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BROKER AND COMPANY LICENSES

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All Alabama real estate salesperson and broker licenses are registered to a specific real estate office. Any individual wishing to be licensed as a broker in Alabama must apply for a broker's license using an AREC-designated form which specifies the real estate office under which the individual is registered.

The individual must also meet the education, experience, and personal requirements for becoming an Alabama broker.

Issuance of broker licenses

General requirements. Individuals who want to obtain an Alabama real estate broker license must meet the same personal requirements as those necessary to obtain a salesperson license. An applicant must be

- ▶ a U.S. citizen or permanent resident alien, or be legally present in the U.S.
- ▶ at least 19 years old
- ▶ a high school graduate or the equivalent
- ▶ a resident of any U.S. state
- ▶ free of any conviction for a felony or a crime involving moral turpitude
- ▶ free of any rejection of a real estate license application or revocation of a real estate license in any state within the previous 2 years

The broker applicant must provide the same documentation an applicant for a salesperson license must provide (as discussed in detail in the previous chapter) as proof of meeting these requirements.

Criminal background. Just as when applying for a salesperson license, if the applicant has been convicted of a felony or a crime involving moral turpitude, he or she may file an "Application for Determination of Licensing Eligibility" form with the Commission. The Commission will review the conviction(s) and determine if the applicant is eligible for licensure in Alabama.

Additionally, the AREC requires both state and national criminal history checks to be performed on any applicant for licensure. The applicant must submit any required information and fingerprints to the Commission, to the Federal Bureau of Investigation, to the Alabama State Law Enforcement Agency or its successor, or to a fingerprint processing service approved by the Commission. Fingerprints are to be submitted on the approved fingerprint card.

The AREC may then use the criminal history to determine the qualifications and fitness of the applicant to hold a real estate license. The applicant is responsible for the cost of the criminal history check which must be current to the date of license issuance.

Salesperson experience. The broker applicant also must have been licensed as an active real estate salesperson in any state for at least 24 months before applying for a broker license. The 24 months of licensure must have occurred within the 36 months prior to applying for the Alabama broker license. Proof of this licensure must be submitted to the Commission along with the broker license application.

Coursework and state examination. Additionally, the broker applicant must complete a 60-hour AREC-approved broker pre-license real estate course.

After the applicant has met all requirements, he or she must apply to take the national and state broker licensure examination, pay the examination fee, and pass the examination with a score of at least 70%. The examination must be taken and passed within 6 months of course completion.

When the applicant has met all requirements, including passing the examination, he or she will apply for the broker license. Once the broker license is issued, the broker's salesperson's license automatically terminates. The salesperson's license certificate is to be returned to the Commission for the broker's license to be issued.

An applicant for a broker's license must maintain a place of business.

Associate broker status. According to Alabama license law, all brokers must be registered to a real estate business and under the business's qualifying broker. Once registered, the broker becomes an associate broker with that qualifying broker. By definition, an associate broker is any broker other than a qualifying broker, made so by his or her relationship with the qualifying broker.

Company and branch office licenses

The Alabama Real Estate Commission defines a company as "any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may provide from time to time." Corporations, LLCs, and sole proprietorships are the most common examples of companies under Alabama law. The other common entity defined as a company is a branch office. Alabama license law requires every qualifying broker and every place of business to have a company license.

License application. The company's qualifying broker is responsible for applying for a company license or branch office license. The application must be made on an AREC-approved form. Branch office licenses use a special application form because the law requires that the branch qualifying broker and the main company qualifying broker both share responsibility for the actions at the branch office.

The qualifying broker is required to be an officer, partner, or employee of the company.

The company license applicant must maintain a place of business. If the applicant maintains more than one place of business in Alabama, he or she needs a company or branch office license for each location or branch office. The company must meet the following requirements for licensure:

- ▶ the application must include the location of the company or branch office and the name of its qualifying broker
- ▶ each company or branch office must be under the direction and supervision of a qualifying broker who is licensed at the company or branch office address
- ▶ each company or branch office must have its own qualifying broker with no qualifying broker serving more than one location
- ▶ the branch office qualifying broker and the company qualifying broker are to share equal responsibility for the activities of all licensees assigned to the branch office or company

Every activity that requires a real estate license must be performed in the name of the licensed company under the qualifying broker. If the qualifying broker declines to support certain types of business activities, the salespersons and brokers working for that company must not engage in those activities.

For example, let's say that qualifying broker Bob does not want to include property management in the services offered by his company. Bob has several associate brokers who want to manage property, so they decide to manage property on their own and not under Bob. Bob has told them he doesn't care as long as he doesn't have to deal with the activities. Bob has also told them that they cannot use the company name when offering and performing the property management services.

This seems workable for all involved, right? However, it is against Alabama license law because every activity a licensee performs must be performed in the name of the licensed company and under the qualifying broker. Therefore, the

associate brokers may not manage property unless Bob agrees to include that service in his company offerings so the brokers can manage property in Bob's company name and under Bob.

Each company license expires at midnight on September 30 of the final year of the license period.

Qualifying broker requirements. To serve as a qualifying broker, the individual must be an Alabama-licensed broker with real estate being his or her principal business. The individual must also be in a position to supervise the real estate activities of any associate broker or salesperson registered to that office. Serving as a qualifying broker is a full time position, so the individual must be available to serve full time.

Responsibilities of qualifying broker

Salespersons and associate brokers must be licensed under a qualifying broker who is then responsible for real estate activities in which the salesperson or associate broker engage. The qualifying broker is also responsible for all real estate activities of the company for which he or she is the qualifying broker.

The qualifying broker must also assure that all transactions performed by any licensee or company for which he or she is responsible comply with Alabama license law and AREC rules.

If a licensee or company for which the qualifying broker is responsible violates any of these laws or rules, the qualifying broker will be held responsible to the injured party for any damage caused by the violation. The qualifying broker's liability will be in addition to the licensee's own liability for such violations.

The qualifying broker is also responsible for displaying the current licenses for all companies, branch offices, brokers, and salespersons under his or her supervision. The licenses must be publicly displayed at the place of business.

Even though the law requires the qualifying broker to supervise the associate brokers and salespersons licensed under him or her, the law is not meant to establish an employer-employee relationship. The broker and licensee may establish such a relationship, but the law does not automatically establish it for them.

Broker supervision

One of the primary responsibilities of a qualifying broker is proper supervision of the broker's company and of those licensed under the broker. Proper supervision includes, but is not limited to, the following:

- 1) maintain an active broker's license with the Commission
- 2) prevent unlicensed persons from engaging in activities requiring a license on behalf of the qualifying broker or company
- 3) prevent a licensee from conducting licensed activity for a company under which the licensee is not licensed
- 4) prevent a person whose license is expired, inactive, pending transfer suspended, or revoked from engaging in licensed activities
- 5) ensure that licensees comply with any restrictions placed on their licenses
- 6) refrain from causing licensees to violate a state, federal, or local law or regulation while conducting licensed activity

- 7) prevent licensees from violating state, federal, local or license law while conducting licensed activity when the broker knows or should know of the impending violation
- 8) take timely action to correct or mitigate a violation of license law or regulation on learning of the violation
- 9) ensure that contracts and forms used by licensees are accurate and in compliance with statutes, rules, and office policies.
- 10) ensure that licensees are able to communicate effectively with the supervising broker, branch broker, or a competent designee
- 11) ensure that the company and its licensees handle funds and other property belonging to others properly
- 12) ensure that the company's advertisements and those of its licensees conform with license laws and rules
- 13) provide necessary orientation for licensees newly affiliated with the company.

Termination of qualifying broker status

An individual may change his or her status as qualifying broker for a licensee by notifying the licensee and the Commission in writing. Remember, each licensee must be registered under a qualifying broker. So, if the qualifying broker wants to cease being a licensee's qualifying broker, he or she must send the licensee's license certificate back to the Commission. The Commission will then issue a new license certificate registered to a new qualifying broker. If the license has been lost or destroyed, the qualifying broker must verify that in writing to the Commission.

An individual may terminate his or her status as a qualifying broker for a company by providing written notice to the company or to the qualifying broker of the parent company. He or she must also notify the Commission.

Licensees and companies whose qualifying broker has terminated his or her status as such may not perform any acts for which a license is required until a relationship with a new qualifying broker has been established and a new active license has been issued by the Commission.

Qualifying broker for more than one company

Brokers may not serve as the qualifying broker for more than one company or for a company and him or herself unless the following requirements are met:

- ▶ the qualifying broker must obtain the written consent of all companies for which he or she wishes to serve
- ▶ the qualifying broker must file a copy of the written consent with the commission
- ▶ all of the companies share the same company address

The qualifying broker's licensees may be engaged by one or all of the companies for which the qualifying broker serves.

Temporary qualifying broker

Should a company's qualifying broker die or become disabled, the company license will become invalid. Within 30 days of the qualifying broker's death or disability, the corporation or the remaining partners may designate another

officer, member, or salesperson to apply for a license as a temporary qualifying broker.

The person designated must be a broker or have been a licensed salesperson for at least 1 year prior to the application being submitted. If the application is granted, the company is allowed to operate under the temporary qualifying broker for no more than 6 months from the date the commission issues the temporary qualifying broker license. During that 6 months, the company must designate a fully licensed broker as the qualifying broker.

If the company does not designate a fully licensed qualifying broker within 6 months of the commission issuing the temporary license, the company license and all licenses under the company will be placed on inactive status by the Commission after a 2-week notice.

Place of business

Real estate professionals must maintain a place of business which is identified by a sign that includes the name of the company as it is licensed with the AREC. If exterior signs are allowed, the sign is to be posted outside the office so that it is plainly and readily visible to the public. If exterior signs are not permitted, the sign is to be posted inside the place of business and is to comply with the building's restrictions on signage. If allowed, the sign should be posted in the entry area and on the office door.

Licensees who are located within city limits or the police jurisdiction of a municipality are to operate from an office also located in the city limits or police jurisdiction. The office must be a separate space with a business telephone and a sign identifying it as a real estate office.

All business records and files are to be kept at the place of business. Maintenance of such records and files is to comply with Alabama law and AREC rules.

Operating from home. Licensed brokers who live in rural areas of Alabama may operate from their homes as long as the broker sets up an office to be used specifically for conducting real estate business. The space set up as an office may not be used for living purposes.

The space also may only be used by the one broker and not by other licensees who are operating under the broker's license. In other words, the broker may not conduct business as a qualifying broker who supervises associate brokers operating from the same home office space.

The home office space must have a separate business telephone, a separate entrance, and a sign that identifies it as a real estate office.

Teams

In many real estate companies, individual licensees team up with other professionals to form an official team to provide real estate services. In Alabama, a team is defined as two or more licensees who join forces to offer real estate services as a distinct group. A real estate licensee may only be a member of one team.

A team does not need to be registered as a separate entity with AREC. While the qualifying broker designates the team leader, the qualifying broker cannot

delegate any duties reserved for qualifying brokers to that team leader. In addition, the team leader must provide a list of team members to the qualifying broker.

TRUST FUNDS

Purpose

Trust funds defined

Qualifying broker responsibilities

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Escrow account reconciliation

A trust fund account, also known as an escrow account, is a bank account set up to hold funds belonging to someone other than the real estate broker owning the account. The account is set up by the brokerage company's qualifying broker at a federally insured banking institution that is located in Alabama. The funds are held until such a time that a specific event, such as a real estate closing, takes place.

Purpose

When a property is being purchased, the buyer provides earnest money to the broker to be held until the purchase closes. These earnest funds are to be deposited into a bank account other than the broker's business or personal account.

This trust fund account keeps the client's money separate from the broker's money. This ensures that any money the client needs to use for the real estate transaction is in a secure account that is accessible only by the client or the broker. As long as the money is held in a trust account in a bank insured by the Federal Deposit Insurance Corporation (FDIC), each client's funds are insured up to \$250,000.

Trust funds defined

Alabama license law and AREC rules require a real estate licensee to deposit and account for *all* funds belonging to or being held for others at all times. These funds include earnest money, security deposits, and all other funds related to a contract for the sale or lease of property or a property management agreement. They are money or other items of value that the broker receives on behalf of an individual (usually the property buyer) to be held for the benefit of others in relation to any acts for which a real estate license is required.

The funds may be U.S. currency (cash), checks, notes, other recognized forms of money, or other items of value. Cash is to be deposited immediately. Checks may be held for a specific length of time before being deposited if the purchase offer designates the length of time or the event that must occur prior to the check being deposited. If the offer does not state a specific time for the check to be deposited, it is to be deposited when the offer becomes a contract.

Qualifying broker responsibilities

Each salesperson or associate broker must submit to his or her qualifying broker all funds that come into the salesperson or broker's possession to be held for other parties.

Alabama laws and rules also require that the individual responsible for holding trust funds is to be the qualifying broker.

The qualifying broker is responsible for depositing the funds belonging to others to be held in trust unless he or she is expressly relieved of the responsibility in writing. Thus, the qualifying broker is the trustee for the account.

If a purchase contract involves more than one qualifying broker, any of the qualifying brokers involved in the sale may deposit and hold the funds related to the purchase.

Funds being held in relation to a purchase contract, a lease, or a property management agreement are to be deposited and held by the qualifying broker who is providing these services to the property owner. If the services are provided by a secondary or successor broker, the first broker is to provide a complete accounting of the funds to the successor qualifying broker and is to transfer the funds to the successor broker.

The qualifying broker who is currently providing the services to the owner is responsible to the public and to the Commission for the funds. At the request of the Commission, the current qualifying broker must immediately account for any trust funds he or she holds.

The qualifying broker is to be a customer of the bank or financial institution where the trust account is held and is to be one of the persons with authority to deposit and withdraw funds from the account. He or she may write or make checks as necessary on all trust accounts set up on behalf of the company.

Disbursement of trust funds

The qualifying broker holding the trust funds must disburse the funds to the appropriate party or parties within 7 days of the consummation of the transaction for which the funds were being held. In other words, when the purchase is completed and closed, the funds must be disbursed within 7 days of that closing date.

If the transaction does not close or there is disagreement regarding who should receive the funds, the qualifying broker must not disburse any of the funds unless there is a court order or until there is a written agreement signed by all parties. Alternatively, the broker may deposit the funds with the appropriate court under the rules of interpleader or any other lawful procedure that is applicable.

The rules of interpleader remove the qualifying broker from the disbursement process and make the disagreeing parties litigate the disbursement between themselves. The qualifying broker becomes the stakeholder, and the disagreeing parties become the claimants. The stakeholder then would deposit the funds under dispute with the court, and the court would decide who is legally entitled to the funds. Thus, the qualifying broker is released from any liability regarding disbursement of the funds.

Trust fund management

Proper accounting. Alabama license law has defined procedures which real estate professionals must follow in relation to trust fund accounts. The law has also assigned penalties for failing to perform any of these acts. The law requires the licensee to properly account for or remit money belonging to others that comes into his or her possession. Consequently, licensees must be able to correctly determine the amount of trust funds they are holding. Failure to do so is a violation of the law. The law also requires the broker to deposit and account for all funds belonging to others or being held for others in a federally insured account in a financial institution located in Alabama. Failure to do so is a violation of the law.

No commingling. Further, the licensee is required to maintain trust accounts separate from his or her personal or business accounts to hold funds belonging to others. The trust account may hold funds belonging to multiple clients but not funds belonging to the broker. Failure to separate the broker's funds from the funds belonging to others is called commingling and is a violation of Alabama law. However, the AREC does allow the broker to keep some personal funds in a trust account to cover bank service charges or check fees.

The qualifying broker can lose his or her license if the broker uses any money from the trust account for his own personal or business use.

The broker is not only responsible for his or her own actions, but also for the actions of the salespersons and brokers which the qualifying broker supervises. Thus, the qualifying broker may be held responsible for any commingling, embezzling, and conversion of his or her client's money committed by associate brokers or salespersons.

Violations and discipline. If a licensee violates any of these provisions of the law pertaining to trust funds and the violation is reported in writing to the AREC, the Commission or its staff may investigate the actions and records of the licensee. Just as with any other violation or complaint, the Commission may issue subpoenas and hear testimony of witnesses and require trust fund records and documents to be produced during the course of the investigation.

If the Commission finds probable cause as a result of the investigation, the Commission will file a formal complaint and hold a hearing on the complaint. If the hearing determines the licensee is guilty of an alleged trust fund violation, the Commission will impose any or all of the following penalties for each act for which the licensee is found guilty:

- ▶ require the licensee to complete continuing education courses in addition to the existing CE requirements
- ▶ suspend or revoke the licensee's license
- ▶ impose a fine of at least \$100 but not more than \$5,000
- ▶ suspend or revoke the license and impose a fine
- ▶ reprimand the licensee

The Commission may suspend or revoke the license until the licensee has completed an approved continuing education course and/or made restitution to

any accounts holding funds that belong to others. The Commission may also stay the revocation or suspension and require the licensee to complete an approved education course and/or make restitution to any accounts holding funds belonging to others.

Trust fund scams

In this age of technology, it is common for funds to be transferred and deposited into bank accounts by way of electronic transfers. However, it is also unfortunately common for electronic hackers and scammers to use the same transfer methods to commit email and wire fraud and obtain funds belonging to others.

The scammer typically hacks into an email account or impersonates the email of a party involved in a real estate transaction. Once the scammer has the email of the involved party, the scammer transmits false wiring information for the transfer of funds from the real estate transaction. The funds then are wired to the scammer's bank account and then immediately transferred to a bank out of the country, making it impossible to recover the funds. Typically, neither the scammer's bank or the victim's bank will reimburse the funds.

Scammers are targeting licensees, parties to transactions, and even real estate settlement agents in Alabama and across the U.S. The following tips will help protect involved parties from falling victim to these scammers:

- ▶ never send wire transfer information or any sensitive information by email. this includes bank information or routing numbers
- ▶ include statements in emails that wiring instructions will not be sent by email
- ▶ inform parties involved in the transaction of the scam and ask they inform the licensee of any requests involving funds transfers
- ▶ if funds must be wired, contact the intended recipient on the phone and inform them of the intended transfer
- ▶ do not open suspicious emails or click on suspicious links
- ▶ be very careful with callers who request username or password verification
- ▶ use passwords that are not easy to guess and then change them on a regular basis
- ▶ keep firewall and antivirus software up to date

While hackers and scammers are becoming more and more sophisticated on ways to obtain bank account information, often times simple steps and common sense can thwart their efforts.

Escrow account reconciliation

As the trust account holder, the qualifying broker is responsible for depositing and accounting for all trust funds in the account. Accounting for the funds requires periodic reconciliation of the broker's records with those of the bank holding the accounts.

All deposits into and disbursements from the trust account should be indicated both in the broker's records and on account statements from the bank. Any discrepancies must be accounted for and resolved.

Trust fund recordkeeping. All records pertaining to funds belonging to others must be maintained for at least 3 years. The records must indicate to whom the money belongs, the date the money was deposited, the date the money was withdrawn or disbursed, and any other pertinent information.

Reconciliation. The AREC suggests the following as means to reconcile the account records with the bank records:

- ▶ tape canceled checks into the checkbook next to the check stub to maintain a complete record of the check without having to search statements for the check in question
- ▶ prepare a continuous list of pending contracts with the amount of earnest money involved. mark off each transaction as it closes, as the money is refunded, or as it is forfeited by the buyer or seller
- ▶ deduct any bank service charges from the account before the remainder of the commission is paid to prevent overdraft charges. the AREC allows additional designated funds to be deposited into the account to cover bad checks, services charges, etc.
- ▶ keep pending contracts separate from closed contracts
- ▶ maintain a separate escrow account for rental or leased property to distinguish it from sales contracts which will have no disbursements for repairs, owner's payments, etc.
- ▶ keep written receipts of all funds that are received, whether they are cash, check, or other items of value. doing so will provide an internal means of control

While Alabama law does not designate a time frame for account reconciliation, monthly reconciliations are a good course of action to maintain accurate records and to stay on top of discrepancies. Balancing the company's account records against the bank statement should be performed as soon as the statement is received.

If the funds being held are security deposits or rent payments, the licensee should maintain a security deposit escrow account and a rent escrow account to hold the funds belonging to the tenants or to the property owner.

The licensee should maintain a continuous ledger that includes all deposits, the tenants' names, the property address, the owner's name, the deposit amount, and the date of the deposit. Account ledgers for rent payments should also include a record of payments to the property owner as proceeds, to the real estate management company for their management fees, and invoices for any maintenance.

These accounts also should be reconciled monthly with the balances shown in the ledgers matching with the balances shown on the monthly bank statement for each account.

ESTIMATED CLOSING STATEMENT

Purpose for the estimate
Estimated closing expenditures
Disclosure to consumer

A real estate closing is the transfer of the property title from the seller to the buyer in accordance with the sales contract. However, there are numerous costs associated with the closing that can become quite complex. The costs involved are determined by the sales contract, local tradition and custom, type of financing, and local, state, and federal laws.

The closing statement. A closing statement is an accounting document used in the real estate transaction closing that details the final costs related to a transfer of ownership of property. It is also known as a settlement statement.

While the closing statement presents the final settlement costs, buyers and sellers need to know the approximate transaction costs at the time an offer to purchase the property is made. Therefore, the law requires that an estimated closing statement be produced for both the buyer and the seller at the time an offer or counteroffer is made. The estimate approximates settlement costs so that each party will be duly informed and prepared. All parties to the transaction should compare the estimated closing statement to the final closing statement to find and correct potential errors.

Providing an estimated closing statement to the buyer and seller also helps protect against mortgage fraud by eliminating the potential for unexpected and/or unexplained costs charged by the bank or mortgage company at the actual closing.

Purpose for the estimate

Any licensee who represents a residential buyer and obtains a written purchase offer must prepare and provide an estimated closing statement to the buyer. The statement must contain the most accurate and complete estimates of all costs that are the buyer's responsibility at the time the transaction closes. The statement must itemize not only which costs the buyer will pay but also the estimated amount of each cost. The licensee must provide the statement to the buyer at the time the buyer signs the offer to purchase.

Any licensee who represents a residential seller and presents a written purchase offer to such seller must also prepare and provide an estimated closing statement to the seller. The statement provided to the seller must show which costs are the seller's responsibilities and approximately how much each of those costs will be. This statement is to be provided to the seller at the time the offer is presented.

By signing the estimated and the actual closing statements, both the buyer and the seller are acknowledging that they received the statements.

TILA, RESPA and TRID. Alabama license law and administrative rules protect the consumer by mandating that licensee provide an estimated closing

statement. At the same time, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) also serve to protect the consumer. TILA-RESPA Integrated Disclosure (TRID) Rules have specific requirements for disclosure notices from the lender of a mortgage loan to the borrower.

Under TRID, the Good Faith Estimate formerly provided by lenders has been replaced by the Loan Estimate, which must be provided to the borrower of a mortgage loan within 3 business days of the borrower's application for the loan. Additionally, a TRID-mandated Closing Disclosure must be provided to the borrower 3 days prior to closing on the mortgage loan.

Keep in mind the difference in these mandated disclosures:

- ▶ the estimated closing statement, ***mandated by Alabama law***, is provided by the real estate licensee to inform the buyer and the seller of all costs associated to the real estate transaction closing; it is provided at the time a purchase offer or counter offer is submitted
- ▶ the loan estimate and closing disclosure, ***mandated by federal law***, are provided by the lender to inform the borrower of the costs associated with the mortgage loan; the loan estimate is provided at the time the loan application is received, and the closing disclosure is three days prior to closing, as stated

Both federal and state laws work to assure the consumer is informed, prepared, and protected in real estate transactions and financing.

Estimated closing expenditures

The estimated closing statement includes debits and credits for both the seller and the buyer that are due at closing and the approximate amount of each. Typically, what is a debit to the seller is a credit to the buyer and vice versa.

Debits for the seller would include the following:

- ▶ real estate commissions to be paid
- ▶ escrow fees
- ▶ excise taxes, if applicable
- ▶ repairs to be done based on the home inspection
- ▶ prorated property taxes and assessments
- ▶ title clearing
- ▶ second mortgages, home equity loans, and tax liens
- ▶ any other items to be paid by the seller
- ▶ credits for the seller would include the following:
 - ▶ purchase price of the property
 - ▶ prorated prepaid property insurance
 - ▶ prorated prepaid utilities
 - ▶ prorated prepaid property taxes
 - ▶ any other agreed upon shared costs between the buyer and seller

Debits for the buyer would include the following:

- ▶ purchase price of the property
- ▶ escrow fees
- ▶ title insurance
- ▶ mortgage loan origination fee
- ▶ home inspections
- ▶ property surveys
- ▶ prorated prepaid property insurance
- ▶ prorated prepaid utilities
- ▶ prorated prepaid property taxes
- ▶ any other items to be paid by the buyer

Credits for the buyer would include the following:

- ▶ earnest money deposit
- ▶ cash down payment
- ▶ adjustments for the buyer's overpayment of estimated attorney fees and closing costs
- ▶ repairs needed based on the home inspection but not prepaid by the seller
- ▶ any other agreed upon shared costs between the buyer and seller

Disclosure to consumer

The Real Estate Settlement Procedures Act (RESPA) requires that the buyer of real estate be informed about closing costs and prevents abusive practices that inflate the costs of closing for the buyer. The Act requires that the lender disclose the costs of closing to the borrower and prohibits the lender from demanding excessive deposits for escrow accounts.

Providing an estimated closing statement is the means for disclosing purchasing or sellings costs that the buyer or seller will be expected to pay. Because the notification must take place at the time an offer to purchase is obtained from the buyer or presented to the seller, it assures there will be no surprises for either party at closing.

Failing to disclose these estimated costs to the buyer or the seller is a violation of Alabama license law and RESPA and puts the licensee at risk of investigation by the AREC. If found guilty at a formal hearing, the licensee may have his or her license suspended or revoked, may have a \$100 to \$5,000 fine imposed, may be reprimanded for each instance of a guilty verdict. The licensee may also be required to complete an approved continuing education course and/or make restitution.

ADVERTISING

Advertising with an interest Signage Team Advertising

When advertising real estate, licensees must be honest. They are prohibited from making false promises that could potentially influence, persuade, or induce a consumer to enter into a contract. They are also prohibited from flagrant misrepresentation in any form of advertising. Publishing any advertisement that deceives the public or is likely to deceive the public is against the law. All advertisements must identify the advertiser as a licensed broker or salesperson.

Advertising with an interest

Alabama license law exempts property owners from licensing requirements when the owners are managing their own property or engaging in a real estate transaction involving their own property. In other words, a property owner can manage, lease, or sell his or her own property without needing to be licensed as a real estate salesperson or broker. This also means the property owner can advertise his or her own property for lease or sale without needing to be licensed.

Alabama license law also allows any property owner who becomes a licensed broker or salesperson to advertise his or her own property. However, while the non-licensed owner is exempt from the license laws, the licensed owner must abide by all provisions of the law and AREC rules in any real estate transaction. This includes transactions in which the licensee is the property owner or the spouse, child, or parent of the property owner.

Thus, the licensee must also comply with all applicable laws when advertising his or her own property for lease or sale.

Further, if the licensee is advertising his or her own property or property belonging to a member of the licensee's immediate family, the licensee must provide prior written disclosure of his or her interest in the property to all parties to the transaction. The licensee must also disclose that he or she is a licensed real estate salesperson or broker. The law states the disclosure must be "timely" without giving a definitive time frame.

If the licensee is seeking to purchase an interest in a property being sold by his or her brokerage company, the licensee must disclose his or her intention to the property seller or the seller's agent. The licensee must inform the seller that he or she is a licensed real estate salesperson or broker and that he or she is the intended buyer of the property.

Signage

Real estate licensees have the legal right to advertise property for sale, lease, or transfer using signs that are affixed to or located on the property itself. Alabama does not allow a municipal corporation or local government to impose a fee or tax on the signs, whether the signs are located on or near the property.

However, local, county and city governments are allowed to set and enforce reasonable restrictions on the size, height, and placement of signs on private

property or a public right-of-way. Such restrictions are covered in detail in Article 1 of Chapter 54 of the Alabama Code of Ordinances. The restrictions include the manner of erection and posting of signs, interference or obstructions caused by the signs, removal and disposal of the signs, etc.

Team Advertising

Real estate teams have specific advertising rules that apply only to them. While the law has granted AREC the ability to adopt rules regarding the words that may and may not be used in team names and how teams may market and advertise their services, the law does proscribe a few of its own requirements.

In team advertisements, the name of at least one team member and the name of the real estate company where the team members are licensed must both be included in the ad. Either “team” or “group” must be included in the team name. In addition, the qualifying broker must give written authorization to allow the team to include its name in any advertisements.

RECORDKEEPING

Both estimated closing statements and the actual closing statements must be retained in the broker's files. The buyer's agent should retain the estimated and actual closing statements signed by the buyer in his or her qualifying broker's files, while the seller's agent retains the statements signed by the seller. Neither licensee is required to retain statements signed by both the buyer and the seller. Nor is it necessary for cooperating brokers to maintain both the buyer's statement and the seller's statement.

Although the law does not specify a time frame for retention of closing statements, as with any documents or records related to a real estate transaction, the statements should be retained for at least 3 years.

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Alabama Brokerage Regulation Snapshot Review

BROKER AND COMPANY LICENSES

Broker licenses

- all broker licenses are registered to a specific real estate office.
- individual must meet all requirements for becoming an Alabama broker.
- applicant must be U.S. citizen or meet other legal status and show proof of state residency; be 19 years old and a high school graduate or equivalent; have no felony conviction or crime involving moral turpitude; have no real estate license application rejection or revocation in any state for past 2 years; must provide documentation as proof of meeting requirements
- AREC requires state and national criminal history checks on each applicant at the applicant's expense; fingerprints must be included
- broker applicant must have been salesperson for 24 months within past 36 months
- applicant must complete 60-hour pre-license course
- applicant must pass the national and state licensure examination with minimum score of 70% within 6 months of course completion
- applicant must maintain a place of business
- all brokers must be registered to a specific real estate company and the company's qualifying broker
- once registered, the broker becomes an associate broker to that qualifying broker
- defined as any broker other than a qualifying broker who is associated with a qualifying broker

Company & branch office licenses

- company is defined as any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization
- every qualifying broker and place of business is required to have a company license
- the qualifying broker is responsible for applying for the license
- law requires that branch office qualifying broker and main company qualifying broker share responsibilities of the branch office
- the qualifying broker must be an officer, partner, or employee of the company
- the company license applicant must maintain a place of business.
- multiple places of business must each maintain a company or branch office license
- application for licensure must include location of company and name of qualifying broker
- each company or branch office must be directed by its own qualifying broker who serves only one location
- branch office qualifying broker and main company qualifying broker must share responsibility of licensees' activities
- all activities must be performed in the company's name under the qualifying broker; brokers may not engage in activities not supported by the qualifying broker
- the company license becomes invalid with death or disability of qualifying broker; a temporary qualifying broker must be designated within 30 days thereafter
- the company license will become inactive if a new qualifying broker is not designated within 6 months of the death or disability of the previous qualifying broker
- the company license expires at midnight on September 30 of the final year of the license period

Responsibilities of qualifying broker

- every qualifying broker must be an Alabama-licensed broker with real estate as the principal business
- serving as a qualifying broker is a full-time position to supervise activities of brokers or salespersons registered to that office
- the qualifying broker is responsible for all activities of the company and the registered brokers and salespersons
- must assure all transactions comply with Alabama law
- the qualifying broker is responsible for damages caused by law violations and will be held liable
- the qualifying broker must display all current licenses for the company, brokers, and salespersons in the place of business

Broker supervision

- qualifying broker must supervise company and its licensees
- remain licensed; make sure only licensed persons do licensed activities; enforce restrictions on licenses; make sure all laws are observed during licensed activities; correct or mitigate violations; oversee contracts; facilitate communication; ensure proper handling of funds; oversee advertisements; provide training and orientation for new affiliates

Termination

- the qualifying broker may terminate his or her status for a licensee by notifying the licensee and the Commission in writing and then send the licensee's license to the Commission.
- licensees or companies whose qualifying broker has been terminated must not perform any acts requiring a license until a new qualifying broker has been established

More than one company

- qualifying brokers may serve only one company at a time unless he or she has the written consent of all companies being served, has filed a copy of the consent with the Commission, and all companies share the same business address

Temporary qualifying broker

- to be designated as a company's temporary qualifying broker upon the death or disability of the previous qualifying broker, the individual must be an officer, member, or salesperson of the company and must have been licensed for at least 1 year prior to applying.
- the temporary qualifying broker may serve for no more than 6 months before the company must designate a full-time qualifying broker
- failure to designate a full-time qualifying broker within 6 months will result in the company license and all licenses under the company becoming inactive

Place of business

- place of business is identified by a sign with the name of the company as licensed, to be posted outside the office if allowed or posted inside the place of business in compliance with building restrictions
- licensees located within city limits must operate from an office within city limits and must have separate space with a business phone and proper signage
- all business records are to be kept at place of business
- rurally located licensees may operate from their homes provided the home has a separate space for conducting real estate business and not for living purposes
- home offices may only be used by the one broker
- home office spaces must have separate business telephones, separate entrance, and proper signage

Teams

- two or more licensees in the same company who work together to provide services as a distinct group
- qualifying broker designates the team leader but cannot delegate any qualifying broker duties to that person

- does not need to be licensed or registered as a separate business entity with the commission
- team leader must provide a list of members to qualifying broker
- licensees may only be members of one team

TRUST FUNDS

Purpose

- a trust account is a bank account set up to hold any funds belonging to others and is set up by the qualifying broker at a federally insured bank in Alabama
- trust accounts keep client funds separate from the broker's own funds
- federally insured accounts insure funds up to \$250,000

Trust funds defined

- all funds belonging to others must be held in a trust account
- includes earnest money or other funds related to a real estate transaction
- includes cash, checks, notes, other recognized forms of money, or other items of value
- cash is to be deposited immediately; checks may be held for a length of time specified in the purchase offer or when the offer becomes a contract
- salespersons and brokers must submit all funds to the qualifying broker for deposit into a trust account

Qualifying broker responsibilities

- the qualifying broker is required by Alabama law to hold all trust funds
- the qualifying broker must deposit all trust funds unless relieved of the responsibility in writing
- with multiple qualifying brokers, any of the involved qualifying brokers may deposit and hold the funds
- funds are held by qualifying broker who is providing services
- when services are provided by a secondary broker, the first broker must provide a complete accounting of all funds to the secondary broker and must transfer the funds to the secondary broker
- qualifying broker providing the services to the owner is also responsible to the public and the AREC for the funds and must immediately account for the funds upon the AREC's request
- the qualifying broker must be a customer at the bank where the trust account is maintained
- the qualifying broker must also have authority to deposit and withdraw the funds and may do so by writing or making checks as necessary

Disbursement of trust funds

- the qualifying broker must disburse funds to the appropriate party within 7 days of the closing of the transaction
- the qualifying broker must not disburse funds if there is no closing or if there is a disagreement as to whom should receive the funds
- the qualifying broker must have a written agreement signed by all parties or a court order to release funds in the case of a disagreement
- the qualifying broker may deposit funds with the appropriate court if there is a disbursement disagreement

Trust fund management

- licensees must properly account for or remit money belonging to others and must be able to determine the amount of funds being held
- licensees must deposit and account for all funds belong to others and must use a federally insured account in an institution located in Alabama
- licensees must not commingle trust funds with broker's own funds but may keep personal funds in the trust account to cover service charges
- the qualifying broker must not use any trust funds for personal use
- the qualifying broker is responsible for actions of associated salespersons and brokers in relation to trust funds

Trust fund scams	● reported violations are investigated by the Commission who may issue subpoenas, hear testimony of witnesses, and require documents to be produced for the investigation ● a probable cause finding will result in the AREC filing a formal complaint and holding a hearing on the complaint ● punishments for a guilty finding include: license suspension or revocation; imposition of a fine of \$100 to \$5,000; licensee reprimand; CE requirement ● AREC may require completion of continuing education course and/or restitution before lifting suspension or revocation, or the AREC may stay the suspension or revocation and still require the education course and restitution ● hackers and scammers are using email to commit wire fraud ● once the funds are transferred to the scammer's bank and then out of the country, most banks will not reimburse the monies ● there are several ways involved parties can thwart the scammers, such as changing email passwords often, not sending wire transfer information in emails, contacting the intended recipient of wired funds on the phone
Trust fund reconciliation	● Alabama law does not designate a time frame for account reconciliation, but monthly reconciliations are recommended ● balancing the company's account records with the bank's statement should occur as soon as the bank's statement is received ● all deposits and disbursements should show on both the broker's records and the bank's statement with discrepancies resolved ASAP ● all trust fund records must be kept for 3 years ● records must show to whom the money belongs, the deposit and withdrawal dates, and any other pertinent information ● AREC recommended reconciliation includes: taping canceled checks into the checkbook; preparing a continuous list of pending contracts with amount of earnest money; deducting bank fees prior to paying commission; separating pending contracts from closed contracts; maintaining separate escrow accounts for leased property, with an account for security deposits and another account for rents; keeping written receipts for all received funds ● licensees should keep a rental ledger that includes deposits, tenant names, property address, the owner's name, and date and amount of deposits. ● rent payment ledgers should include a record of payments to the owner, the management company, and maintenance
ESTIMATED CLOSING STATEMENT	
Purpose	● the closing statement details the costs related to the transfer of property ownership. ● the estimated closing statement approximates closing costs so each party is informed and prepared. ● an estimated closing statement helps protect the consumer against mortgage fraud ● licensees must provide an estimated closing statement to any buyer who submits a written purchase offer for a single family residential property, with the statement including each cost the buyer will pay and the estimated amount of each cost; the statement is due at the time the buyer signs the purchase offer. ● licensees must provide an estimated closing statement to any seller at the time a written purchase offer is presented, with the statement including each cost the seller will pay and the estimated amount of each cost. ● licensees must provide an actual closing statement to both the buyer and the seller when the sale closes, with the statement showing all receipts and disbursements. ● the buyer and seller acknowledge receiving the statements by signing both the estimated and the actual closing statements.
Estimated closing expenditures	● a debit to the seller is a credit to the buyer and vice versa.

- debits for the seller include commissions, escrow fees, excise taxes, repairs, prorated property taxes, title clearing, mortgages and liens.
- credits to the seller include the property purchase price, prorated prepaid property insurance, utilities, and property taxes.
- debits to the buyer include the property purchase price, escrow fees, title insurance, loan origination fee, inspections and surveys, prorated prepaid property insurance, utilities, and property taxes.
- credits to the buyer include earnest money deposits, cash down payments, repairs not paid by the seller, and overpayments of attorney fees and closing costs

- Disclosure to consumer**
- RESPA requires the buyer be informed about closing costs and prevents abusive closing practices
 - RESPA requires the lender to disclose the closing costs to the borrower and prohibits excessive deposits
 - disclosing estimated closing costs to both the buyer and the seller at the time of offer avoids surprises for either party at closing.
 - failing to disclose the estimated closing costs violates Alabama license law and RESPA and can result in an AREC investigation.
 - a guilty finding can result in license suspension or revocation, a fine, reprimand, required education, and/or restitution

ADVERTISING

Advertising with an interest

- licensees must advertise honestly and not make false promises.
- they must not flagrantly misrepresent or deceive the public.
- all advertisements must identify the advertiser as a licensed broker or salesperson.
- property owners who are managing, leasing, selling, or advertising their own property are not required to be licensed real estate salespersons or brokers.
- licensees can advertise their own property or property belonging to a spouse, child, or parent but must comply with Alabama laws and AREC rules.
- the licensee must also provide prior written disclosure of his or her interest in the property and must disclose that he or she is a licensed real estate salesperson or broker.
- the licensee must disclose his or her intention to purchase an interest in a property to the seller or the seller's agent.

Signage

- licensees can advertise using signs that are attached to or located on the property itself without paying a fee or tax on the signs.
- licensees must comply with local government restrictions on the size, height, and placement of the signs on private property and public right-of-way.

Team Advertising

- Include the name of at least one team member and name of the company where the licensee is licensed
- include the word “team” or “group” in team name
- Receive qualifying broker’s permission to use team name in ad

RECORDKEEPING

- estimated closing statements and actual closing statements must be retained in the broker's files.
- the buyer's agent should retain statements signed by the buyer, while the seller's agent retains statements signed by the seller.
- neither agent is required to retained statements signed by both buyer and seller; and cooperating brokers are not required to retain both buyer's statement and seller's statement.
- the law does not specify a time frame for closing statement retention, but keeping them for at least 3 years is a good idea.