated by the Commission to be the final year of the license period during which the license is valid. The license period is 2 years, beginning and ending in even numbered years.

Expired license is a license that has not been renewed by the required license period deadline and has been placed on inactive status. An expired license may still be renewed within the prescribed time frame.

Lapsed license is a license that is no longer valid. Once a license lapses, it may not be renewed and the individual must again meet all of the licensure requirements of a first-time applicant.

Place of business is a designated office from which the licensee conducts real estate business. The office may not also be used for living purposes or any other business purposes and must have a separate business telephone and be properly identified as a real estate office. The office is also the place where all business records and files must be kept as required by law.

Recovery fund refers to the Alabama Real Estate Recovery Fund which will be discussed in detail later in this chapter.

Revenue fund refers to the Alabama Real Estate Commission Revenue fund and will be discussed in detail later in this chapter.

A **team** is formed when two or more licensees at the same company work together to provide real estate services that require a license and are a distinct group at the company.

Exemptions

The licensing requirements under Alabama law do not apply to the following:

- ▶ a property owner managing or selling his or her own property or that of his or her spouse, child, or parent
- ▶ an attorney-at-law performing duties as an attorney
- ▶ a person acting under a power of attorney without compensation and in good faith to execute a real estate transaction
- ▶ a person or a state or federally chartered financial institution performing duties as a trustee, receiver, administrator, executor, or guardian, or under a court order or authority of a trust or will
- ▶ a public officer performing his or her official duties
- ▶ a broker's assistant who performs clerical or administrative duties and does not show properties
- ▶ an apartment building manager, but not an on-site condominium building manager
- ▶ a person licensed as a time-share seller performing only acts covered under that license
- ▶ a transaction involving the sale, lease, or transfer of cemetery lots

Revenue Fund

All moneys collected by the Commission are to be deposited into the State Treasury to the credit of the Real Estate Commission Revenue Fund. This includes fees, fines, charges, etc. However, it does not include the \$30 recovery fund fee paid by each applicant for original broker or salesperson licensure. Money in the Revenue Fund is disbursed by the state Comptroller as directed by the executive director at the direction of the Commission.

A proportionate share of the license fees collected for multi-year licenses and fees collected for research and education are reserved in the Real Estate Commission Proportionate Fund and are disbursed quarterly to the Real Estate Research and Education Center. Monies not allocated to the Research and Education Center are used for Commission expenses.

The proportionate share of the license fees used for the Research and Education Center is determined by dividing the amount collected as license fees each year by the number of years within the multi-year license period. The State Treasurer may invest the funds in any investments that domestic life insurance companies may legally invest in under Alabama law. Interest and income from the investments is to be deposited into the Revenue Fund for Commission expenses.

All other monies, such as penalty fees, are to be disbursed in the fiscal year they are collected. Commission expenses are paid by the state Comptroller and the State Treasurer from the Revenue Fund as ordered by the executive director. The Commission's expenses may not exceed the total fees and charges collected or the amount appropriated by the Legislature.

All funds withdrawn or disbursed must have been budgeted and allotted in accordance with Alabama real estate law. Any monies remaining in the Revenue Fund at the end of the fiscal year will transfer over to the following year.

DISCIPLINARY ACTIONS AND PROCESS

Complaints
Hearings
Disciplinary actions and penalties
Rehearing
Appeals

Alabama law identifies actions and conduct that constitute violations of real estate laws and rules. When an individual, firm, corporation, or other business entity is believed to have violated these laws or rules, the offended party may file a complaint with the Commission.

Complaints

When a complaint is made about a licensee's conduct, or the Commission has reason to believe a licensee has committed a violation, the Commission or its staff may investigate the actions and records of the licensee. The matter will be assigned to an investigator who will work with the Attorney General to determine if probable cause exists to file a formal complaint. If so, the Commission staff will develop a formal complaint charging a licensee or timeshare seller with a violation of Code of Alabama 1975, Chapter 27 of Title 34, or of a Commission Rule or Regulation. The staff may do this in response to a complaint from a third party or on its own initiative.

The formal complaint must include at least the following:

- ▶ the name(s) of the accused party (or parties)

- ▶ the legal authority and jurisdiction under which the charge is being made
- ▶ the type and issuance date of the license held by the accused party
- ▶ the specific law and/or rule the accused is alleged to have violated
- ▶ a brief description of the accused's acts or omissions that allegedly constituted the violation

When a complaint is filed, the Commission serves the accused a copy of the complaint either personally or by certified mail. The Commission also notifies the accused party's qualifying broker in writing that a complaint has been filed. The Commission then schedules a complaint hearing and provides the accused with a 15-day notice of the time, date, and place of the hearing.

The Commission must also notify the complainant, licensee, and qualifying broker in writing what determination of the complaint was made.

If the Commission refuses to issue a license to an applicant, the Commission must notify the applicant and give the applicant 15 days to file a request for a hearing.

Hearings

Any licensed or unlicensed person or entity who has been charged with a real estate law violation has the right to a hearing. The applicant or the accused is given the opportunity to offer testimony on his or her behalf and to question witnesses. The accused may also waive the right to a hearing and settle the dispute outside of a hearing. The settlement may include the accused pleading guilty and consenting to disciplinary action by the Commission. Settlement may also include the accused and the accuser reaching a settlement and withdrawing the complaint. However, even if the party filing the complaint and the accused reach a settlement and withdraw the complaint, the Commission may still decide to hold a hearing on the matter.

Hearings are held in Montgomery County unless the Commission chooses to hold the hearing in the county where the accused or applicant resides or maintains a place of business. The Commission may also choose to hold the hearing in any county where the Commission has a scheduled meeting.

The Commission may subpoena witnesses, records, and documents on its own or may do so at the request of the complainant or respondent. The party requesting the subpoenaed witnesses must deposit a cashier's check or certified check with the Commission to cover the witness's fees, mileage, and expenses. A subpoenaed witness is required to attend the hearing, and failure to do so will result in a circuit court taking action against the witness.

All witnesses are sworn by a member of the Commission, the executive director, the assistant executive director, or a hearing officer. The Commission will hear witness testimony and inspect records and documents to determine if a violation has occurred.

Individuals or corporations who violate Alabama license law commit a Class A misdemeanor and will be punished accordingly if convicted.

Disciplinary actions and penalties

The enforcement jurisdiction of the AREC extends over persons and companies who have an Alabama real estate license and also to those who choose to practice real estate without a license. Therefore, if a licensee is found guilty of a license law violation, the Commission may take appropriate disciplinary action as follows:

- ▶ require the licensee to complete continuing education courses in addition to the existing CE requirements
- ▶ revoke or suspend the license
- ▶ impose a fine of \$100 to \$5,000
- ▶ revoke or suspend the license and impose a fine
- ▶ reprimand the licensee

The license can be revoked or suspended until the licensee has completed an approved continuing education course or made restitution to designated accounts that contain funds held for other parties. The Commission may choose to suspend the revocation or suspension while the licensee is completing the educational course or making restitution.

If a licensee, firm, corporation, or other business entity has violated any Alabama license law, rule, or regulation, the Commission may take legal action through the Attorney General to stop the violation and to enforce the law or rule. The legal action can be taken even if an adequate legal remedy does not exist or there is no proof that irreparable damage would result from the continued violation.

If the accused party or entity is unlicensed and engaging in activities which require licensure, the Commission may issue an order to cease and desist the activities. The executive director will issue the order after the Commission staff finds probable cause. The order will become final 15 days after service unless the accused requests a hearing before the AREC. If the hearing results in the finding of a violation, the cease and desist order may become final and the Commission may impose an appropriate fine for each violation. The Commission may also impose a fine in the amount of any gain or economic benefit that resulted from the violation, as well as a fine in the amount of the costs incurred by the Commission. Unpaid fines are enforceable in any court with competent jurisdiction and venue.

The Commission may choose not to issue an order to cease and desist but may give proper notice to the accused and hold a hearing. If the hearing results in a guilty verdict, the penalties will be the same as discussed in the previous paragraph where a cease and desist order was issued.

Actions which constitute violations will be covered in detail in a later chapter.

Rehearing

An accused party associated with a case heard by the Commission may file an application for rehearing if the individual does not agree with the Commission's findings. The application must specify the grounds for the rehearing and must be filed within 30 days of receiving notice of the Commission's decision.

Filing an application for rehearing does not change the effective date of the original decision. An application for rehearing is only appropriate if the final decision is one or more of the following:

- ▶ in violation of constitutional or statutory provisions
- ▶ in excess of the commission's statutory authority
- ▶ in violation of a commission rule
- ▶ made upon unlawful procedure
- ▶ based on the error of a law
- ▶ clearly wrong in view of the evidence
- ▶ unreasonable or arbitrary or was based on an abuse of discretion

If the Commission's decision was based on any of the above, the accused can apply for a rehearing. Within 30 days of receiving the application, the Commission must schedule a new hearing, enter an order without a hearing, or grant or deny the application. If the rehearing is granted, the Commission will schedule the hearing as soon as practicable. The application for rehearing is considered denied if the Commission does not enter an order for a rehearing within 30 days of receiving the application.

All hearings on contested cases are conducted by a hearing officer who is appointed by the Commission. The hearing officer has the authority to ensure the hearing is conducted in accordance with Alabama law and with the Rules of the AREC.

Appeals

Whether the accused has applied and been provided a rehearing or not, the Commission's findings are final unless the applicant or accused files for an appeal within 30 days of the final order. The notice of appeal is filed in Circuit Court in Montgomery County, in the county of the accused's residence, or in the county where the accused corporation is registered or has its principal place of business.

The party appealing the Commission's decision must post a \$200 bond with the circuit court clerk, who then notifies the Commission of the appeal.

Filing the appeal does not suspend the original decision in and of itself, but the circuit court can stay the decision pending the appeal. When an appeal is filed, the Commission must file the case record with the circuit court within 30 days of service. The court may allow additional time for the case record to be filed. The appealing party must file a complaint that explains the issues to be appealed within 30 days of the appeal notice being filed. Once all notices have been filed and served, the appeal is conducted in accordance with Alabama Rules of Civil Procedure.

An appeal is conducted by the court without a jury and is confined to the record. The Commission's decision is taken at face value, or *prima facie*, as being just and reasonable. The appeal court does not override the Commission's judgment regarding the weight of the evidence but does affirm or reverse, in part or in whole, or modify the Commission's decision. The court may even remand the case back to the Commission for further proceedings.

If the appeal court affirms the Commission's decision in part or in whole, the party requesting the appeal is responsible for the cost of the appeal. If the appeal court does not affirm the Commission's decision, the Commission is responsible for the costs of the appeal.

RECOVERY FUND

Purpose of the fund

Payment into the fund

Payment from the fund

Minimum fund balance

Exemptions

When an accused is found guilty of a license law or rule violation, the complainant may be awarded compensatory or actual damages which the licensee is ordered to pay. However, sometimes the licensee does not pay any or all of the damages, so the complainant may not be fully compensated for the damages. To address this situation, Alabama law requires the AREC to establish and maintain a Recovery Fund.

Purpose of the fund

The Recovery Fund was established to assist an aggrieved party in recovering actual or compensatory damages not paid by the licensee in cases where the licensee has been ordered to pay such damages. The damages must have been sustained within Alabama and must have been the result of conduct of a broker or salesperson that is in violation of Article 1 or 2 of the Alabama License Law or of AREC rules. The Recovery Fund is not used to pay interest or court costs.

Payment into the fund

The Recovery Fund is funded by a fee of \$30 paid by each applicant for an original broker or salesperson license. This fee is in addition to any other fee paid by the applicant. The \$30 is deposited into the Recovery Fund. If the Commission does not issue the applicant's license, the fee is refunded to the applicant.

If a salesperson pays the Recovery Fund fee at the time he or she applies for the salesperson license, he or she is not obligated to pay the fee again if/when applying for a broker license. If the salesperson does pay the fee a second time, he or she can request a refund of the extra Recovery Fund fee paid.

The Recovery Fund fee is only paid once at the time of application for an original broker or salesperson license, unless the Fund's balance drops below the minimum required.

Monies received for the Recovery Fund are to be deposited into the State Treasury and held in the Recovery Fund in trust by the AREC. The funds may be invested by the State Treasurer in any investments that domestic life insurance companies may legally invest in under Alabama law.

Any interest or income from the investments is to be deposited into the Real Estate Commission Revenue Fund, with half of the deposited monies being

Payment from the fund

transferred to the University of Alabama Real Estate Research and Education Center. The amount transferred to the Center may not reduce the Recovery Fund's balance below \$600,000.

Payments from the Recovery Fund are subject to the following conditions and limitations:

- ▶ no payment from the fund will be made for acts or omissions of a broker or salesperson who is acting on his or her own behalf or on the behalf of his or her child, spouse, or parent
- ▶ no payment from the fund will be made for acts or omissions of an inactive licensee
- ▶ no payment will be made for the acts or omissions of a corporation, branch office, or partnership except for its licensed brokers or salespersons as individuals
- ▶ no payment will be made for acts or omissions of a broker or salesperson while marketing or developing a time-share project

Recovery Fund payments for judgments or settlements against any one licensee cannot exceed \$50,000 in total. Payments for multiple claims associated with the same transaction cannot exceed \$25,000 in total, regardless of the number of aggrieved persons or claimants.

Recovery Fund payments will not be made to a licensee or bonding company unless either was the principal party to a real estate transaction for which the judgment was based.

An aggrieved person who is seeking payment from the Recovery Fund for a judgment against a broker or salesperson must notify the AREC at the time the action for judgment was initiated.

When the Commission receives the notice, it may take any appropriate steps to defend the accused or the Commission itself. The AREC may also take any action of review or may settle the claim. All costs of defending, satisfying, or settling the claim will be paid from the Recovery Fund.

If the aggrieved person obtains a valid court judgment against a broker or salesperson, he or she may apply for an order for payment from the Recovery Fund for the amount of the unpaid judgment. The claimant must provide the Commission a 10-day written notice that he or she is seeking the court order for payment from the Fund.

The court in which the application for an order for payment was made will proceed on the application immediately. The claimant will be required to show all of the following:

- ▶ that the claimant is not the spouse, child, or parent of the debtor or the personal representative of the spouse, child, or parent
- ▶ that the claimant has obtained a judgment

- ▶ how much is still owed on the judgment at the date of the application for an order of payment
- ▶ that the claimant joined any bonding companies which issued corporate surety bonds to the judgment debtor and other necessary parties
- ▶ any amount recovered from the judgment debtor, bonding companies, and out-of-court settlements have been applied to the damages awarded by the court

If the claimant does not strictly comply with all requirements for the payment order, the claimant's rights to payment from the Fund will be waived.

If the claimant meets all requirements as outlined above, the court will order payment from the Recovery Fund in whatever amount the court determines is due to the claimant.

If the Commission pays from the Recovery Fund to satisfy a judgment or settle a claim against a licensee, the Commission may terminate all licenses the licensee holds. The Commission may also refuse to issue a new license until the licensee has repaid the Recovery Fund payment in full and with interest. When the claim has been repaid by the licensee, the payment, including interest, is to be deposited back into the Recovery Fund.

If the Recovery Fund's balance is insufficient to pay a claim, the Commission must pay the claim plus interest when the Fund has been restored to a balance that allows such payments. When the balance is restored, claims are to be paid in the order they were originally filed.

Minimum fund balance

When the Recovery Fund's balance drops below \$500,000, the Commission will order each broker and salesperson to pay a \$30 fee for each license held. This fee is in addition to the Recovery Fund fee paid at the time of original license application. The additional fee is to be deposited into the Recovery Fund.

A licensee on inactive status is not required to pay the additional fee until his or her license is activated.

Exemptions

All applicants for an original broker or salesperson license must pay the \$30 Recovery Fund fee unless the original license is issued on inactive status. In that case, the fee is waived until the license is activated. The license can only be activated when the Recovery Fund fee and any supplemental Recovery Fund fee are submitted to the Commission along with all other required documentation and fees.