

29

Alabama License Law Violations

General Issues

Honesty and Good Faith Issues

Accountability and Reporting Issues

Representation Issues

GENERAL ISSUES

Violations of AREC rules

Pleading guilty or nolo contendere

Final money judgment

Not fulfilling obligations to transaction parties

Failure to report legal action disposition

The Alabama License Law and the AREC Administrative Rules set forth the roles and acceptable behaviors of real estate professionals. Refusing or neglecting to follow these laws and rules is a violation punishable by temporary or permanent loss of license, fines, reprimands, required education coursework, restitution payment, or any combination of these measures.

The AREC or its staff may investigate the actions of any licensee. A member of the public or of the real estate profession may file a written complaint with the AREC about the behavior of any licensee. In either case, the Commission will take steps to determine if the licensee has indeed committed a violation. These steps are discussed in detail in an earlier chapter.

The following sections list possible violations as they are written in the license law and administrative rules.

Violations of AREC rules

As mentioned, violating or disregarding any provision of the Alabama license law or any rule, regulation, or order of the Commission is punishable if an investigation and subsequent hearing determines the licensee is guilty.

Pleading guilty or nolo contendere

Entering a plea of guilty or nolo contendere to a felony or a crime involving moral turpitude is also a violation. This also includes being found guilty of a felony or a crime of moral turpitude.

Pleading nolo contendere is not an admission of guilt. It is a plea of no contest wherein the individual does not accept or deny responsibility for the charges but does agree to accept punishment.

Crimes involving moral turpitude include conduct that goes against community standards of justice, honesty, or good morals. They have a level of vileness or

depravity against another person or society that shocks the public conscience. Such crimes include forgery, robbery, rape, murder, kidnapping, and aggravated assault. A crime involving moral turpitude often brings more severe criminal charges or penalties.

Final money judgment

Any act or omission that occurs while the licensee is pursuing his or her real estate business or that involves the goodwill of an existing real estate business and that results in the licensee having a final money judgment rendered against him or her is also a violation.

For example, a buyer could potentially sue a licensee because the licensee did not make all required disclosures. In such a suit, the buyer may be granted a final money judgment to cover any damages the buyer suffered due to the lack of disclosure. In this case, the licensee would have violated the law by omitting the disclosures and, consequently, having a judgment against him or her.

Not fulfilling obligations to transaction parties

The license law outlines specific obligations licensees have to real estate consumers, whether customers or clients, as covered in a previous chapter. Failure to meet these obligations is a violation of the law.

An example of such a violation would be failing to keep confidential information confidential or failing to present purchase offers as received by the licensee. A violation would also occur with failing to disclose material facts regarding the property or transaction.

Failure to report legal action disposition

If a licensee has action taken against him or her in a criminal or civil matter involving a real estate transaction, the licensee must notify the Commission within 10 days after receiving notice of the action. Notice to the Commission must be in writing and sent certified mail. The notice should also include a copy of the summons and complaint. In the case of a criminal charge, the notice must include the specific charge and a copy of any indictment or information alleging the charges. Failure to notify the Commission in this manner and this time frame is a violation.

For example, if a client has filed a suit against the licensee for misrepresentation or failure to disclose, the licensee must let the Commission know about the suit within 10 days of receiving notice of the suit.

HONESTY AND GOOD FAITH ISSUES

Dishonesty in procuring license
Dishonesty in personal real estate transactions
Failure to disclose defects
False promises to influence or induce
Misrepresentation through other agents
Deceitful advertising
Inducing a party to breach a contract
Dishonest dealings, bad faith, untrustworthiness
Unlicensed person acting on behalf of licensee
Failure to disclose intention to purchase
Failure to disclose the true terms of a contract
Acting negligently or incompetently

One of the personal qualifications required for obtaining a real estate license in Alabama is that the applicant must be trustworthy and competent to practice real estate. Under Alabama license law, the first obligation that licensees have to all consumers is to provide services honestly and in good faith.

Any of the following acts which defy the obligation of honesty and good faith is a violation of the law.

Dishonesty in procuring license

The license law stipulates requirements for obtaining a real estate license. If a licensee or applicant uses fraud, misrepresentation, or deceit or makes a material misstatement of fact to obtain or attempt to obtain a license, he or she has violated the law. Such is the case whether the license is for him or herself or for another person.

This offense would include such actions as cheating on the licensure examination, making false statements on the application, using the licensee's name to obtain a license for someone else, and so on.

Dishonesty in personal real estate transactions

Licensees are required to be honest and forthright when selling, buying, trading, or renting real property belonging to the licensee or to his or her spouse, child, or parent. If the licensee is dishonest or commits fraud or misrepresentation in this situation, he or she has violated the law.

Let's say that licensee Lenny is representing a buyer who is interested in a home that Lenny just happens to own. However, Lenny doesn't disclose his ownership of the home. Lenny also does not disclose that the home was flooded a year ago, resulting in the occurrence of black mold in the basement that was not professionally removed. When the buyer makes an offer on the home, Lenny tells the buyer that the owner has multiple offers and encourages the buyer to drastically increase his offer price.

Lenny has violated the law by failing to disclose his interest in the property, by failing to disclose material facts about the property that will put the buyer's health

Failure to disclose defects

at risk, and by being dishonest about the multiple offers as a ploy to obtain a higher price.

Even though Alabama is a caveat emptor state, the license law states that licensees must not make a material misrepresentation or fail to disclose any latent structural defect or other defect to the potential buyer. The licensee must know about the defect(s), and the defects must not be trivial or insignificant. The defects must qualify as significant factors in the buyer deciding whether or not to purchase or lease the property.

If we look again at licensee Lenny who is selling his own home and not disclosing his ownership interest or the previous mold issue, we might also discover that the home has structural issues from the flooding and length of time the flood water sat in the home. Of course, Lenny doesn't disclose this structural issue either. Consequently, Lenny has committed yet another violation of the law by not disclosing a latent structural defect that, if the buyer knew about, could potentially cause the buyer to walk away from the purchase.

False promises to influence or induce

Considering that the law requires licensees to be honest in real estate transactions, making false promises to influence, persuade, or induce a person to sign a contract or agreement is dishonest and a violation of the law.

For example, Lenny's home is next door to a rather run down home with an unkempt yard, and the buyer is reluctant to purchase based on the neighboring property. Lenny is untruthful in telling the buyer that the neighboring property has just been purchased and the new owners will be renovating the home and cleaning up the yard. Lenny promises the buyer that the house next door will be beautiful within a few months. Reality is that the current neighbors have no intention of selling the home or cleaning up the property.

Furthermore, to influence the buyer to sign the purchase agreement, Lenny promises the buyer that once the neighbor's property is cleaned up and renovated, the value of the home Lenny is selling will increase by at least 25%, resulting in the buyer ending up with considerable equity in the home. If the buyer should resell the home, he or she would obtain a much higher asking price than what the buyer will pay.

Lenny has made multiple false promises to influence the buyer to sign a purchase agreement. Lenny has violated the law.

Misrepresentation through other agents

Just as licensees are not allowed to make false promises to influence a person to sign a contract, the licensee is also not allowed to continue the false promises or misrepresentations through other agents or salespersons. The licensee also may not continue the deception through any form of advertising.

Once again using Lenny as an example, if he uses another agent to further influence the buyer to purchase the home based on Lenny's false promises and misrepresentation, Lenny has violated this particular section of the law. If Lenny

Deceitful advertising

advertises the home for sale with any of these misrepresentations or false promises, that is also a violation of this law.

Actually, the law specifically prohibits deceptive advertising. Licensees must not publish or cause to be published any advertisement that deceives the public, even if it is only likely to deceive. Advertisements must not create a misleading impression.

For example, let's say a licensee publishes the following advertisement:

Beautiful 4-bedroom home in up and coming neighborhood with child-friendly park and waterfront homes. For more details, call Harold Connor at 555-8382.

In reality, the home has 3 bedrooms and a garage that is enclosed and is currently being used as a fourth bedroom although it does not contain any closets. The "child-friendly" park is really a vacant lot at the end of the street, and the "waterfront" homes sit adjacent to a fenced retention pond.

The ad for this home is deceptive and certainly gives a misleading impression of the home. Consequently, the ad and the licensee are in violation of the law.

Inducing a party to breach a contract

Typically, parties to a transaction sign a contract with terms to which all of the parties have agreed. Neither party may breach the contract without consequences. At the same time, the licensee must not convince either party to breach the contract and substitute a new one that will benefit the licensee more than the original contract.

Licensee Linda represents a seller who has already signed a purchase agreement with a buyer. The contract states the amount of the purchase price at \$250,000. Both seller and buyer have agreed to that price. However, Linda knows that a higher purchase price will bring her a higher commission payment. If Linda convinces the seller to breach the contract and substitute a new contract with an increased selling price, Linda has violated this law.

Another example would be if Licensee Linda changes qualifying brokers and tries to take this client's listing with her to the new brokerage firm. The listing agreement is with the original firm and cannot be moved to the new firm unless the client breaches the contract with the original brokerage firm. If Linda convinces the client to cancel the original contract and sign another one at the new firm, she is violating this law.

Dishonest dealings, bad faith, untrustworthiness

Remember that Alabama real estate laws and rules emphasize honesty and good faith. Trustworthiness is not just a good quality, it is a requirement. Therefore, anything that a real estate professional does that constitutes dishonest dealings, bad faith, or untrustworthiness is a violation of the Alabama License Law.

Many examples can be cited: if a client tells his or her agent something in confidence, trusting the agent to keep the confidence, the agent must exercise trustworthiness by keeping the confidence. If the licensee receives offers to purchase a client's property, the agent must exercise good faith by delivering the

**Unlicensed person
acting on behalf of
licensee**

offers to the client in a timely manner. The agent must also exercise good faith to the client by negotiating the best price for a property. Licensees must continually demonstrate that they can be trusted. If they fail to demonstrate that or fail to be honest and trustworthy, they have violated the law that requires this of them.

The law is specific on what acts require a real estate salesperson or broker license. Remember that the law requires a real estate license for anyone who sells, buys, leases, rents, exchanges real property or negotiates to sell, buy, lease, rent, or exchange real property for another person for compensation. An unlicensed person who performs any of those acts for compensation is breaking the law.

The law also stipulates that, if anyone helps, employs, or establishes an association with an unlicensed person and expects or requires the unlicensed person to perform any of those acts, that individual is also breaking the law.

So, if a qualifying broker hires an unlicensed individual for the purpose of listing and showing properties, the qualifying broker is violating this law.

Furthermore, an individual is also prohibited from aiding, abetting, or conspiring with a person to circumvent the licensing requirements outlined in the license laws.

For example, Joe wants to work as a real estate broker, but he does not have a license. Joe doesn't meet the qualifications for licensure because he never graduated from high school or obtained a GED. Sarah falsifies a high school diploma and graduation records for Joe so he can qualify for licensure. Not only has Joe violated the law, but so has Sarah.

**Failure to disclose
intention to
purchase**

If a licensee is interested in purchasing the property his or her seller client is selling, the licensee must disclose the interest to the client. If the agent selling the property is the licensee's associate, the licensee still must disclose his or her interest in purchasing the property. Whether the licensee plans to buy the property directly or indirectly, the licensee still must disclose his or her interest.

This mandate is similar to the one that requires a licensee to disclose his or her own interest in a property the licensee is selling. Both situations require the licensee to let the client know about the licensee's interest in the property.

If Tami has a client who is selling a home that Tami would like to buy, Tami must tell the client that she will be the purchaser. However, let's say that Tami wants to buy the home but doesn't want to disclose that to the seller. So, Tami decides to have her father purchase the home and then transfer the title over to Tami. In this way, Tami would be purchasing the home indirectly, but, under Alabama law, she would still be required to disclose this to the seller. Failure to do so is a violation of the law.

**Failure to disclose
the true terms of
a contract**

Licensees must disclose the true terms of a real estate sale to any lender, guaranteeing agency, or any other interested party. Along the same lines,

licensees must not misrepresent the terms of the sale to any of these agencies or interested parties.

For example, lenders give mortgage loans based on the value of the property. If the value of a property is misrepresented to the lender at \$250,000 when the value is really \$200,000, the loan to value ratio will be incorrect. The lender will most likely set up a mortgage loan at a higher amount than the property supports. The licensee who misrepresented the property's true value will have violated this particular law.

Keeping in mind many of the other mandates of the law, the licensee will also have violated mandated honesty, trustworthiness, and good faith.

Acting negligently or incompetently

To qualify for a license, Alabama law requires a person to be trustworthy and competent to practice real estate. The law also sets forth the acts for which an individual must possess a real estate license. The law further mandates that an individual must not act negligently or incompetently in performing any of those acts which require a license.

So, let's use Jim as an example. Jim holds a real estate broker license and is in the process of handling a transaction for a client purchasing a home. Jim knows he has certain obligations to the client, such as looking out for the client's best interest and negotiating the best purchase price for the home. However, Jim has been rather distracted lately and has not been fulfilling his obligations. Jim neglected to suggest his client have the home inspected. He also neglected to point out to the client that the home is in a deed restricted community. Further, Jim didn't appear to know how to negotiate the best price. When the seller counter offered at a higher price, Jim recommended that his client offer an even higher price than the counteroffer, just to "seal the deal."

The buyer was confused by Jim's recommendation but figured Jim, as a professional, knew what he was doing. Unfortunately, the client was wrong. Jim was negligent and acting incompetently during most of the transaction, costing the client thousands of dollars. By doing so, Jim violated the law that says he must not act negligently or incompetently when practicing the business of real estate.

ACCOUNTABILITY AND REPORTING ISSUES

Mishandling trust funds

Commingling

Failure to keep funds in a separate, federally insured account

Failure to keep records for 3 years

Paying commission to unlicensed person

Undisclosed or post-closing rebates

Lottery inducements

Accepting commission from anyone other than qualifying broker

Failure to provide estimated closing costs

Failure to submit records

Failure to provide AREC-requested information

Failure to return records

Failure to report address change

Alabama license law specifies what constitutes violations of the honesty and trustworthiness requirements and the obligations a licensee has to consumers. The law also specifies what actions constitute accountability and reporting violations.

Mishandling trust funds

The law is clear on how licensees are to handle funds belonging to others. The law states that licensees must account for all money he or she receives which belongs to someone else and what the licensee must do with that money.

Therefore, a licensee is violating the law if he or she fails to account for money belonging to others which the licensee has received.

Licensee Julie received earnest money on a pending property sale. Let's take a look at what Julie did with the money.

Julie received the earnest money in cash on Monday. She decided to hang onto the money for a while to see if the sale would actually go through. Although she mentioned receiving the money to her qualifying broker, she did not turn the funds over to him. Julie's qualifying broker knew she had the earnest money but had no idea the amount of the funds. Julie herself had not recorded the amount, date, client, or actual receipt of the funds.

As it turned out, the sale went through, and the transaction closed. However, Julie had violated the law by not accounting for the funds and by not turning the funds over to her qualifying broker for deposit,

Commingling

The law also makes it clear that commingling, or mixing others' money with the licensee's personal or business funds is not allowed.

So, if we go back to the case of Julie and the earnest money she received, let's see what she actually did with the money while she was hanging onto it.

After Julie received the cash and mentioned it to her qualifying broker, she decided she wouldn't have the funds deposited into the company's trust account so she could readily access the money if necessary. Instead, she decided she

should at least deposit the cash into her personal checking account for safe keeping. Three weeks later, Julie deposited the cash into her account, and she didn't think about it again until the transaction was in its final stages.

While the money may or may not have been safe in Julie's personal account, it didn't belong there. The law states any funds belonging to others must be turned over to the qualifying broker and must be deposited into a trust account. Funds belonging to others must not be commingled with funds belonging to the licensee or the company. Julie violated that law.

**Failure to keep
funds in separate,
federally insured
account**

Federally insured accounts protect any funds deposited into the account. Deposits are insured for \$250,000. Because of this security, Alabama license law requires licensees to have any money belonging to others deposited into a separate federally insured account in a financial institution located in Alabama.

Back to Julie: Most likely her personal checking account was at a federally insured bank, so the funds were secure once they were deposited. However, we already know she broke the law by depositing the cash into her own account and not recording or accounting for the funds at all. What we might not have known is that Julie's personal account is with a bank located across the state line in Georgia. Additionally, Julie hung onto the cash for 3 weeks before she deposited it.

During the 3 weeks she was hanging onto the cash, Julie was committing another violation by not having the funds secured in a federally insured account. Once Julie deposited the funds into her own account, she was still violating this particular mandate because, not only were the funds commingled with Julie's personal funds, but the money was deposited in a bank located outside of Alabama.

**Failure to keep
records for 3 years**

According to license law, if a document is touched or created by a licensee during any real estate activities, the qualifying broker must be given a copy of the document to be kept in his or her files. Documents which must be kept include all contracts, leases, listings, and other records, including a complete record of all funds that belong to others, showing to whom the money belongs, the date any monies were deposited and/or withdrawn, and any other pertinent information. All documents and records must be kept for at least 3 years. Failing to do so is a violation of the law.

This mandate could be broken in multiple ways: first, the licensee could fail to give copies of documents to the qualifying broker as required by law. Second, the qualifying broker could fail to keep the records for at least 3 years as required. One more way a violation could occur is if the records of funds belonging to others do not include names and dates as required.

Paying commission to unlicensed person

Because the law requires anyone performing specific acts in a real estate transaction to be licensed if the individual is compensated for the acts, then an unlicensed person may not be paid any profit, compensation, commission, or fee for performing such acts. These acts include but are not limited to selling, buying, leasing, renting, and exchanging real property or negotiating to sell, buy, lease, rent, or exchange real property.

However, the law specifically does not prohibit a licensee from owning a business organization whose purpose is to receive payments of profits, compensation, commissions, or fees. In this case, the business does not need to hold a real estate license as long as it does not engage in any other activity that requires a license.

So, let's say that Jerrod is a licensed real estate broker. His friend Frank helps him from time to time in certain real estate transactions. Frank is not licensed, so Jerrod is careful about what he allows Frank to do. However, Jerrod is not as careful as he should be. He allows Frank to show property and, in return, pays Frank a percentage of any commission received when the property sells.

Jerrod has violated two laws: he is allowing an unlicensed person to perform acts that require a license, and he is compensating an unlicensed person for performing acts that require a license.

Now let's say that Jerrod owns a business that collects any funds owed in relation to real estate transactions. The business collects commissions, profits, and other compensation and fees. That is all they do. However, the business is not licensed under Alabama real estate license laws. Has Jerrod violated another law?

No, Jerrod has not violated another law. Jerrod is allowed to own such an unlicensed business as long as the business does not perform any acts that require a real estate license.

Undisclosed or post-closing rebates

Alabama law prohibits paying or receiving a rebate from any person in a real estate transaction after the transaction has closed. By Commission definition, a rebate is any unearned fee, kickback, or thing of value that is given in connection with a real estate transaction. Further, the definition of a rebate implies it is something given back after a transaction has occurred.

Giving any rebate or incentive legally depends mostly on how and when it is given. In Alabama, the incentive must be given before or at closing and must be disclosed to all parties involved in the transaction, to include the seller, buyer, and lender or guaranteeing agency (FHA, VA, HUD). A rebate or other incentive that is given after or outside of the closing and is related to the transaction violates the law. Since rebates given before or during closing must be disclosed, an undisclosed rebate related to the transaction also violates the law.

If the incentive is not disclosed to the lender, etc., the law that prohibits misrepresentation or failure to disclose the true terms of a sale to the lender, guaranteeing agency, or other interested parties will have been violated. In that

case, the guaranteeing agency could consider sanctions against the licensee for failure to disclose.

Permissible incentives. The law does allow licensees to pay the following incentives:

- ▶ cash to a property owner who lists his or her property with the licensee to sell.
- ▶ cash to a customer to influence him or her to purchase a property
- ▶ an item, such as a car or refrigerator, to a customer to influence him or her to purchase a property
- ▶ 1 month's free rent to a customer to influence him or her to rent an apartment
- ▶ repair expenses to influence a buyer and seller to sign a contract or close a sale

An example of an illegal incentive would be something like this: if a buyer does not qualify for a mortgage loan for a particular property, the licensee might give the buyer a loan or gift that would allow the buyer to qualify for the loan. If that loan or gift is not disclosed, not only has the licensee violated the law, but he or she may also have criminal charges brought against him or her.

Lottery inducements Offering free lots or conducting lotteries to influence a party to purchase or lease real estate is a violation of the license law. This practice also violates other laws.

If a licensee offers free lots as incentive to purchase or lease real estate, the licensee must disclose the gift and its value, just as with rebates. Further, the transfer of ownership of the lots would need to take place prior to or at closing of the purchase or lease transaction, or the licensee has violated the law prohibiting rebates.

In regard to offering lotteries, Alabama has criminal statutes prohibiting lotteries of any kind. Therefore, licensees offering lotteries as incentives to purchase or lease real estate would be violating these statutes and would most likely be brought up on criminal charges.

**Accepting
commission from
anyone other than
qualifying broker**

Salespersons and associate brokers may accept commission payments or any other compensation only from their qualifying broker. Therefore, if a salesperson or associate broker engages in activities that require a license and then accepts any form of compensation directly from a seller, a company, or anyone else other than the qualifying broker, that salesperson or associate broker has violated the law.

For example, Betsy is Tim's agent handling the sale of his family home. Betsy has done a great job of showing the home and finding just the right buyer. So, Tim is grateful to Betsy for making the experience pleasant. Therefore, Tim pays Betsy the agreed-upon commission when the sale closes. Betsy thanks Tim and deposits the commission into her personal bank account.

Failure to provide estimated closing costs

Betsy has violated the law. She should have had the commission paid to her qualifying broker and then accepted payment from him or her.

Licensees are required to prepare and present estimated closing statements to both the seller and the buyer in a real estate transaction. The estimated closing statement must be presented to the buyer when an offer is written and to the seller when an offer is received. The estimated closing statement shows what costs are involved in the transaction and the approximate amount of those costs.

Terry has a client looking to purchase a home. Terry has found just the right home for the buyer, and together, Terry and his client have written an offer. Terry knows he's supposed to show his client an estimated closing statement when they present the offer, but he decides to wait to see if the seller accepts the offer. After all, the seller may counter offer, causing some of the numbers on the estimated closing statement to change.

While Terry's decision to wait may seem like a good idea, it is a violation of Alabama license law that states the buyer must be informed of closing costs and the approximate amount of those costs at the time the offer is written, not at the time the offer is accepted.

Failure to submit records

From time to time, the AREC may request a licensee or qualifying broker to produce documents, books, or other records related to a real estate transaction for the Commission's inspection or the inspection of their authorized representative. The law mandates that these records must be produced on demand and that failing to refusing to do so is a violation of the law.

Jason received a request from the AREC to produce any records and documents related to a real estate transaction involving Cara and Sam Connor. As the company's qualifying broker, Jason is in possession of all transaction-related records. While putting the records together to turn over to the AREC, Jason notices a problem with the estimated closing statement one of his associate brokers produced. Not wanting the Commission to see the problem, Jason does not include the document with the other records he will turn over to the Commission.

Jason believes he is protecting his associate broker and his real estate firm by not revealing the problem document. What Jason is doing is breaking the law and compounding the problem. Having a document with an error that was not discovered and corrected is a problem, but refusing to produce that document for the AREC is a bigger problem.

Failure to provide AREC-requested information

Just as licensees and qualifying brokers are required to produce documents and records upon the demand of the AREC, they are also required to provide any information the Commission requests as part of an investigation or a complaint. The law allows a "reasonable time" in which to provide the information. Failing to provide the information is a violation of the law.

Let's go back to Jason and the request the AREC made of him to produce certain records. In addition to the records, the Commission requested information about

the licensee involved in the transaction in question, along with information on the property purchased.

Jason knows the law allows him a reasonable time in which to provide the information, so he procrastinates getting the information to the Commission. Then Jason gets busy and doesn't get around to putting the information together. Every time he thinks about it, he figures he has plenty of time. In the end, 3 months passed with Jason still not providing the information to the Commission.

By definition, reasonable time is the amount of time that is fairly necessary to do what is requested or required as soon as circumstances permit. Although the license law provides a reasonable time and not a specific time period for the broker to produce the information, the AREC most likely will not consider 3 months with still no information provided as reasonable. Jason is violating the law by not providing the information within a reasonable time and certainly by not providing it at all.

Failure to return records

During a real estate transaction, the licensee may find it necessary to obtain certain documents or records from a client or other party to the transaction. If the party provides the document and later wants the document returned, the licensee must return the document to its rightful owner. Failure to do so is a violation of the law unless the licensee has a legal cause for not returning the document.

During a transaction to purchase a home in a deed restricted community, Sue was asked to give her agent a copy of her dog's shot records and license registration. Sue complied because she understood the community's rule that all pets must be kept up to date on their shots and licensing. Once the transaction closed and Sue was moving into the new home, she told her agent she wanted her dog's records returned to her. Her agent, however, stated he wanted to keep the records in his file on the entire transaction and would not return them to Sue.

Not having legal cause to keep the dog's records, Sue's agent violated the law by not returning the records to their rightful owner.

Failure to report address change

When a licensee is issued a license certificate, the certificate includes the address of his place of business. If the licensee changes that address, he or she must notify the Commission in writing within 30 days after the address changes. The licensee needs to include both the company's old address and the new address in the written notification. To change the business address, the qualifying broker must return the company license and all broker and salesperson licenses to the Commission with a transfer fee for each license. Failure to notify the AREC within the 30 days, to include the required information, and/or to return the company and other licenses violates the administrative rules of the AREC.

For example, Kelly owns a real estate firm on Main Street with 3 associate brokers and 4 salespersons. Kelly is the qualifying broker for the firm. Kelly recently found a new location over on Elm Street and has moved the entire office operations to the new location. She's been so busy with the move and getting all of her salespersons and brokers settled that she has not notified the Commission of her new address, nor has she returned all of the current licenses as required. It's been 3 weeks since she moved, so Kelly still has time to notify the Commission

of her address change and send in the licenses. If she meets the 30-day deadline, she will be in compliance with the law. If not, she will be in violation.

REPRESENTATION ISSUES

Unauthorized dual agency
Failure to provide document copies
Improper brokerage name ad display
Improper sign placement
Taking a net listing
Omission of expiration date on listing
Failure to present all offers

Unauthorized dual agency

Any licensee who represents clients or consumers in real estate transactions has duties and obligations to the individuals he or she is representing. When licensees do not fulfill those obligations, they are in violation of Alabama license law and the AREC Administrative Rules.

Licensees may enter into a few types of agency with consumers. One of those is dual agency. The most important aspect of this relationship is that all parties to the relationship must consent to their agent representing more than one party in the same transaction. When the parties consent to this arrangement, they must do so in writing. If the licensee does not obtain the authorization of all parties, the licensee has violated the law.

Let's say that licensee Scott is in a position to represent both seller Raymond and buyer Denise in the sale of Raymond's home and five acres of land. Both Raymond and Denise want Scott to represent them, but they are not familiar with dual agency relationships. Raymond is trying to figure out how to have Scott represent just him and let Denise find her own agent. The situation is becoming tense.

Scott explains to Raymond that he can legally represent both him and Denise in the transaction under the dual agency relationship. Raymond agrees to the arrangement, and the transaction progresses. There is just one problem: Scott never informed Denise or obtained her authorization for the dual agency relationship. Because the law states that Scott must obtain written consent from all parties he is representing, getting only Raymond's consent was not enough. Scott has violated the law.

Failure to provide document copies

When a party is involved in a real estate transaction, that party has the right to receive copies of each document related to the transaction. It is the licensee's obligation to furnish the copies, so failure to do so violates the law.

George is selling his property and has signed an agency agreement with Eddie, a broker representing Home Hunters Realtors. Eddie and George have set forth the terms of the agreement and the listing for the property. After Eddie has shown the property several times without receiving any offers, George wants to take another look at the agreement and listing contract. He asks Eddie for copies of the

documents, but Eddie says the documents are part of the firm's files and cannot be copied. Not only has Eddie lied to his client, but he has broken the law that says he must voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document. He must do so with reasonable promptness.

Advertising without prominently displaying brokerage name

Advertising real estate in Alabama brings with it certain requirements under the law. One requirement is that the advertiser must identify him or herself as a licensed real estate salesperson or broker. Another requirement is that the salesperson or broker must include the name or trade name of the qualifying broker or company prominently on all advertising. Likewise, the qualifying broker must not allow the salesperson or broker to advertise without including the name or trade name of the company or qualifying broker prominently on all advertising.

“Prominently” means the information must be printed in a larger font than is used elsewhere in the ad for terms such as “for sale” or “for lease,” and the information must be placed where it will get the attention of consumers who are looking at the ad.

Tania puts together the following ad for a property she is contracted to sell:

Newly remodeled 3-bedroom condominium for sale. Small homeowner association fee and nice amenities, including an indoor pool and gym. Covered parking with security. Contact Tania Riley, a licensed real estate broker, at 555-8855 for details.

Tania knows she must identify herself as a licensed broker within the ad, and she shows the ad to her qualifying broker to assure she has done everything according to the law. Her qualifying broker agrees that everything looks good and approves the ad for placement in the local newspaper and online.

Once the ad is placed, both Tania and her qualifying broker will have violated the law requiring the name or trade name of the company and qualifying broker to be included in all advertising. By allowing the ad to be placed without the company name showing prominently, the qualifying broker has also violated the law.

Placing a sign on property without owner's consent

When a licensee signs a listing agreement with a client, one of the first things the agent will want to do is advertise the property for sale. Placing a sign on the property is one effective advertising technique. However, according to the law, the licensee must obtain the client's consent before placing any signs on the property. Failure to do so violates the law.

Lee has just signed a listing agreement with Terrance, so Lee is anxious to get the property advertised and sold. While Lee is touring the home and taking photographs, he places a for sale sign in the front yard. The sign meets all advertising requirements by including the firm's name and Lee's license designation, so Lee thinks he has done everything right. However, although Lee asked for consent to photograph the home and advertise it for sale, he never

actually asked about placing a sign on the property. So, Lee has violated the law that says he must obtain the consent of the property owner before placing a for sale sign on the property.

Taking a net listing

A net listing is one that stipulates a net price the owner must receive for the sale of the property with any amount received over that net price going to the broker as his or her commission. The commission is not based on a percent of the sale price but is actually the amount in excess of the owner's required net price. Net listings are not permitted in many states, including Alabama. Therefore, any licensee accepting a net listing agreement for the sale of real property or any interest in the property is in violation of the law.

For example, Caroline has a new client who wants to sell his home. The client wants \$350,000 for the home, not a penny more or less. Caroline thinks the home is worth considerably more than \$350,000, so she suggests they set up the commission to be paid as any amount for which she can sell the home in excess of the \$350,000. As long as the client gets his \$350,000, he doesn't care how much she gets for the house, so he agrees to let Caroline's commission be whatever amount over \$350,000 she receives for the house. Both the client and Caroline are happy with the arrangement.

However, what Caroline has done is set up a net listing. In doing so, she has violated the law that prohibits net listings in Alabama.

Omission of expiration date on listing

The listing agreement creates an agency and fiduciary relationship between the seller and the licensee. Most states require the listing agreement to be in writing and to include an expiration date. The AREC Administrative Rules do not allow automatic extensions of a listing agreement, so the expiration date must be included. Failing to include a fixed expiration date in the listing agreement is a violation. Further, the law requires a copy of the listing agreement to be given to the principal (seller).

Brian signed a listing agreement with Sheri. Brian included an expiration date for the agreement but told Sheri that the date was flexible. In case the property was not sold by the stated expiration date, they would just set up an automatic extension of the expiration date so the listing agreement would remain in effect until the property was actually sold. That sounded okay to Sheri until she learned that setting a flexible expiration date and/or automatically extending the expiration date was against Alabama law. Sheri then declined to sign the listing agreement and found another broker who did not violate the law or rules.

Failure to present all offers

When a licensee signs a listing agreement with a seller, one of the main obligations the licensee has to the seller client is to present all written purchase offers to the client. Failure to do so is a violation.

Ira has a listing agreement with Frank to sell Frank's farm. Ira has received only one offer on the property. He knows he's supposed to show the offer to Frank, but Ira thinks the offer is just too low. So, Ira decides to decline the offer without showing it to Frank and to wait for a better offer to come in.

While it may seem like Ira is looking out for Frank's best interest, the law requires Ira to show all written offers to Frank. It is not up to Ira to determine if an offer is acceptable or not. He can advise Frank, but he cannot withhold any offer. By doing so, Ira has violated the law.