



April 2013

Arkansas Real Estate Commission  
612 South Summit Street  
Little Rock, AR 72201-4701  
Phone: 501-683-8010  
Fax: 501-683-8020

Administration:  
arec@arkansas.gov

Investigations: arecinv@arkansas.gov

Licensing:  
arecllic@arkansas.gov

Web page:  
www.arec.arkansas.gov

#### Members of the Commission

Tina B. Daniel, Chairman  
Searcy

Ken Gill, Vice Chairman  
Little Rock

Sylvester L. Smith III  
Little Rock

Sherman E. Tate  
Little Rock

Allen W. Trammell  
Little Rock

#### Commission Staff

Gary C. Isom  
Executive Director

Andrea S. Alford  
Deputy Executive Director

Debra Randolph  
AREC Supervisor, Investigations

# ARKANSAS REAL ESTATE COMMISSION N E W S L E T T E R

## Governor Announces Commissioner Appointments

*By Gary C. Isom, Executive Director*

Governor Mike Beebe recently appointed two new members to the Arkansas Real Estate Commission. They will take the place of two outgoing Commissioners - Jim Newell of Little Rock, Consumer Representative, and Karen Crowson of Benton, Industry Representative - who ably represented the Arkansas Commission in both state and national venues.

In January Governor Beebe appointed Sherman E. Tate of Little Rock and Allen W. Trammell of Alexander to serve three-year terms on the Commission. They assumed their new duties as Commissioners at the February AREC Business Meeting.



***Sherman E. Tate***

Both Commissioner Tate and Commissioner Trammell bring years of experience in the real estate industry and public service to the AREC. Commissioner Tate has an established record of service in communications, energy supply, government, education and community affairs over the past four decades. He takes the Consumer position on the Commission. Commissioner Tate is currently President and CEO of The Domino Effect, Inc., a consulting company, and is also chairman of the Southern Bank Board. Prior to founding The Domino Effect, he was Executive Director of Public Policy for Verizon Wireless. Previously he has held senior management positions with the State of Arkansas, Arkansas Louisiana Gas Company and Alltel Corporation. In the public service arena, he served 12 years as Chairman of the Board of Trustees of Philander Smith College in Little Rock, and was honored by the college in its naming of the Sherman E. Tate Student Activity Center.

Commissioner Tate is a past chairman of the Greater Little Rock Chamber of Commerce, and is the first and only African American to serve as Chairman of the Little Rock Chamber. Additionally, he has served as an officer with the Arkansas Army National Guard, attaining the rank of Colonel.

Commissioner Trammell, owner and Principal Broker of Trammell and Co., brings over 40 years of valuable experience in the real estate industry to the Commission.

Both Commissioner Tate and Commissioner Trammell bring years of experience in the real estate industry and public service to the AREC.

Commissioner Tate has an established record of service in communications, energy supply, government, education and community affairs over the past four decades. He takes the Consumer position on the Commission.

Commissioner Tate is currently President and CEO of The Domino Effect, Inc., a consulting company, and is also chairman of the Southern Bank Board. Prior to founding The Domino Effect, he was Executive Director of Public Policy for Verizon Wireless. Previously he has held senior management positions with the State of Arkansas, Arkansas Louisiana Gas Company and Alltel Corporation. In the public service arena, he served 12 years as Chairman of the Board of Trustees of Philander Smith College in Little Rock, and was honored by the college in its naming of the Sherman E. Tate Student Activity Center.



***Allen W. Trammell***

*(Continued on Page 3)*

# *A Final Farewell to a Champion of Real Estate Educators, A Free Spirit, and a True Friend*

**By Gary C. Isom, Executive Director**

You will note that the front page of this newsletter lists Tina B. Daniel of Searcy as Chairman of the Commission. Sadly, and as most of you know by now, this will be the last edition of the newsletter that will include our friend, Tina, as a member of the Commission. On Sunday, March 3, 2013, Tina passed away.



***Tina B. Daniel***

This news came as a shock to many of us who had enjoyed Tina's company during the previous week at the Arkansas Realtors Association Leadership meeting and Legislative Reception. Tina and I joined together to speak to a legislative committee on Wednesday before her death. It all seemed surreal as we attended Tina's funeral the following Wednesday.

While Tina's absence will leave a void for so many, both personally and professionally,

her presence will be felt for years to come in so many ways. From a state regulatory perspective, we won't ever be able to discuss real estate education without covering an element that Tina somehow influenced. Real estate licensees who attended Tina's courses will seldom handle a transaction without adhering to some aspect of Tina's teaching. Real estate instructors who taught with or participated in workshops with Tina will often use some technique or concept that they observed in their interaction with her.

As for buyers and sellers of homes for their families, many who never had the pleasure of knowing Tina will experience her influence through the actions of those Tina taught to treat their clients and customers professionally and ethically.

Tina's accomplishments are far too many to list in this article. Suffice it to say she taught real estate in all fifty states and five

countries. As a friend and colleague of Tina, her appointment to the commission in 2011 was a milestone in both of our careers. She and I first met in 1987 when we traveled Arkansas to present nineteen continuing education seminars. We confided regularly and remained close friends for the next thirty years.

Many of the readers of this article were also touched by Tina. So, you know that Tina would have a few words of advice for us. Everyone who knew Tina could add to the list, but here are a few things Tina would tell us about enjoying life and career.

*Go to a Gaither concert.* Travel to someplace new with family and friends. *Take lots of pictures of people you know and meet.* Buy a vehicle that does everything you need it to. *Invest in yourself.* Take time to relax by a lake, river, mountain or whatever gives you solace. *Build up lots of frequent flyer miles and always ask for an upgrade.* Treat everyone as you like to be treated. *Put the newspaper down and turn off your cell phone when the show opens.* Take lots of notes. *Share stories about your family and friends.* Learn to enjoy something as simple as a cow grazing in a field. *And finally, whenever it seems to be dark all around, light a candle and reach out to someone.*



***Everywhere she went,  
Tina made friends, including  
on a recent trip to Las Vegas.***

Thanks to Tina for giving us all she had to give, and to Walt and the rest of the family for sharing her with us.

## **2012 Sees Several AREC Regulation Changes**

- Regulation 6.3: Expired Licenses: This change gives licensees one year instead of three in which to reinstate a license that has expired without having to reapply, and allows only the prior year identified as expired to be considered as if inactive for purposes of continuing education requirements. Effective January 1, 2013.
- Regulation 3.1: Fees: This change increases the amounts for the annual license renewal fees from \$70.00 to \$80.00 for brokers and from \$50.00 to \$60.00 for salespersons. Effective July 1, 2013.
- Regulation Section 15: Real Estate Auction Definitions and Requirements: These changes address concerns expressed by real estate auctioneers and members of the public who attend auctions. Those concerns involve alleged abuses in the auction of real estate with regard to absolute versus reserve actions and the use of false bids being utilized to unfairly raise the prices of real estate being auctioned. Effective January 19, 2013.

Full text versions of the above changes may be viewed on the News page of the AREC website: [www.arec.arkansas.gov](http://www.arec.arkansas.gov).

# What I Know Now That I Didn't Know Then

**By Former AREC Commissioner Karen C. Crowson**

My past six years of service on the Arkansas Real Estate Commission (AREC) has by far been the most rewarding experience of my real estate career. I was given opportunities to grow professionally and personally. I am grateful to the Arkansas REALTORS® Association for giving me the opportunity to serve a second term. The three year terms we have in Arkansas can be a hindrance to Commissioners who want to be involved in the Association of Real Estate License Law Officials (ARELLO). Many jurisdictions have longer terms for their Commissioners.

AREC Executive Director Gary Isom encouraged me to get involved in ARELLO leadership in my very first year. I was fortunate to have a great mentor in Gary as he was moving up the leadership ladder with ARELLO. Gary served as ARELLO President in 2010. Just two years later, due to a unique set of circumstances, I was elected as 2012 ARELLO President.

In my role as President, I had the opportunity to meet with licensees across our globe which included Canada (Nova Scotia and Newfoundland), South Africa (where I was asked to speak to a government forum between officials and licensees), and Japanese and Chinese delegations who were in the US discovering the way we regulate the real estate industry. These meetings reinforced the belief I already had that our regulations not only protect the public but also benefit me as a licensee.

When I took that first oath of office as a Commissioner, I knew my duties would include serving at the hearings when a licensee was charged with violating the License Law. After serving many years with ARA Professional Standards Committee, I thought this would be fairly easy. I had served on many Pro Standards hearing panels both as a panel member and Chair. I realized very quickly that I had much to learn about the process and manner in which we would hear each case. Again, this is where ARELLO membership is valuable to our Commissioners. ARELLO administers Commissioner College for its Commission members, training them in the art of the hearing process and the regulation of the real estate industry.

I have learned that Arkansas is blessed to have a wonderful working relationship between the REALTOR® association, the Commission and all licensees. I can tell you that staff at AREC are truly concerned that licensees have a working knowledge of our laws and regulations. AREC hearings provide the best knowledge regarding law violations. The agents in my office have benefitted from the wealth of material for sales meeting topics I received. All hearings are open to the public and I would encourage every licensee to attend.

I have learned that Commissioners are very involved in the creation and presentation of proposed laws and regulations. In the past two sessions we have seen passage of new laws that protect the public and aid our industry. The new Broker education program will go a long way toward developing Brokers who know how to operate with a keen awareness of our law and

regulations.

More than anything, it's about the relationships developed by serving together. I have learned much from those I have served with. Each Commissioner has a different approach to asking questions during the hearing process, which enabled us to usually arrive at a consensus fairly quickly in deliberation. And, in tribute to my friend, Tina Daniel, (I am sure those of you who've attended one of her classes can relate) her Columbo-style of asking questions left many respondents with their heads spinning from not knowing what hit them.

Finally, I've learned that I have to use care in all my transactions and to expect the unexpected. Many times in the past six years, I've thought to myself that complaints from the public can occur so easily; even when we try so hard to do the right thing. But, I've also learned that we have friends at AREC who are always willing to answer our questions and would prefer that we ask, rather than ending up in the complaint process.

## Appointments...

*(Continued from Page 1)*

Commissioner Trammell, CRB, CRS, GRI, founded Trammell and Company Realtors of Little Rock in August 1978. During his 40 years in the industry, he has served as Area Management Broker for the Department of Housing and Urban Development and Property Management Broker for the Department of Veterans Affairs.

Commissioner Trammell's area of expertise spans the real estate industry; however, his primary focus is in REO listings and sales. He works with multiple asset management companies, assisting them in reselling their assets to the public. In addition to his broker/agent duties, Commissioner Trammell is also a Certified Residential Appraiser.

Commissioner Trammell has held numerous leadership roles in both local and state associations, including President of the Little Rock Realtors Association (LRRA), Zone Director of the Arkansas Realtors Association (ARA) and District Vice President of ARA. He was Arkansas Realtor of the Year in 1992, when he also became a member of Omega Tau Rho.

Commissioner Trammell's professional affiliations also include the National Association of Realtors® (NAR) and the Co-operative Arkansas Realtors Multiple Listing Services. In addition, he is a Trustee for the ARA's Political Action Committee and a member of the ARA's Legislative Committee.

Commissioner Trammell was born in Little Rock and now resides in Alexander with his wife of 40 years, Carol, and their four dogs. They have two children and two grandchildren. When not working, Commissioner Trammell enjoys vacationing in Destin, FL, playing golf, and spending time with family and friends at their home-away-from home - Branson, MO.



# One Commissioner's Opinion: A Look Back on My Three Terms

**By Commissioner Sylvester Smith**

I am now in the last year of what will be my third and final term as a member of the Arkansas Real Estate Commission. Serving the people of Arkansas and regulating this honorable profession has been one of the great privileges of my life.

There is no training program for Real Estate Commissioners. For those of us who are consumer representatives, there is a tremendous learning curve. I was literally a blank slate when I began. Today, as I prepare to depart, I am the senior member of the Commission, having served nearly a decade. During this time I have presided over countless cases and worked with many wonderful commissioners. I have seen a great deal during this time and would like to share some of what I have learned with you, the licensees.

Let me be clear, the content of this or any future article is not legal advice. These words are mine and mine alone. My thoughts should not be taken as the policy position of the Commission.

## ***The Commission***

The Real Estate Commission operates just like a court of appeals. Instead of being in front of one judge, licensees appear before a panel of commissioners. Like most judges, we come to work every day with open minds and we know very little about the case we will hear.

If the matter involves a complaint, then the AREC staff will present the evidence against the licensee via an attorney from the Arkansas Attorney General's Office. The licensee will present their evidence themselves or with the help of private counsel.

The commissioners listen to all of the evidence. Then we retreat to another room and we discuss the case. We argue back and forth about what the evidence is and what it means. We try to persuade one another. Often our decisions are the result of compromise. Maybe a commissioner will vote to find that a licensee did in fact violate the rules in exchange for another commissioner supporting a lighter punishment. Our system is very much a judicial democracy.

## ***Personalities Make a Difference***

An important thing to remember about the Commission is that its membership regularly changes. With each new appointment the chemistry and personality of the body is altered. During my early years on the Commission I served with Roy Rainey and Doug Smith. I used to refer to them as the "hanging judges." Those two gentlemen valued the integrity of the profession above all else. They were quick to bring swift and severe punishment to those who broke the rules.

The Commission has become more moderate in recent

years. Until recently, the Commission was chaired by real estate educator, Tina B. Daniel. Tina's recent demise has left a void at the Commission and saddens us greatly. However, in her all-too-short tenure, Tina helped us to understand the important role of education and remediation for those who make unintentional mistakes.

## ***My Best Advice About Appearing Before the Commission***

Don't appear before the Commission. Far too often I have seen cases come before us which should have been settled before a complaint was ever filed. As I stated earlier, the Commission is just like a court. I would not advise anyone to go to court, unless the facts are clearly in your favor, because you never know how a judge or jury will react to the facts of your case.

The same can be said about the five members of the Real Estate Commission. Unless you have come and watched one of the hearings or done extensive research, you will not know the personality of the group of commissioners who will be deciding your fate. You could find yourself in front of a group of "hanging judges" who will not tolerate the slightest missteps, or you could appear in front of a group of more patient commissioners who end up requiring you to undertake many hours of continuing education. Either experience could be costly.

I remember a case not too long ago when two agents were fighting over a \$1,600 commission. The agent who was the respondent that day was found guilty of several rule violations. This agent paid thousands of dollars in legal fees to their attorney and a hefty fine. The agent was required to take continuing education and also had their license suspended. The total cost to this agent was well over \$10,000. All for a case that likely could have been settled for \$800.

This is not to suggest that licensees should allow themselves to be threatened or bullied by people with baseless claims. The Commission is well adept at separating legitimate claims from meaningless ones. The suggestion here is that if you know your case is on the margins, or that you broke the letter or spirit of the law, then you may want to consider a settlement.

## ***The Funny Cases***

During my time on the Commission I have seen and heard many interesting things. There was the gentleman who wanted a license and claimed that all of his troubles could be traced back to his one mistake in life, which was marrying a Canadian stripper. We once had a case in which a licensee was paying his cable bill from his trust account and truly thought there was nothing wrong with that.

The funniest of all was the case that

*(Continued on Page 7)*

# A Conversation Regarding Land Contracts And Contracts for Deed

*By Gary C. Isom, Executive Director, and Tim Grooms, Attorney*

**Introduction:** I recently visited with Attorney Tim Grooms of Quattlebaum, Grooms, Tull and Burrow, PLLC, in Little Rock about a real estate instrument commonly referred to as a Contract for Deed or Land Contract. We occasionally find these legal documents at the center of complaints filed with the Real Estate Commission.

**Gary Isom:** Tim, Contracts for Deed, also referred to as Land Contracts, have become a red flag for the Real Estate Commission's investigative section over the years. While these instruments can certainly be used legitimately and legally, it has been our experience that the Contract for Deed can also present problems and lead to misfortune for those party to such instruments.

However, before we talk about the pitfalls we see with these types of contracts, please explain for us how a Contract for Deed differs from the more usual real estate transaction.

**Tim Grooms:** In a Contract for Deed, also known as a Land Sale Contract or an Installment Land Sale Contract, the fee simple title to the property remains with the seller until the seller financing is satisfied. Only when the buyer's debt to the seller is paid in full does the seller convey fee simple title to the buyer. Of course, in a more typical real estate contract, fee simple title passes immediately at closing.

**Gary:** Thanks for that clarification, Tim. Now, if a party decides to enter into a Contract for Deed, what are some of the essential components that the party should seek or be concerned with to protect their interests?

**Tim:** First and foremost, the buyer should obtain a title search or title commitment to learn what encumbrances may exist on the property. It is helpful to know the relationship the buyer may need to have with any existing lender, including a possible right to cure any default by the seller regarding the existing loan.

The buyer should also wish to know that the payments to be made under the Land Contract will be sufficient to cover required payments on the existing loan and, in addition, that the aggregate of payments under the Land Contract will pay off the existing loan.

The buyer may also wish to obtain an "estoppel" from the existing mortgage lender confirming the loan payoff, monthly payment amounts, whether taxes or insurance are escrowed and confirming the mortgage lender will not make any "future advances" under the existing loan (other than property preser-

vation advances). Preferably, the buyer would want payments (or that portion thereof that will pay the PITI payment on the underlying loan) paid directly to the existing lender.

Similar consideration should be given with regard to real estate and special assessment taxes – the Buyer must be sure these are timely paid. In addition, the Buyer needs to record the Land Contract or a "memorandum" thereof so that the world is on record notice of the Buyer's interest.

Many buyers cause all payments to be made through a reputable escrow agent, attorney or real estate broker with express instructions to pay the PITI payments on the underlying loan, taxes, assessments and other charges owed regarding the real estate, before any excess distribution is paid to the Seller. The Escrow Agreement often includes a deed from the Seller so that, when the Buyer has made all payments, the deed is simply recorded and a title policy issued.

Let us not all forget that these transactions have implications for a Seller, also. Recently, the Arkansas Court of Appeals called into question the available interest rate limitation – in the past, being exempt from the Arkansas Usury law has been one of the reasons for Land Contracts – and, in addition, agricultural Land Contracts have interest rate and default limitations.

In addition, many sellers think they have the right to convey their property in a "wraparound" situation and not pay off an existing mortgage lien. However, most residential and commercial mortgages have a "due-on-sale" clause which may be triggered if a Land Contract is entered into since, like a typical real estate contract, upon execution the buyer obtains "equitable title" which qualifies as a "sale" under a due-on-sale clause.

Finally, there is a misconception that sellers have the immediate ability to evict a Land Contract purchaser for default. This may or may not be true, based on the down payment made, number of installment payments made and improvements to the property made by the buyer. Arkansas law follows the ancient maxim that "equity abhors forfeiture" – translated, that means that a Buyer who has quite a bit of "skin in the game" may not be subject to eviction for default and, instead, may have the protections of statutory and equitable redemption which may have to be foreclosed, either judicially or non-judicially.

Recently, the issue of what persons or entities may avail themselves of the statutory foreclosure remedy was questioned by a federal bankruptcy court in Arkansas. The case was reversed, but questions remain that may need resolution in the legislature.

*(Continued on Page 8)*



## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, and Conclusions of Law and Order issued by the Commission from December 2012 through February 2013.



### **Louis Butler, Salesperson, and Michael Stinnett, Principal Broker, Stinnett Realty, Little Rock, AR:**

In Formal Hearing # 3253, Respondent Butler's salesperson's license was revoked and Respondent Butler was ordered to pay a fine of \$5,000 to the AREC within 30 days of the date of the final Order. Respondent Stinnett was also ordered to successfully complete a minimum of six hours broker agent continuing education to be approved in advance by the Executive Director and in addition to the annual continuing education hours required to renew a license. The Executive Director shall determine the time for completing the extra hours. Respondent Stinnett was also ordered to submit a written office policy/procedure manual on agent-owned property within six months of the date of the final Order. The Commission found Respondent Butler guilty of violating A.C.A. § 17-42-311(a)(4), 17-42-311(a)(6), 17-42-311(a)(7), 17-42-311(a)(13), 17-42-311(a)(9) and 17-42-311(a)(11), and AREC Regulations 10.7(a)(1), 8.5(a) and 10.1(b). Respondent Stinnett was found to be in violation of A.C.A. § 17-42-311(a)(2) and AREC Regulation 10.4(b).

In December 2010, the Subject Property located at 12205 Sundew Cove, North Little Rock, AR, was quitclaimed from the owner Larue Young to Carla Perkins, Respondent Butler's companion. At the time, the Subject Property was still subject to a mortgage held by BAC Home Loan Servicing. The Quitclaim Deed was never filed with the Pulaski County Circuit Clerk. Respondent Butler had no interest in the Subject Property recorded or unrecorded.

On June 1, 2011, Complainants Karona and Shannon Smith entered into a Residential Lease with Option to Purchase the Subject Property with Respondent Butler. Respondent Butler signed the agreement as Lessor even though the agreement referred to him as Lessee. Complainants Smith paid Respondent Butler \$5,000 as a non-refundable down payment

for the Option to Purchase the Subject Property. The term of the initial lease was 12 months, with \$1,100 due each month. The total purchase price of the Subject Property was agreed to be \$150,000 minus the down payment.

The \$5,000 was not placed in a trust account, escrow account or any account controlled by Respondent Butler's Principal Broker, Respondent Stinnett. Respondent Butler did not disclose to Complainants Smith that he held an Arkansas Salesperson License. Complainants Smith believed that Respondent Butler was the owner of the Subject Property and that they were leasing the property from Respondent Butler. From June 1, 2011 until June 1, 2012, Respondent Butler collected \$1,100 rent each month from Complainants Smith. Those funds were not remitted to Larue Young or the mortgage holder.

On June 20, 2012, Complainants Smith received notice from the Mikel Law Firm of Little Rock, AR, acting on behalf of the mortgage holder, BAC Home Loan Servicing, notifying the Complainants Smith that the Subject Property was in foreclosure and would be sold at the Pulaski County Courthouse if action was not taken. At this time, Complainants Smith discovered that Respondent Butler was not the owner of the Subject Property. On August 3, 2012, Complainants Smith terminated the lease on the Subject Property. Respondent Butler refunded Complainants Smith \$3,900 from the original down payment. On August 15, 2012, the Subject Property was sold at foreclosure to Federal National Mortgage Association.

Respondent Stinnett was fully aware of Respondent Butler's property management activities with respect to the Subject Property, but Respondent Stinnett took no action to ensure that Respondent Butler placed the non-refundable down payment into a trust or escrow account. Respondent Stinnett took no action to ensure that Respondent Butler remitted the monthly rents to him as supervising Broker.

### **Eric P. Lambert, Salesperson, ERA Henley Real Estate, Conway, AR:**

In Formal Hearing # 3255, Respondent Lambert was allowed to keep his real estate license.

Respondent Lambert was found to be in violation of A.C.A. § 17-42-311(a)(7).

On October 11, 2012, the Arkansas Commission on Law Enforcement Standards and Training revoked the certification of Respondent Lambert pursuant to Arkansas Code Annotated

§12-9-402 and Regulations 1010(3)(a)(iii), 1010(3)(a)(iv), 1010(3)(a)(viii), and Specification S-21 of the Commission on Law Enforcement Standards and Training. The factual findings in the Findings of Fact, Conclusion of Law, and Order entered by the Arkansas Commission on Law Enforcement Standards and Training on October 11, 2012, have become final and were incorporated into the Findings of Fact, Conclusion of Law, and Order entered by the Arkansas Real Estate Commission.



## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, and Conclusions of Law and Order issued by the Commission from December 2012 through February 2013.



### **Jeffrey (Scott) Davis, Inactive Salesperson, Springdale, AR:**

In Formal Hearing # 3252, Respondent Jeffrey (Scott) Davis was ordered to make payment in full of \$75 to the Commission within 30 days of the date of the Hearing. If Respondent fails to make payment in full within that time, his real estate license will be revoked.

Respondent Davis was found to be in violation of A.C.A. § 17-42-311(a)(13), and AREC Regulations 3.2(a) and 3.2(b).

On or about April 9, 2012, Respondent provided a counter check in the amount of \$50.00 as payment of a penalty in accordance with the Commission's Consent Order, Formal Hearing # 3209. The subject counter check was dishonored as

"Account Closed" by Arvest Bank. The Respondent was notified of this action by letter on August 31, 2012, and advised that a \$25.00 service charge was incurred as a result. A money order or cashier's check was therefore required as payment of the penalty. Funds in the amount of \$75.00 were not received and a second letter of notification was sent to the Respondent on September 24, 2012. Both letters were sent by certified mail to the Respondent, who accepted both of them. Payment of the penalty and bad check fee for a total of \$75.00, to date, had not been paid to the Commission by the Respondent. (NOTE: Respondent Jeffrey (Scott) Davis failed to make payment as ordered by the Commission and his license was revoked in accordance with the Commission's order.)

## Changes in Auction Regulations Effective January 19

Changes in Section 15 of the Real Estate Commission Regulations are intended to address concerns expressed by real estate auctioneers and members of the public who attend auctions. Those concerns involve alleged abuses in the auction of real estate with regard to absolute v. reserve auctions, and with the use of false bids being utilized to unfairly raise the prices of real estate being auctioned. The changes, which went into effect January 19, address these issues as follows:

- o Adds definitions to applicable terms
- o Specifies the content that must be included in an auction agreement
- o For absolute auctions, specifically requires a statement in the auction agreement between the auctioneer and the seller by which the seller acknowledges the legal repercussions of agreeing to an absolute auction

- o Adds language providing the legal meaning of standard auction practices such as bidding, retracting bids and the auctioneer's announcement of completion of the sale
- o Establishes specific requirements applicable to advertising of an auction
- o Sets out requirements for establishing validity of absentee and internet bidders
- o Establishes record maintenance and retention requirements, specifically identifying documents that should be maintained for absolute auctions
- o Identifies prohibited activities that can lead to disciplinary actions against the auctioneer and his or her supervising brokers
- o Extends jurisdiction of Real Estate Commission to unlicensed individuals participating in a real estate auction

### *Commissioner Smith...*

*(Continued from Page 4)*

I will always call the "a tree is a tree case." In that case, a seller's agent had listed several pieces of undeveloped land for sale. The agent had taken a picture of one of the lots which consisted of a series of trees. The agent then used this one picture for all of the lots in this grouping of properties and listed them on the MLS.

A young woman came upon one of the listings and decided to make an offer. The seller's agent then took the woman and her agent to the site where she had taken the picture and said, "This is it." The young woman saw that this property had road access, which would save her money, so she made an offer and shortly closed on the property.

Several months later the young woman was driving by her lot and found a group of men working on the property. She stopped to talk with them and found out this lot was not her property at all. In actuality the land she bought was several hundred yards away and land-locked.

The sales agent came before us in a hearing. When she was

asked why she would use the same picture for all of the lots, and how she could take the young woman to the wrong lot, the agent responded, "There was nothing but trees out there. What's the difference between one tree and the next? A tree is a tree."

Sure enough, a tree is a tree. A fine is a fine. A suspension is a suspension, and a license revocation is forever.

The salient point here is that what you do is very important. You have the power to give people the great gift of home ownership. The vast majority of you are wonderful professional people who take your jobs very seriously. Unfortunately, there are a few bad apples in every bunch. For those of you who choose to be bad apples, I'm sure I'll see you soon.

Until then, be well. If any of you would like for me to come share my interesting stories and insight at your staff meetings or Realtor Board please call the staff or email me at [smith3@gmail.com](mailto:smith3@gmail.com).

## Inside This Issue

April 2013

Two New Commissioners Named.....	1
Farewell to a Friend.....	2
2012 Regulation Changes.....	2
"What I Didn't Know Then".....	3
"One Commissioner's Opinion".....	4
Land Contracts.....	5
Formal Hearing Decisions.....	6,7
Changes in Auction Regulations.....	7

## A Conversation About Land Contracts, Contracts for Deeds...

*(Continued from Page 5)*

**Gary:** Ok, let's speak more specifically about mortgages on the property. Can an owner of property sell their property by Contract for Deed if the owner has an existing mortgage on the property? Secondly, can the owner of the property take out a mortgage on the property after the owner has "sold" the property by Contract for Deed?

**Tim:** The answer to both questions is "yes" - as to existing mortgages we discussed that before and the recordation of the Memorandum of the Land Contract (or the Land Contract itself) prevents any future mortgages from having "priority" over the Land Contract buyer's interest.

**Gary:** Tim, those of us close to the real estate profession know that licensed real estate agents are allowed to practice law under very limited circumstances so that they may fill in the blanks of real estate contracts that have been pre-approved by an Arkansas attorney. Does that limited authority allow a real estate agent to complete a Contract for Deed, or, should an attorney be engaged to prepare the legal instruments in this type of

transaction?

**Tim:** I fear the limitation in the Pope County case, requiring a present transfer of a fee simple interest, is very limiting with regard to licensee involvement in Land Contracts.

**Gary:** Tim, thanks for taking time to share your thoughts with us on the Contract for Deed. Is there anything else that you would like to share for the benefit of real estate agents and consumers who encounter situations whereby a Contract for Deed is the chosen method to sell real estate?

**Tim:** I strongly encourage licensees to involve a qualified real estate attorney to assist in these matters. It may be required by the Pope County case (and thus AREC Regulation 10.10) but, in any event, these transactions have been the subject of much litigation and hearings before the AREC. No further proof should be needed that these situations are fraught with peril for the Buyer and, correspondingly, the licensees involved in the transaction.