



July 2014

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Monica K. Freeland
Mulberry

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Gary C. Isom
Executive Director

Andrea S. Alford
Deputy Executive Director

ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

Executive Director Comments

All Principal Brokers and Designated Executive Brokers need to be aware that the Real Estate Commission does not plan to issue "temporary broker status" for persons who only hold salesperson licenses. For this reason, each of you are encouraged to anticipate how your firm would continue to operate in the event of your incapacity or absence. This decision is largely due to past problems wherein salespersons operating in a temporary broker status resulted in formal hearings and recovery fund awards to consumers.

For continuity planning, it would be advantageous for every firm to have an executive broker or associate broker who can step into a principal broker or designated executive broker position when needed. Firms left with only salespersons, and no brokers, will be required to either find a broker outside of the firm or cease operations.

Another component of this issue is the new broker pre-licensing education requirement. For years, AREC, the Arkansas Realtors Association® and licensees have expressed concern about the absence of pre-licensing education specifically for brokers. For this reason, broker applicants continued to repeat the sixty-hour pre-licensing course designed for salespersons. Effective May 1, 2014, all new broker applicants are required to complete a course specifically developed for brokers. While we expect this to be extremely helpful for new brokers, the licensing process for new brokers will likely take longer than that for salespersons. This is due to the fact that the broker course will not be offered as often as the salesperson course because of the low number of broker applicants seeking pre-licensing education.

In 2014, AREC had approximately 150 new broker applicants. We hope that the few schools that find it feasible to offer the broker course will be able to make the course available somewhere in the state at least once monthly. However, the situation may very likely be such that licensees cannot obtain a broker license as expediently as they acquired their salesperson license. This makes it even more important that firms go ahead and acquire a licensed broker who can readily step in when needed.

"Work Performed on Water Wells"

We all like to be helpful, but when the law doesn't allow for it, it can get us into trouble. "Breaking the seal" of a water well by opening it and adding chlorine for disinfections is one such situation. Water sample reports showing that well water is safe to drink are required when a domestic well is on property being sold. However, disinfection is best left to a licensed water well contractor or the landowner.

Any work on a water well in Arkansas must be done by a registered pump installer or driller working for a licensed water well contractor. Homeowners may do their own work, though it is not recommended. Any work, even that done by a homeowner, must be done in accordance with the Arkansas Water Well Construction Commission Standards.

For more information on the water well industry or for group presentations, please visit our website at www.arkansas.gov/awwcc or call us at 501-682-3900.

This article is provided by J. Randy Young, P.E., Executive Director of Arkansas Natural Resources Commission and Executive Secretary for Arkansas Water Well Construction Commission. All Real Estate licensees are advised to take note of this information.

New Appointment to the Commission



At the January 2014 Business Meeting, the Commissioners elected Ken Gill as Chairman and Allen Trammell as Vice-Chairman for the Arkansas Real Estate Commission.

The Commission is also pleased to announce that Governor Beebe has appointed Monica Kirksey Freeland to a three-year term as one of our two consumer members. Consumer members may not be engaged in or retired from the business of real estate. However, Ms. Freeland brings a considerable amount of valuable knowledge to the table.

Following a nine-year stint in consumer and real estate loan operations with Union Bank and Trust Co. of Monticello, Monica furthered her banking career as a Trust Officer with Merchants and Farmers Bank in Dumas. Monica then turned her attention to the non-profit sector where she served as the Executive Director of the Delta Area Community Foundation, an affiliate of the Arkansas Community Foundation.

Most recently, she served three years as Mayor of Tillar. Following her graduation from Alma High School, Monica earned a B.S. Degree in Agricultural Economics at Oklahoma State University. As her career took her into banking, she completed Lending, Management and Trust training through the Arkansas Bankers Association.

After spending several years in major farming operations, which included being named the 1992 Farm Family of the Year for Drew County, Monica and her husband Thad moved back to Monica's hometown and childhood home in Mulberry in January of this year. She is now employed as the Executive Assistant to the Mayor. Monica and Thad have two children, Allen and Kelsey.

One Simple Tip for Enjoying Your Summer Vacation

By: Andrea Alford, Deputy Executive Director

Summer is here, and with it comes the official opening of the 2015 license renewal season. I'm connected to some of you through social media, and I have loved seeing your pictures of family reunions, beach vacations, and weekend trips to the lake. What a great time for some fun in the sun!

For me personally, one thing that always makes vacation enjoyable is knowing that I haven't left anything unattended at work or at home. But let's just be honest: the nature of the real estate business is that you're never really completely done. There's always paperwork to sign, emails to answer and calls to make. Still, wouldn't it be wonderful if there was something you could do and be completely done with for the year? Well, I've got good news for you – there is!

Online license renewal is the quickest and most secure way of renewing your license for 2015. Verifying that we've received your CE for 2015 can also be done quickly and online. The renewal deadline remains September 30, with a late renewal fee applying to all renewals received after that date. Keep in mind as well that we are in our second year of issuing fines and citations to individuals who practice on expired licenses or fail to comply with annual CE requirements.

Two years ago, Gary asked me to write an article for our July newsletter about the opening of renewal season. It was a Friday afternoon, and I was headed to the lakehouse for a weekend of fun and fishing. I didn't exactly relish the thought of sitting down and writing an article about license renewals. So as I left the office, I promised to search for inspiration over the weekend and submit my article the next Monday.

One speeding ticket, two (now three) newsletter articles and \$135 later, I found my inspiration. And you all have had to hear about it for three years running now. So before you head out on vacation, go ahead and hop online at www.arec.arkansas.gov and renew your license. I bet you'll be glad you did. Now, if you'll excuse me, I've got some fishing to do.

If you happen to need assistance renewing your license or verifying your CE online, call the Commission at 501.683.8010, and a member of the Licensing Department will be more than happy to help you. See Page 8 to view an example of the renewal notice.



FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact and Conclusions of Law and Order issued by the Commission from November 2013 through June 2014.

Respondent: LeCorey D. Smith, Salesperson, Access Realty, Inc., Little Rock, AR, Formal Hearing #3340

Violations: Arkansas Code Annotated §17-42-311(a)(2) & §17-42-311(a)(11); Commission Regulation 10.16(a)

Sanctions: Respondent LeCorey Smith is required to pay a fine of \$500.00.

On April 4, 2011, Respondent Smith voluntarily, intelligently, and knowingly entered a negotiated plea of guilty or nolo contendere for Possession of a Controlled Substance (Marijuana) a Class-A Misdemeanor, Possession of a Controlled Substance (Oxycodone), a Class-A Misdemeanor, and Possession of Drug Paraphernalia a Class-A Misdemeanor, in the Circuit Court of Pulaski County, Arkansas. Respondent Smith failed to report the above guilty pleas to the Commission within thirty (30) days of entering those pleas.

Respondent: Cynthia Rae Clark, Principal Broker (Expired), National Realty, Bentonville, AR, Formal Hearing #3354

Violations: Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(6) & §17-42-311(a)(11); Commission Regulations 8.5(a), 9.2(b), 10.7(b)(3), 10.7(c) & 10.10(a).

Sanctions: Respondent Clark's real estate license is revoked and she is fined \$1,000.00. Furthermore, Respondent Clark is to turn over all of her records, particularly including her trust account records and files, to the Arkansas Real Estate Commission.

Sometime prior to April 30, 2012, Complainant Voss and Respondent Clark entered into a Property Management Agreement on properties located at 2201 and 2203 Roselawn, Bentonville, Arkansas, a copy of which was not provided to Complainant. May 1, 2012, Respondent Clark entered into a Lease Agreement with Tenants Kenny and Bethanis Yang for property located at 2201 Roselawn, Bentonville, Arkansas. A security deposit in the amount of \$500 was furnished to the Respondent by Re/Max, the former property manager.

Sometime prior to June 15, 2012, Respondent Clark entered into a Lease Agreement with Tenant Christina Gonzalez for property located at 2203 Roselawn, Bentonville, Arkansas. A security deposit in the amount of \$650 was collected to be held by Respondent. On or about September 14, 2012, Respondent Clark was notified that Complainant Voss was terminating her property management agreement with National Realty.

On September 17, 2012, Complainant Voss sent a letter to Respondent Clark to inform her of the change in property management firms. Complainant Voss requested the tenants' security deposits be transferred to the new property management company. Respondent Clark did not account for or remit the security deposits for Tenants Yang or Gonzalez.

On or about October 5, 2012, Respondent verbally notified the Arkansas Real Estate Commission she had closed National Realty. Respondent did not provide the Arkansas Real Estate Commission written notice of office closure, nor did Respondent provide written notice regarding the location at which National Realty records would be maintained. The Arkansas Real Estate Commission staff were unable to access records for National Realty. Respondent Clark did not provide a written answer with the Arkansas Real Estate Commission Director within twenty (20) days after service of the complaint.

Respondent: Rexanne Morris, Principal Broker, Leasing Connection, Fayetteville, AR, Formal Hearing #3359

Violations: Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(6) & §17-42-311(a)(11); Commission Regulation 10.7(b)(3)

Sanctions: Respondent Rexanne Morris' real estate license is revoked and she is fined \$750.00 per violation for a total of \$7,500, in addition to another fine of \$1,000.00 for failing to provide the Arkansas Real Estate Commission the documents that were requested.

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FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact and Conclusions of Law and Order issued by the Commission from November 2013 through June 2014.

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Recovery Fund Order: As a result of the above proven violations, the Commission voted that Respondent Rexanne Morris pay Complainant Peggy Lloyd \$2,860.46.

On June 6, 2005, Complainant entered into a property management contract with Respondent Morris at Mansfield Property Management for the duration of one (1) year, expiring on June 6, 2006, on property located at 424 South Church, Fayetteville, Arkansas. Respondent continued to manage property for Complainant for 2006, 2007, and 2008.

On October 27, 2008, Respondent issued a letter to Complainant stating a 30 day notice of termination with Mansfield Property Management, at which time the name would be changed to The Leasing Connection. On November 1, 2008, a property management contract was prepared by Respondent between the Complainant and The Leasing Connection. Complainant received the contract and did not sign the contract but did verbally agree for Respondent to continue to manage the Complainant's property according to the terms of the contract.

On October 26, 2010, Complainant notified Respondent that a direct deposit for July, August, and September rent was unsuccessful. Respondent deposited \$1,308.68 on or about November 10, 2010, to Complainant's account for the July, August, and September rent. Respondent collected rent for October 2010, which was never disbursed to Complainant. Respondent collected rent for November 2010, which was disbursed to Complainant on or about March 22, 2011. Respondent collected rent for December 2010, which was disbursed to Complainant on or about February 20, 2011. On or about February 18, 2011, Respondent entered into a lease agreement for Complainant's property with tenant Halverty. Respondent collected security and pet deposit totaling \$550. Respondent collected rent for February to June 2011, but failed to disburse those funds to Complainant. On or about May 25, 2011, Complainant sent a letter to Respondent terminating the property management agreement. On or about June 10, 2011, Complainant followed up with a phone call to notify Respondent of the termination of the management agreement.

On July 26, 2011, Complainant hired Scott Barton of Management Realty as Complainant's new property manager. Respondent did not forward any rental monies to the new property manager. On or about March 15, 2013, an Investigator with AREC sent a letter to Respondent, requesting all copies of trust account records and documents related to her management of the Complainant's property. Respondent failed to provide all records and documents requested by the Investigator.

Respondent: Jimmy Payne, Principal Broker, All Real Estate, LLC, Fayetteville, AR, Formal Hearing #3361

Violations: Arkansas Code Annotated §17-42-311(a)(6), §17-42-311(a)(11), §17-42-311(a)(13) & §17-42-316(b)(2)(I); Commission Regulations 8.5(a), 10.8(b), 10.8(c) & 10.8(g)(1)

Sanctions: Respondent Payne is required to attend the new sixty (60) hour broker education class. The broker education class must be approved in advance by the Executive Director and cannot count toward the regular continuing education hours. Respondent Payne is also fined \$500.00 for six (6) of the violations, for a total of \$3,000.00.

On February 21, 2011, Respondent listed for sale 1038 Hollywood, Fayetteville, Arkansas. The Property was owned by Wally Properties of Fort Smith, Arkansas, Charles Palmer, Manager. On November 2, 2011, Complainant Humphrey entered into a Real Estate Contract to purchase the property at 1038 Hollywood in Fayetteville, Arkansas. Respondent Payne acted as a dual agent, representing both the Seller and Complainant Humphrey.

On November 4, 2011, Complainant Humphrey wrote a check payable to All Real Estate for the amount of \$5,730 for earnest money. On November 4, 2011, Complainant Humphrey wrote a check payable to Respondent Jimmy Payne, in the amount of \$4,270, for additional earnest money, bringing the total earnest money paid to \$10,000. Respondent Payne cashed the \$4,270 check at Arvest Bank in Fayetteville, Arkansas.

On November 14, 2011, Respondent Payne deposited the \$5,730 check into All Real Estate's operating account. On November 15, 2011, the transaction closed. Respondent Payne provided a cashier's check to Bronson Title on behalf of Complainant Humphrey in the amount of \$9,597.90. The cashier's check was \$402.10 less than the total amount Complainant Humphrey paid to Respondent Payne.

2014 Broker Pre-License and Post License Course Offerings

Academy Real Estate School 236 Wedgeview Dr Farmington, AR 72730 (479)903-6767	Broker Pre-License Course TBA	Broker Post License Course TBA
Arkansas Real Estate School, Inc. 11220 Rodney Parham Rd. Ste. 6 Little Rock, AR 72212 (501) 223-2737	Broker Pre-License Course August 12-13; 19-20; 26-27 October 1-2; 8-9; 15-16	Broker Post License Course August 5-7 November 5-7
Arkansas Real Estate Career Training 101 E Main St Suite A-1 Russellville, AR 72801 479-567-7377	Broker Pre-License Course TBA	Broker Post License Course July 16-19, 2014
Clark Long School of Real Estate 3301 S Walton Blvd Bentonville, AR 72712 (479)268-5500	Broker Pre-License Course TBA	Broker Post License Course July 7-9, 2014
Fort Smith Regional School of Real Estate 4720 Rogers Ave Suite C Fort Smith, AR 72903 (479) 788-5605	Broker Pre-License Course TBA	Broker Post License Course TBA
Lindsey School of Real Estate 1196 E Joyce Blvd Fayetteville, AR 72703 (479)527-8787	Broker Pre-License Course August 11- 27, 2014 MWF	Broker Post License Course TBA
National School of Real Estate 5323 JFK Blvd North Little Rock, AR 72116 (501)753-1633	Broker Pre-License Course July 7-17, 2014	Broker Post License Course July 21-23, 2014
Success Real Estate School–LR 11600 Kanis Road Little Rock, AR 72211 (501)975-0000	Broker Pre-License Course July 7-10 and July 14-17	Broker Post License Course November 2014

New Property Management Regulations Effective July 1, 2014

By: Yvonne Halstead, Investigator

There's been a buzz about the new Property Management Regulations (Commission Regulations 10.18-10.24), which became effective July 1, 2014. These regulations create more detailed recordkeeping and accounting requirements for those brokers who manage residential properties. The new Property Management regulations clearly define the parties involved in a property management transaction and how to document the transaction to create an audit trail.

The new regulations also outline proper procedures for receipting cash as well as property management and accounting recordkeeping requirements, including what documentation must be kept, such as written Property Management and Tenant Agreements and Tenant and Owner Property Management Ledgers. The new regulations provide the specific information which will be required to be included in each of the documents stated above. This will allow records of all deposits to be retained in a manner in which they are traceable from their source and to the owners' and tenants' ledgers, the method and termination of Property Management and Tenant Contracts, and more.

The Arkansas Real Estate Commission has offered free Property Management Workshops at the Real Estate Commission in Little Rock and at locations outside of Little Rock. The three hour workshop covers the new property management regulations and offers a hands-on approach to property management trust account and record keeping. **If you are interested in AREC bringing the Property Management Trust Account and Record Keeping Workshop to your area please contact me at: 501-683-8040, or email me at: yvonne.halstead@arkansas.gov.**

The Unauthorized Practice of Law

By: Timothy W. Grooms, Attorney at Law
Quattlebaum, Grooms, Tull & Burrow

Note: Throughout the years we've had articles published in the newsletter that are timeless and worth repeating. Below is one such article by Attorney Tim Grooms.

There have been several decisions handed down from the Arkansas Supreme Court in recent years which, along with the Arkansas laws and Real Estate Commission Regulations, every real estate professional in the State of Arkansas should become familiar. The three decisions which will be discussed here deal with the subject of the real estate professional and the unauthorized practice of law.

The subject matter which has been captioned "the unauthorized practice of law" deals primarily with the question of when do real estate agents and/or brokers improperly invade the province of lawyers, thus subjecting themselves to being sued for the unlicensed, and thus unauthorized, practice of law? This question is of extreme importance to every real estate professional for two primary reasons.

First, the unauthorized practice of law can subject the agent or broker to lawsuits seeking to enjoin the unlawful conduct. Second, and to this author the most important reason, is that by engaging in the unauthorized practice of law, the agent or broker is no longer judged by the standard of care normally attributable to a member of the real estate profession, but instead is held to the same standard of care as a licensed Arkansas attorney. This is particularly important not only because it may lead to liability being assessed against the agent or broker by a court of law, but also because many errors and omissions policies specifically exempt from coverage those liabilities which are assessed against the insured for engaging in areas of expertise for which they are not licensed, i.e. law, appraisal, accounting, etc. The balance of this section will discuss the decisions of the Arkansas Supreme Court which provide guidance as to exactly what constitutes the unauthorized practice of law by real estate agents and brokers in Arkansas.

The determination of what real estate agents and brokers could do to finalize real estate negotiations and transactions received a very cold shoulder from the Arkansas Supreme Court the first time that question came before it. In *Arkansas Bar Association v. Block*, 230 Ark. 430, 323 S.W.2d 912 (1959), before it reached the question of whether the acts which were challenged in that case actually constituted the practice of law, the Court recognized the vague distinction between whether or not a challenged practice was or was not the unauthorized practice of law and opted for a standard of "we'll know it when we see it." The Court stated that:

Research of authorities by able counsel and by this Court has failed to turn up any clearly comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. 323 S.W.2d at 914.

In *Block*, the Court went on to hold that real estate professionals in Arkansas were absolutely prohibited from completing any forms normally incident to a real estate transaction, except for offers and acceptances.

The questions raised in *Block* were again addressed by the Arkansas Supreme Court in *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963), wherein the Court modified its holding in *Block*, and stated that:

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...a real estate broker, when the person for whom he is acting has declined to employ a lawyer to prepare the necessary instruments and has authorized the real estate broker to do so, may be permitted to fill in the blanks in simple printed standardized real estate forms, which forms must be approved by a lawyer; it being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker's business and that such forms shall be used only in connection with real estate transactions actually handled by such brokers as a broker and then without charge for the simple service of filling in the blanks. 367 S.W.2d at 423.

The Court's decision in *Creekmore* was recently reaffirmed in the decision of *Pope County Bar Association, Inc. v. Suggs*, 274 Ark. 250, 624 S.W.2d 828 (1981). In the *Pope County* decision, the Court's opinion makes it clear that there are some absolute "do's" and "don'ts" for real estate agents and brokers. First, the real estate agent or broker should never charge a fee for preparing the documents incident to the closing of a real estate transaction. Second, the real estate agent or broker should never prepare documents and close transactions unless the actual marketing of the property in question was done by the broker, either solely, or in cooperation with another broker (a "co-op" sale). Third, the broker must be sure that each form used in a transaction has been approved by a licensed Arkansas attorney. Fourth, the broker must never give advice or opinions as to the legal rights of the parties, as to the legal effects of instruments, or as to the validity of title to real estate. Fifth, the pre-approved forms must be used only in connection with "simple real estate transactions which arise in the usual course of the broker's business."

The Supreme Court defines a "simple real estate transaction" as:

...those which involve a direct, present conveyance of a fee simple absolute between parties, which becomes effective immediately upon delivery of the title document. Such transactions do not include conveyances involving reservations or provisions creating life estates, limited or conditional estates, contingent or vested remainders, fee tails, easements or right-of-way grants, or any other conveyance of future, contingent or limited interest.

One example of a common transaction which does not technically meet the Supreme Court's definition of a "simple real estate transaction" is a purchase contract (also known in various parts of the state as an installment sales contract, a conditional sales contract, a land contract, or a contract for deed). In most purchase contracts, there is not a "...present conveyance of a fee simple absolute," thus making it questionable as to whether a real estate broker can handle this type of transaction. However, because this is certainly a common transaction in most parts of the state -- particularly away from the urban areas, it is unclear if the Court meant to prohibit brokers from handling this type of transaction. However, because of the uncertainty, it would be advisable to involve an attorney when handling this type of transaction, or to at least have an attorney approve the real estate broker's methodology in handling this type of transaction.

If other transactions cannot, in their entirety, meet the definition of a "simple real estate transaction" set forth above, then an attorney must be consulted. Furthermore, if only one phase of a transaction is unusual, for example an unusual clause within an Offer and Acceptance, then an attorney must approve the use of the clause. Of course, this approval should be documented by a letter from the approving attorney.

At this point, it should be made clear that the Supreme Court did not find that the authorized transactions set forth above were not the practice of law. Instead, the Court specifically stated that these functions do constitute the practice of law, albeit the authorized practice of law. This is important, as was pointed out by Justice Hickman in the *Pope County* decision:

...realtors should be aware that their negligence in preparing such legal documents may well be examined by applying a standard of care expected of attorneys. They sought and gained the right to practice law. With that convenience goes a heavy responsibility to the public. 624 S.W.2d at 831.

With regard to Justice Hickman's comment, this author encourages every real estate broker and agent to look upon the Judge's "warning" not as something to fear, but as an incentive to strive each and every day for the professionalism which the Supreme Court entrusted to the real estate profession.

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CHECK YOUR MAIL FOR THE 2015 LICENSE RENEWAL NOTICE

Urgent Renewal Notice Urgent Renewal Notice Urgent Renewal Notice Urgent Renewal Notice

RENEW ONLINE

www.arec.arkansas.gov

Renew your real estate license online
by September 30, 2014 to avoid penalty.

To be an active agent for 2015, required CE must be
submitted before December 31, 2014.

RENEW ONLINE TODAY.

www.arec.arkansas.gov

This will be the only notice sent.

Notice sent 7-15-2014. **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 16, 2014.

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

2015 Renewal Fees By 9/30/2014
Broker: \$80.00
Salesperson: \$60.00

2015 Renewal Fees After 9/30/2014
Broker: \$110.00
Salesperson: \$80.00

Online payment methods



Urgent Renewal Notice Urgent Renewal Notice Urgent Renewal Notice Urgent Renewal Notice