



August 2015

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

Web page:  
www.arec.arkansas.gov

Members of the Commission  
Allen W. Trammell, Chairman  
Little Rock

Lesia J. Ford, Vice Chair  
West Memphis

Sherman E. Tate  
Little Rock

Monica Freeland  
Mulberry

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Springdale

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Andrea S. Alford  
Deputy Executive Director  
Yvonne Halstead  
AREC Supervisor

# ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

## Executive Director Comments

*By Gary C. Isom, Executive Director*

Regulation 10.5 Advertising requires that a real estate licensee's connection to their Principal Broker be obvious in all public advertising. This message has been repeatedly delivered through this newsletter, the Arkansas REALTORS® Association, and through education this year as part of the required continuing education (CE) topic. All licensees are advised NOT to incur further expenses in any advertising that fails to comply with Regulation 10.5, including yard signs, billboards, newspaper or website advertisements, etc.

In a separate article in this newsletter, Deputy Executive Director Andrea Alford will provide information about a task force that is reviewing and discussing the enforcement of Regulation 10.5. AREC Education and Instruction Specialist Heather Kilpatrick will provide additional information on the three hour required continuing education topic for 2015. Refer to Formal Hearing #3386 (page 6) for Respondent John Cummings in the Formal Hearing Decisions section.

Largely in response to recent discussions on agent safety, legislation was pursued by the Commission and the Arkansas REALTORS® Association to provide greater flexibility in the annual continuing education requirements. The new law will be further defined by proposed regulations to be developed in the coming months.

At the February 2015 meeting, the Commissioners elected Commissioner Allen W. Trammell to the Chair position and Commissioner Lesia Johnson Ford to the Vice-Chair position. Also, Governor Asa Hutchinson appointed ARA Nominee Doyle Yates to the Commission for a three-year term.

## Governor Names Doyle Yates As New AREC Commissioner



Doyle Yates was appointed to the Arkansas Real Estate Commission in February 2015 by Governor Asa Hutchinson. Commissioner Yates obtained his real estate salesperson's license in 1975 and his real estate broker's license in 1977. He holds the National Association of REALTORS® designations of Certified Residential Brokerage Manager, Certified Residential Specialist, Graduate REALTOR® Institute, and is the current president of the Northwest Arkansas Board of REALTORS®.

Previously, Commissioner Yates was the 1998 president of the Metro Area Board of

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REALTORS® and that board's two time REALTOR® of the Year in 1998 and 1999. For the past 6 years he has served on the National Association of REALTORS® Board of Directors. Commissioner Yates is also NAR's Federal Political Coordinator for Senator John Boozman's office. On a state level, Commissioner Yates was the 2002 president of the Arkansas REALTORS® Association and was the 1999 Arkansas REALTOR® of The Year. He currently serves on ARA's Board of Directors and is the Chairman of the Arkansas REALTORS® Association's Political Action Committee. Doyle would tell you the thing he has enjoyed most about real estate is the time he has spent hiring, training, and supporting agents. He says the most rewarding part of his position as a Managing Broker is to be a part of the growth and success of so many people in real estate. As Executive Vice President of Coldwell Banker Harris McHaney & Faucette, he has helped lead his company for the past 22 years. During that time, he has been recognized by Coldwell Banker for the Most Improved Office in the Southeast Region, #1 Coldwell Banker Office in Arkansas for 12 consecutive years, and #1 Coldwell Banker Company in Arkansas for all of his 22 years with his company.

Doyle and his wife Dawn, who is a licensed real estate agent, reside in Northwest Arkansas. When not working, they enjoy motorcycling, traveling, and spending time with their children and grandchildren.

## **The Fine Line of License Statuses**

*By: Andrea Alford, Deputy Executive Director*

If you've read any of my newsletter articles over the last three years, you know I like to fish. Well, it runs in the family. My dad lives on a lake in Scott, and he frequently texts me pictures of the huge bass and crappie he's caught there. I'm a bit competitive, so a few weeks back I decided I'd come for a visit and show him how it's done. I left the office on a Friday and drove home to load up my gear. I was putting my fishing rods in the backseat of my car when all of a sudden, I felt a sharp pain in my left leg and the fishing rods in my hand abruptly stopped moving. I tugged on the rods, not wanting to admit to myself what had just happened, but they wouldn't budge and the pain in my leg only got sharper.

Rookie mistake. I'd left my new topwater lure tied onto my bait caster, and that sucker had done its job...only it hadn't caught a trophy. It caught me. I don't know if you've ever had the misfortune of having a bass lure stuck in your leg, but let me assure you: it isn't pleasant. And the irony of it all? I was standing on dry land, miles from the nearest body of water, not even remotely engaged in the act of fishing.

This reminds me of a question that was raised at a recent hearing before the Commission: when the law or regulations refer to a "licensee", does that include an individual whose license is on inactive status? Specifically, this question was raised in reference to a licensee's obligation to report criminal convictions. This is a question that the staff of the Commission has addressed numerous times over the years, and the answer is fairly simple. In fact, it can be found on Page 2 of the Real Estate License Law and Commission Regulations, under A.C.A. Section 17-42-103(7)(A):

*"Licensee" means an individual who holds any type of license issued by the Arkansas Real Estate Commission.*

In plainest terms, any individual who holds a license -whether active or inactive- is considered a licensee. As I mentioned above, a very common reason we receive this question is in reference to Regulation 10.16, what we call the 'reporting requirement' regulation. In essence, the regulation states that a licensee who has a criminal conviction or has disciplinary action taken against him by another professional licensing board must make a written report to the Commission within thirty days of the conviction or disciplinary action.

It is widely assumed that if an individual's Arkansas real estate license is on inactive status, the reporting requirement does not apply. On the contrary, the reporting requirement applies to all licensees – both active and inactive. In fact, you'll see in the Formal Hearing Decisions section of this newsletter that the Commission recently found that a licensee had violated Regulation 10.16 while her license was on inactive status.

Although this information will not apply to very many of you, it's helpful to understand that once you've been issued a license by the Commission, you are considered a licensee, and certain requirements and obligations apply, whether your license is active or not.

In other words, you may not be fishing, but you can still wind up at the ER with a hook stuck in your leg.



# THE DOWN AND DIRTY OF SEPTEMBER THIRTY

*By Yvonne Halstead, AREC Supervisor*

Fact: It happens at the same time every year.

Fact: A bright red and yellow postcard reminder is mailed to your home address.

Fact: It opens on July 15th.

Fact: It is critical to your vocation.

Fact: It applies to all licensees, active and inactive.

Fact: It is quickest and most secure when done online at [www.arec.arkansas.gov](http://www.arec.arkansas.gov).

Fact: If filed after the deadline, it will be treated as an expired license.

Fact: The fee for Brokers is \$80.00; the expired fee is \$110.00.

Fact: The fee for Salespersons is \$60.00; the expired fee is \$80.00.

Fact: If you practice without having done this, you are in violation, subject to fines and a citation.

What am I? *I am your real estate license renewal!*

Please renew online and renew on time. It's your obligation. You can avoid a violation, a fine and a citation. If you renew your license early, you can forget the down and dirty of this year's September thirty!

## AREC REQUIRED CONTINUING EDUCATION (CE) TOPIC

*By Heather Kilpatrick, Education/Instruction Specialist*

Have you heard that it is time to renew your real estate license? It's TIME! And if you are renewing your license to an active status, it is also time to complete and report your six (6) hours of continuing education.

This year you must complete the 3 hour 2015 AREC Required Topic as a part of your education. In the Required Topic Course you will learn about recent law changes involving education, disciplinary procedures and advertising. Important safety information and resources will be shared. You will hear about changes to regulations involving property management record keeping, auctions, and broker pre-license and post license education requirements. Educators will show you how to utilize the information available on the AREC website including how to check your renewal and education status. And you will receive an update on AREC policies.

If you haven't completed your continuing education or the 2015 AREC Required Topic yet this year, now is the time. A list of educators approved to offer the required topic is available at [www.arec.arkansas.gov/licensing](http://www.arec.arkansas.gov/licensing).

# ***Tina B. Daniel Memorial Scholarship Fund***

*By Kim Ashcraft, Arkansas Real Estate Foundation*

Tina Beavers Daniel passed away unexpectedly on March 3, 2013. As the founder and director of the Arkansas Institute of Real Estate, Tina was the instructor under whom REALTORS® from across Arkansas began their career and/or continued their education. Tina served on the Board of Governors of the Council of Residential Specialists (CRS) and was also a certified instructor for many CRS courses teaching students all over the world.

The Arkansas Real Estate Foundation has established an endowment fund in honor of our friend Tina B. Daniel and the funds raised will be used to permanently fund a scholarship at Harding University in Searcy, Arkansas. The Tina B. Daniel REALTOR® Memorial Scholarship will be an annual scholarship awarded to a deserving student who is pursuing a degree in Business or an Education-related field at Harding University.

March 3, 2015 marked the second anniversary of the passing of our dear friend and fellow REALTOR®. As of today, we still need to raise \$40,000 to have this scholarship fund completed. It will be a permanently endowed fund that will continue to honor Tina B. Daniel's memory and legacy for years and years to come.

Tina B. Daniel was an educator and a life-long learner. If you were a student of Tina's, you can honor her love of education by becoming a contributor to the Tina B. Daniel Memorial Scholarship Fund. Remember, your gift is tax-deductible. Checks can be made payable to AREF with "TBD Scholarship Fund" on the Memo line and sent to Kim Ashcraft at the Arkansas REALTORS® Association, 11224 Executive Center Drive, Little Rock, AR 72211. You can contact Kim for more details by email at [kim@arkansasrealtors.com](mailto:kim@arkansasrealtors.com).

## **Expectations Grow Greater for Broker Fee Disclosure**

From the Arkansas Real Estate Commission

A case heard by the Commission on Monday, June 8, 2015, will likely increase expectations for brokers representing buyers to disclose fees the buyer's broker will receive through seller concessions. Following the hearing, the Commissioners were concerned that their decision not to sanction the buyer's broker may lead to the inaccurate conclusion that the Commission will render the same decision in future hearings on this issue. Each case has many variables that can impact the Commissioners' decision.

In this case, the seller's broker's due diligence in detecting and disclosing the professional services fee payable to the buyer's broker lessened the likelihood that the buyer's broker would be sanctioned. Had the seller's broker not detected the fee, the seller would likely have closed on the transaction without knowing that, through seller concessions, she was paying the buyer broker professional services fee on behalf of the buyer. The seller's broker made sure his seller was aware of the fee prior to closing. The seller's complaint was that she did not agree to pay the fee when she executed the contract; the fact that the seller knew about the fee prior to closing and still chose to close was a significant component in the Commissioners' decision.

While this case will likely increase expectations for brokers representing buyers, the defending attorney made a very valid argument that brokers representing sellers have a duty to review documents on behalf of their seller clients to make the sellers aware of the fees they will be paying. The practice of using vague language regarding seller concessions places the seller's broker in a precarious position. Brokers should recall from their agency training that, in a co-op sale with two real estate firms, the buyer's broker has the obligation of dealing honestly with the seller while the seller's broker pledges to protect and promote the interests of the seller. Had this seller learned of the fee after closing, you can bet the buyer broker and his attorney would have laid the blame on the seller's broker for not adequately representing his seller client.

Here are some basic facts of the case:

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- The seller was a licensed real estate agent and had her property listed with her broker.
- Through an Exclusive Buyer Agency Agreement, the buyer agreed to pay \$499 for professional services rendered.
- The Real Estate Contract (New Construction), Paragraph 5. LOAN AND CLOSING COSTS included the statement:  
“Seller to pay buyers closing costs, prepaids, and settlement fees not to exceed \$5,750.”
- The \$499 fee was deducted from the seller’s proceeds as a portion of the “Seller Concessions for Closing Costs” on line 506 of the seller’s Settlement Statement (HUD-1).
- The seller claimed that she did not consider the \$499 fee a cost that should have been included by the verbiage in Paragraph 5 and therefore, she did not agree to pay the fee on behalf of the buyer.
- Seller’s broker requested a copy of both the buyer’s and seller’s closing statement the day before closing. The seller’s broker discovered the \$499 shown as a Transaction Fee payable to the buyer’s broker on line 704 of the buyer’s Settlement Statement (HUD-1).
- Seller’s broker prepared a General Addendum to the contract with language regarding paragraph #5 of the Real Estate Contract, disclosing that the \$499 dollar fee paid to the buyer’s broker was included in the buyer’s cost paid by seller at closing. Buyer and Seller signed the addendum.
- During the hearing, the seller’s broker indicated that his reason for preparing the General Addendum was to protect himself by making it known that he had discovered and made his seller client aware that the fee was included in her concessions to the buyer. The seller’s broker stated the purpose of the addendum was not to have his seller agree to pay the fee.

Complaints filed with the Commission on this issue will continue to be investigated. There are many variables in any transaction, any of which can affect the outcome of a hearing. Here are some to consider in this situation:

- What if the seller had not been a licensed real estate agent, but a consumer less knowledgeable of real estate transactions?
- What if instead of a fixed fee for professional services rendered, the amount paid to the buyer’s broker was the difference between the sales commission the buyer’s broker received through the co-op arrangement and the percentage fee the buyer agreed to pay according to the terms of the Exclusive Buyer Agency Agreement?
- What if instead of a fixed fee for professional services rendered, the amount paid to the buyer’s broker was the difference between the actual amount of typical closing costs paid to third parties versus the total amount the seller had conceded to pay on behalf of the buyer?
- What if the seller had not learned that the fee was part of her concessions until after the closing?
- What if there had not been a General Addendum prepared and signed by the parties with regard to the fee?
- Lastly, what if this had been an in-house transaction with both parties being clients of the broker?

This case in and of itself is more important than the Commission’s decision. This case puts all real estate licensees on notice that the inclusion of buyer broker fees as part of the seller concessions can be confusing to consumers. Brokers representing buyers should consider language that will inform sellers that their concessions include fees payable to the buyer’s broker. It will be prudent for brokers representing sellers to inquire as to whether the costs their sellers are conceding to pay on behalf of the buyers include any fees payable to the buyer’s broker. I’ve had one broker tell me that he plans to insert language that expresses that his seller concessions will not include any fees payable to the buyer’s broker. Brokers may want to contact their attorney about such a provision.

In a court of law, this case might be considered a precedent upon which future decisions will be based. Commission hearings can be different. The more aware brokers are that an issue is confusing to the parties to a transaction, the greater the expectation is that the brokers address the situation in a manner that lessens that confusion.





## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from November 2014 through April 2015. Formal Hearing Decisions that have been appealed are not listed.



**Respondent:** John Cummings, Principal Broker, Cardinal Realty, Bella Vista, Arkansas, Formal Hearing #3386

**Violation(s):** A.C.A. §17-42-311(a)(2) & §17-42-311(a)(11); Commission Regulations 8.5(a), 10.5(a), 10.5(b), 10.10(a), and 10.11.

**Sanctions:** Respondent Cummings' license is hereby revoked, and he must appear before the Commission before his license may be reinstated. Respondent Cummings is ordered to pay a penalty of \$500.00 for each violation of the regulations, and \$1,000.00 for each violation of the license law, for a total of \$4,500.00, payable and due to the Commission within thirty (30) days of the date of this Order. The Executive Director is directed to notify the Executive Director of the Texas Real Estate Commission regarding these proceedings.

Respondent Cummings advertised his real estate brokerage services via the website [www.bellavistaarkansas.us](http://www.bellavistaarkansas.us). In so doing, Respondent Cummings advertised the services under the name "John Cummings" and failed to disclose that he was actually working under the firm name "Cardinal Realty," with which he was licensed as Principal Broker.

Respondent Cummings, in soliciting buyers via his website, failed to make full disclosure to the buyers, in writing, of the exact fact that he was licensed as a real estate Broker.

Respondent Cummings offered to purchase a house from James W. and Connie Chapman. Respondent Cummings failed to make full disclosure to sellers Mr. and Mrs. Chapman, in writing, of the fact that he was licensed as a real estate Broker and was buying property for his own account.

Respondent Cummings failed to reduce to writing the exact agreement of the parties regarding the sale and purchase of properties.

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**Respondent(s):** Machellia D. Greco, (Unlicensed), Hot Springs, Arkansas, Formal Hearing #3378

**Violation(s):** Arkansas Code Annotated §17-42-103(9). Arkansas Code Annotated §17-42-103(12). Arkansas Code Annotated §17-42-105(a)(1) and §17-42-109.

**Sanction(s):** Civil penalty of \$2,500.00 is hereby assessed and payable to the Arkansas Real Estate Commission within thirty (30) days of the date of the Executive Director's final Order. In addition, Ms. Greco, as an unlicensed person, is required to reimburse the property owner, Mr. Jones, \$400.00 in other remuneration collected within thirty (30) days of the date of this final Order.

On or about January 9, 2006, Machellia D. Greco became Manager and Tax Preparer of Landlord Services of Arkansas, LLC, located at 142 Earnest Way, Hot Springs, Arkansas. Acting through the corporate entity Landlord Services of Arkansas, LLC, Respondent held herself out as being engaged in the business of renting or leasing real estate by soliciting rental property owners to hire Respondent to provide property management services. Multiple individual property owners hired Respondent to provide services including leasing, offering to lease, negotiating leases, attempting to lease, and procuring prospects to rent or lease real estate, or collecting rents with respect to the owners' properties. On March 24, 2013, Respondent Greco entered into a One Year Lease - Rental Agreement between

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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from November 2014 through April 2015. Formal Hearing Decisions that have been appealed are not listed.



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Landlord Services of Arkansas, LLC as Landlord and Tenant David Dudley as Tenant of property located at 1207 W. St. Louis, Hot Springs, Arkansas, which was owned by Pinewood Real Holdings. On April 1, 2013, Respondent Greco entered into a Month-to-Month Lease Agreement between Pinewood Real Holdings as Owners, and Landlord Services of Arkansas, LLC, as Tenants for the property located at 1207 W. St. Louis, Hot springs, Arkansas to begin on April 15, 2013. Respondent received compensation or other remuneration for performing services described in Paragraphs 2 and 3. Respondent Greco reported to the IRS as income on Schedule C the difference between the lease amounts paid to property owners by Landlord Services of Arkansas, LLC, and the sublease amounts collected from tenants in a manner typical of a property management business.

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**Respondent(s):** Justin Patterson, (unlicensed), Bryant, Arkansas, Consent Order #3376

**Violation(s):** No findings made pursuant to Consent Order agreed to by Complainant.

**Sanction(s):** He is to pay a \$2,500.00 penalty to Andrea Giles within one week from date of this Consent Order. He shall not advertise for sale or lease any property in which he does not hold a current fee simple or leasehold interest.

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**Respondent(s):** Amy Jackson, Salesperson, Inactive, Rogers, Arkansas, Formal Hearing #3358

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(11). Commission Regulation 10.16(a) and Arkansas Code Annotated § 17-42-311(a)(2).

**Sanction(s):** License is revoked and she is required to pay a fine of \$1,000.00 within thirty (30) days of the date of the Executive Director's Order.

On or about July 13, 2011, Respondent Jackson was cited for public intoxication, a misdemeanor, in THE BENTONVILLE DISTRICT COURT, Benton County, Arkansas. On July 29, 2011, Respondent Jackson pleaded guilty to the offense of PUBLIC INTOX in the District Court of Benton County, Arkansas, Rogers Division. On January 20, 2012, Respondent Jackson pleaded guilty to the offense of DWI 1ST OFFENSE misdemeanor in the District Court of Benton County, Arkansas, Rogers Division. On January 20, 2012, Respondent Jackson pleaded guilty to the offense of FAIL TO APPEAR CLASS A misdemeanor in the District Court of Benton County, Arkansas, Rogers Division. On May 16, 2012, Respondent Jackson pleaded guilty to the offenses of POSS CTRL/CNFT SUB (IE: MARIJ) 1ST OFFENSE-misdemeanor; POSS DRUG PARAPHERNALIA MISD-misdemeanor; SPEED 19 MPH OVER; DRIVING W/SUSPENDED DL DWI RELATED-misdemeanor; DWI II; REFUSAL TO SUBMIT TO CHEMICAL TEST-misdemeanor, in the BENTONVILLE DISTRICT COURT, Bentonville, Arkansas.

Respondent Jackson failed to report the above guilty pleas as shown in paragraph 3 to the Arkansas Real Estate Commission within thirty (30) days of the guilty plea.



## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from November 2014 through April 2015. Formal Hearing Decisions that have been appealed are not listed.



**Respondent(s):** Robert Charles Overend, (Unlicensed), RCO Vacation Marketing, LLC, Branson, Missouri, Formal Hearing #3387

**Violation(s):** Arkansas Code Annotated §17-42-103(9). Arkansas Code Annotated §17-42-105(a)(1) and §17-42-109.

**Sanction(s):** Civil penalty of \$5,000.00 and costs, as certified by the Executive Director. The penalty and costs are due and payable to the Arkansas Real Estate Commission within thirty (30) days of the date of this final order.

Acting through the corporate entity RCO Vacation Marketing LLC., Respondent Robert Charles Overend held himself out as being engaged in the business of negotiating, selling, exchanging, purchasing or procuring of prospects calculated to result in the sale or exchange of real estate, specifically time-share. On or about November 18, 2012, Respondent Overend met with time-share owners J. R. and Cornelia Lyons in Conway, Arkansas to provide brokerage services for Lyons with regard to their timeshare located in Bella Vista, Arkansas. Upon Respondent Overend's offer to provide brokerage services, J.R. and Cornelia Lyons agreed to trade in their timeshare.

Respondent Overend collected a \$1,500.00 payment from Lyons.

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**Respondent(s):** John Jordan, Salesperson, Legacy Realty, Inc., Conway, Arkansas, Formal Hearing #3388

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(8). Commission Regulation 10.1(b). Commission Regulation 10.7(a)(1). Commission Regulation 9.2(b). Arkansas Code Annotated § 17-42-311(a)(2). Arkansas Code Annotated §17-42-311(a)(11).

**Sanction(s):** License is revoked, and before his license may be reinstated, he must appear before the Arkansas Real Estate Commission. He shall pay a penalty of \$500.00 for each violation in paragraphs 9, 10, 11, and 12, for a total of \$2,000.00, to be paid to the Arkansas Real Estate Commission within ninety (90) days of the date of this final order.

On February 11, 2013, Respondent listed for sale 1110 Spencer Street, Conway, Arkansas. The Property was owned by the Rosa M. West Rev Trust, Leslie West, Executor. On September 18, 2013, the City of Conway entered into a Real Estate Contract to purchase the property for \$315,000.00. The purchase of the property was made in three separate installments of \$105,000.00. On April 4, 2014, The City of Conway issued a check for the second installment payment. The Check was in the amount of \$105,000.00, made out to Rosa M. West Revocable Trust. On April 8, 2014, Respondent accepted a cashier's check, made payable to John Jordan from the Rosa M. West Rev. Trust, in the amount of \$8,400.00. May 22, 2014, Complainant Executive Broker Wanda Goodrich returned Respondent's license and filed a formal complaint against Respondent with the Arkansas Real Estate Commission. On May 28, 2014, Respondent was sent a copy of the complaint and answer form, which was returned to the Commission by the U.S.P.S., marked "Box Closed." On June 17, 2014, Respondent was sent a copy of the complaint and answer form to Respondent's home address, which was returned by the U.S.P.S., marked "No mail receptacle". August 4, 2014, Respondent replied to the Commission Investigator's email stating he will provide an address to

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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from November 2014 through April 2015. Formal Hearing Decisions that have been appealed are not listed.



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send the complaint and answer form. Investigator sent a second email on August 12, 2014. Respondent stated that he will have mail box up soon and to send by mail correspondence to his home address. On August 15, 2014, Investigator requested confirmation from Respondent that the mail box was operational.

Respondent failed to respond.

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**Respondent(s):** Nathan Lipsky, Salesperson, Re/Max Real Estate Centre, Jonesboro, Arkansas, Consent Order #3385

**Violation(s):** Commission Regulation 10.10(a). Arkansas Code Annotated §17-42-311(a)(13). Commission Regulation 10.10(a). Arkansas Code Annotated § 17-14-311(a)(4). Commission Regulation 10.1(b). Commission Regulation 8.5(a). Arkansas Code Annotated §17-14-311(a)(2).

**Sanction(s):** Write and submit an article to the Executive Director addressing activities that resulted in the above violations, any or all of which may be published as the Executive Director deems appropriate. He shall receive a Letter of Reprimand to be placed in his license file for one year and pay a \$500.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of the date of this Order.

On or about June 21, 2014, Complainant Perdsock and Respondent Lipsky entered into a verbal Exclusive Right-to-Sell Agreement on property located at 3203 Windover Garden Circle, Jonesboro, Arkansas. On or about June 23, 2014, Respondent Lipsky completed an Exclusive Right-to-Sell Agreement on the subject property. The Exclusive Right-to-Sell Agreement was not signed by Complainant Perdsock. On or about June 23, 2014, Respondent Lipsky signed Complainant Perdsock's name on the Exclusive Right-to-Sell Agreement to avoid being assessed a fine by the multiple listing service.

A copy of the Exclusive Right-to-Sell Agreement was not provided by Respondent Lipsky to Complainant Perdsock.

On or about August 20, 2014, an Addendum to the Exclusive Right-to-Sell Agreement was agreed to between Complainant Seller Perdsock and Executive Broker Webbe to withdraw the listing on the subject property.

A review of Respondent Lipsky's website revealed that Respondent Lipsky offered financial incentives to unlicensed persons for referring prospects to the Respondent. Respondent did not obtain the permission of his Principal Broker to offer the financial incentives to unlicensed persons.

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**Respondent(s):** Stephen S. Milburn, Associate Broker, Chenal Properties, Inc., Little Rock, Arkansas, Consent Order #3384

**Violation(s):** Commission Regulation 10.16(a). Arkansas Code Annotated § 17-42-311(a)(2).

**Sanction(s):** He is to pay a \$250.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of  
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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from November 2014 through April 2015. Formal Hearing Decisions that have been appealed are not listed.



the date of this Order. He shall complete the thirty hour AREC Broker post-license course within 120 days of the date of this order.

On June 25, 2013, Respondent Milburn was found guilty of a disorderly conduct charge in Garland County, Arkansas.

Respondent Milburn failed to report the above action within thirty (30) days of that conviction.

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**Respondent(s):** Marcia Shinn, Salesperson (Inactive), Russellville, Arkansas, Formal Hearing #3393

**Violation(s):** Arkansas Code Annotated § 17-42-311(a)(3). Commission Regulation 10.16(a). Arkansas Code Annotated §17-42-311(a)(2). Arkansas Code Annotated § 17-42-311(a)(11).

**Sanction(s):** License is suspended until such time as she can demonstrate to the Commission that she has successfully completed the terms of her probation. She is ordered to pay a fine of \$500.00; however, that fine is suspended pending Respondent Shinn's successful completion of the Arkansas law portion of the salesperson exam within six (6) months of the final date of this Order. Additionally, for a period of two (2) years from the date her license is released from suspension, she must notify any broker with whom she affiliates of the sanctions issued her by the Arkansas Real Estate Commission, and she must provide proof of such notification to the Commission.

September 9, 2013, Respondent Shinn voluntarily, intelligently, and knowingly agreed to defer further proceedings against her and agreed that she be placed on probation for a period of four (4) years without making a finding of guilt or entering a judgment of guilt for Delivery Sch I or II Not Meth/Cocaine C (1), a class C-Felony, In The Circuit Court of Pope County, Arkansas, Fifth Judicial District, 1 Division.

Respondent Shinn failed to report the above actions to the Commission within thirty (30) days.

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**Respondent(s):** Alice Johnson, Salesperson, United Country-Country Living, Waldron, Arkansas, Consent Order #3391

**Violation(s):** Commission Regulation 10.16(a). Arkansas Code Annotated § 17-42-311(a)(2).

**Sanction(s):** Letter of Reprimand to be placed in her license file for one year and pay a \$250.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of the date of this Order.

On March 23, 2014, Respondent Johnson plead guilty to Domestic Battering 3RD DE in the District Court of Sebastian County, Arkansas, Greenwood Division.

Respondent Johnson failed to report the conviction of Domestic Battering 3RD DE, within thirty (30) days after the conviction.

### Advertising Task Force

On June 17, several Arkansas broker licensees met with AREC leadership as part of an Advertising Task Force. The purpose of the task force is to identify current advertising practices and explore those practices in

*continued...*

view of the Arkansas Real Estate License Law and Commission Regulations. From there, we hope to identify ways to either accommodate new methods of advertising or work to encourage compliance where some advertising practices may have run afoul of the law and regulations. We'd like to tell you about some of the task force's work. Please note that for the purposes of this article, the term "agent" is used to describe a salesperson, associate broker or executive broker under the supervision of a principal broker.

The real estate business is certainly not the same today as when the law and regulations were written. Agents don't necessarily come to the office every day – many of you work completely from home or out and about in the community, using technology to keep you connected to your firm, clients and customers. As a result, agents' general perception of the role played by the firm's principal broker has changed. This lack of connection to the principal broker, coupled with the importance of personal brand portability to the modern day agent has created an environment where licensees are advertising their services and listings with no connection to their principal broker, obvious or otherwise.

Advertising isn't the only area where an agent's lack of connection to the principal broker is apparent, however. When was the last time you heard someone refer to a listing as "my listing", or a buyer as "my buyer"? You probably don't have to think back too far to answer. But let me ask you this: can an agent truly say "my listing" or "my buyer" if that agent isn't the principal broker of the firm? Too many agents fail to understand the basic concepts of agency and who ultimately "owns" the agency relationship between a broker and a client. (Hint: it's the principal broker.)

In addition to the principal broker connection in advertising and agency relationships, the task force discussed the abundance of technology in the real estate industry. Agents are being bombarded by constantly emerging platforms, apps and services aimed at increasing sales, generating leads, enhancing the level of services provided to clients, etc. Technology, in and of itself, is not the enemy. The danger lies in how agents utilize technology and whether or not those agents are educated and equipped to utilize technology wisely.

So many of these issues appear to fall at the agent level, yet this group of brokers assembled in our office all agreed that the principal broker is responsible for protecting the public and supervising the agents associated with the firm. They also agreed that the consumer should be able to easily identify and connect with the principal broker via their relationship with that broker's agent.

We discussed many potential solutions to these issues and more; however, there's still more work to be done, and the task force meets again soon to continue on. For now, all licensees should take note that two themes have emerged: brokers need to increase the quality of supervision they are providing to their agents, and agents and brokers alike need better education.

Stay tuned for more updates from the Advertising Task Force. In the meantime, if you have a question regarding advertising, please don't hesitate to call the Real Estate Commission at 501-683-8010.

## 2015 EDUCATOR'S RETREAT: A MOUNTAIN TOP EXPERIENCE IS WAITING FOR YOU

*By Heather Kilpatrick, Education/Instruction Specialist*

Mount Magazine State Park will be the setting for this year's Fall Educator Retreat, to be held October 11-13, 2015. In our ongoing mission to improve real estate education, AREC hosts a retreat each year for education providers. Whether you have several years of experience or are considering becoming an instructor for the first time, the retreat provides varied opportunities for learning and information sharing.

The event will begin with a Welcome Reception on Sunday evening, followed by two (2) days of informational sessions, round-table discussions, and workshops. Session topics will include education regulations, contract forms, TILA-RESPA Integrated Disclosure (TRID) changes, and the current trends and issues in the real estate industry. You can also spend time enjoying the wonderful scenic vistas of Arkansas' highest peak.

The Educator's Retreat registration is free; however, participants will pay for their own lodging and meals during the event. You may begin your registration now at [www.arec.arkansas.gov](http://www.arec.arkansas.gov).

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## RENEW ONLINE

[www.arec.arkansas.gov](http://www.arec.arkansas.gov)

**Renew your real estate license online  
by September 30, 2015 to avoid penalty.**

To be an active agent for 2016, required CE must be submitted before December 31, 2015. Don't forget the 3 hour required topic!

## RENEW ONLINE TODAY.

[www.arec.arkansas.gov](http://www.arec.arkansas.gov)

This will be the only notice sent.

Notice sent 7-15-2015. **Online renewal receipts will be available for printing at the time of renewal.** To renew by paper, please send a written request to AREC by August 14, 2015.

All payment information will be handled securely and will not be stored on our systems.  
Secured by DigiCert SSL.

### **2016 Renewal Fees By 9/30/2015**

Broker: \$80.00  
Salesperson: \$60.00

### **2016 Renewal Fees After 9/30/2015**

Broker: \$110.00  
Salesperson: \$80.00

### Online payment methods



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