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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:
arecllc@arkansas.gov

Web page:
www.arec.arkansas.gov

Members of the Commission

Ken Gill, Chairman
Little Rock

Jim Newell, Vice Chairman
Little Rock

Karen C. Crowson
Benton

Tina Daniel
Searcy

Sylvester L. Smith III
Camden

Commission Staff

Gary C. Isom
Executive Director

Andrea S. Alford
Deputy Executive Director

Debra Randolph
AREC Supervisor, Investigations

ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

From the Desk of the Executive Director...

Broker Price Opinion Law Passed

Arkansas Act 762 passed by the 2011 General Assembly clarifies that real estate licensees can prepare and issue Broker Price Opinions in limited situations. The law, which became effective July 27, 2011, prohibits real estate licensees from preparing Broker Price Opinions to be used primarily to determine the value of a buyer's principal residence for the purpose of the origination of a residential mortgage loan secured by that buyer's principal residence.

The act goes on to state that "A broker's price opinion or market analysis issued by a real estate licensee shall not contain the terms 'market value', 'appraised value', or 'appraisal'."

The Arkansas Real Estate Commission is given the authority to prescribe rules/regulations for the preparation and issuance of a broker's price opinion by real estate licensees. As of the writing of this article, the proposed regulations have been drafted and are planned to be scheduled for public hearing during October. The proposed regulations can be reviewed at the commission's website at: www.arec.arkansas.gov.

The proposed regulations reinforce the provisions of Act 762 by requiring information and a disclaimer with each Broker Price Opinion prepared and issued by a real estate licensee. While the law and regulations allow real estate licensees to respond to those who request Broker Price Opinions, it also makes clear that the Broker Price Opinion should not be used as an appraisal or in those situations where state or federal law requires an appraisal.

As with all real estate activities performed by real estate licensees, Broker Price Opinions must be performed through the Principal Broker (PB) or Designated Executive Broker (DEB) under whom the licensee is licensed and all compensation must flow through that PB or DEB. The proposed regulations address this issue by deeming the preparation of a Broker Price Opinion without the PB's or DEB's knowledge as "independent dealing" as defined in Commission Regulation 10.1.

PBs and DEBs Responsible for Property Management Funds

Increased activity in property management by many residential firms has resulted in greater amounts of cash flowing through these offices. Principal Brokers and Designated Executive Brokers are responsible for those funds and consequently for developing control mechanisms that ensure the safekeeping of those funds. Consider these two cases.

A Principal Broker filed a complaint with AREC because he suspected that a particular licensee/employee had stolen property management funds. The PB had not reconciled the property management trust account for several months. Upon discovering the shortage, the Principal Broker contacted the local law enforcement authority and reported the activity. If the licensee/employee is convicted of theft, then AREC could take action against that licensee/employee; however, the Principal Broker is still responsible for any missing funds that belong to consumers.



Gary C. Isom

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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 July 2011 through September 2011. Formal Hearing Decisions that have been appealed are not listed.



In the Matter of Daniel Scott Nelson, Principal Broker, Williams and Williams Marketing Services, Inc., Tulsa, OK: In Formal Hearing # 3152, the Commission voted that Respondent Daniel Scott Nelson be levied a \$500 fine to be payable to the Arkansas Real Estate Commission. Respondent Nelson is ordered to take an additional six classroom hours in the Arkansas licensure law. Those hours are to be in addition to the regular continuing education credit requirement.

The Commission found Respondent Nelson in violation of Arkansas Code Annotated § 17-42-311(a)(12) and Arkansas Code Annotated § 17-42-311(a)(13).

On or about November 4, 2010, Respondent's firm, Williams and Williams Marketing Services, Inc. of Tulsa, OK, held an auction in Rogers, AR for real estate parcels located in Arkansas. Respondent scheduled an auctioneer to participate in the auction who did not hold an active Arkansas real estate license at the time he called the auction. Further, on or about February 17, 2011, Respondent allowed the same unlicensed auctioneer to participate as a ring man in real estate auctions held in Hot Springs, AR and Little Rock, AR.

In the Matter of Scott Allen, Broker: In Formal Hearing # 3155, the Commission voted that no disciplinary action be levied against Respondent Broker Allen and that he be allowed to continue to hold an Arkansas Real Estate Broker's License.

On or about June 22, 2011, Respondent Allen, when applying to the Commission to re-activate his real estate broker license, disclosed that while an active real estate Broker he pled guilty to one Felony charge.

In the Matter of Lemuel Dwight Turner, Salesperson and Principal Broker, and Keitha Turner, Salesperson and Principal Broker, Village Pro Realty, Inc., Hot Springs Village, AR: In Formal Hearing # 3154, the Commission voted that Respondent Dwight Turner's license be revoked indefinitely. He was fined \$1,000 for each of the eight violations proven, for a total of \$8,000, to be paid to the Arkansas Real Estate Commission.

The Commission found Respondent Dwight Turner in violation of Arkansas Code Annotated § 17-42-311(a)(7), § 17-42-311(a)(11) and § 17-42-311(a)(13), and Commission Regulations 8.5(a), 10.8(b), 7.5(c) and 10.7(c).

By Consent Order, in Formal Hearing # 3104, Respondent Keitha Turner voluntarily agreed to surrender her broker license.

The Commission found Respondent Keitha Turner in violation of Arkansas Code Annotated § 17.42.311(a)(6) and Commission Regulations 8.5(a) and 10.8(b).

Keitha and Dwight Turner, as owners, officers and real estate licensees and brokers of Village Pro Realty, Inc., engaged in a pattern and practice of conduct in violation of the Real Estate License Law or Commission Regulations. Respondents managed or leased properties for 93 complainants. Some properties were rented on a long-term lease while other properties were placed in a nightly rental program. During Respondents' tenures with Village Pro Realty, Inc., each participated in the collection of rental monies, security deposits and monies designated for repairs for properties managed by the firm. Respondents did not account for or remit funds collected and failed to disburse those funds appropriately. Respondents commingled clients' and customers' monies with personal monies and disbursed client and customer monies without authorization. Prior to January 1, 2011, Respondent Dwight Turner closed Village Pro Realty, Inc., without returning all licenses and pocket cards issued to persons associated with Village Pro to the Real Estate Commission, and without notifying the Real Estate Commission of the address and phone number of the place where the records are to be maintained.

As a direct result of the proven violations by Respondent Lemuel Dwight Turner, in Formal Hearing # 3154, and by Respondent Keitha Turner by Consent Order, Formal Hearing # 3104, and the Recovery Fund Hearing held on July 12, 2011, the Commission found Respondents jointly and severally liable and ordered them to pay the Complainants within 30 days of the date of the Order. In the event the Respondents do not pay some or all of the amounts awarded within 30 days, the Complainants may be paid from the Recovery Fund. Since the total amount the Complainants were awarded exceeds the amount of Recovery Fund liability pursuant to Arkansas Code Annotated § 17-42-406(c), which is \$75,000 times two (2) licensees, or \$150,000, each Complainant may be paid a pro rata share of the \$150,000 available.

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AREC Commissioner Crowson Selected President-Elect of ARELLO

Arkansas' own Real Estate Commissioner Karen Crowson has been selected as President-elect of the Association of Real Estate License Law Officials (ARELLO). After serving her term as President-elect, Karen will assume the role of President for the 2012 term. She was installed at ARELLO's annual meeting on October 1 in Baltimore. Karen is the second Arkansan to serve as President of ARELLO, following the 2010 presidency of AREC Executive Director Gary Isom.

Karen has been an AREC Commissioner since 2007, having been re-appointed in 2010. She served as Chairman of the Commission in 2009. Karen has been a licensed sales associate in the Benton-Bryant area since 1987, and has held her broker's license since 1995. During this time, she has served in a variety of local, state, regional and national positions. She is affiliated with Crye-Leike Realtors in Benton, where she is principal broker, and has been chosen Realtor of the Year twice by the Benton/Bryant REALTORS® Association. Karen is active in her community, being involved with the First Baptist Church, Benton Area Chamber of Commerce, Habitat for Humanity and Saline Homebuilders Association.



Karen Crowson

Commission Identifies Continuing Education Topics for 2012

The AREC Commissioners identified the 2012 Continuing Education (CE) topics at the August AREC Business Meeting. The topics are:

Required One-Hour Topic:

AREC Legislation Passed During the 2011 Legislative Session

Topics Highly Recommended by the Real Estate Commission:

1. *License Law and Commission Regulations*
2. *Agent and Broker Responsibility (Includes Post-Licensure Course Module IV)*
3. *Regulatory Compliance with Trust Account Record Keeping and Transaction File Maintenance (Includes Post-Licensure Course Modules III and V)*
4. *Real Estate Policies and Procedures (Includes Post-Licensure Course Module V)*
5. *Real Estate Contracts and Forms (Includes Post-Licensure Course Module II)*
6. *Agency and Disclosure (Includes Post-Licensure Course Module I)*
7. *AREC Formal Hearing Procedures, Commission Decisions, and Reasons for Complaints Being Filed*
8. *Closing Methods and Practice (Includes Post-Licensure Course Module III)*
9. *Ethics and Professionalism in Real Estate*
10. *Real Estate Law (i.e., Antitrust, Misrepresentation, Megan's Law, etc.)*
11. *Fair Housing*

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12. *Property Management and Landlord - Tenant Relationships*
13. *Environmental and Hazardous Substances Issues (e.g., Lead-based Paint Disclosure and Mold - Federal Requirements)*
14. *Short Sales*

Other Acceptable Topics:

15. *Applied Construction and Land Use*
16. *Appraisal / Establishing Marketing Value Range*
17. *Commercial, Industrial and Investment Real Estate*
18. *Farm - Rural Property*
19. *Finance (mortgage fraud, mortgage programs FHA / VA, HUD, FmHA, Conventional, etc.)*
20. *Real Estate Tax Issues*
21. *Buyer Representation*
22. *Real Estate Auctions*
23. *Home Inspections With Emphasis on Inspection and Repair Clauses in Real Estate Contracts*
24. *New Technology Including Usage of Computers in Real Estate Activity*

These Topics Cannot Exceed Two Classroom-Hours of Content:

25. *Real Estate Court Decisions*
26. *Researching County and City Records and Requirements Regarding Real Estate (Practical information about local ordinances, zoning and property records)*
27. *Security Issues - Protection of Clients' Property*
28. *Real Estate Advertising Through Interactive Media*

NOTE: All Topics Must Be Real Estate-Related.

In the Matter of Jude T. Smith, Principal Broker, SHARPMLS.COM, New Orleans, LA: By Consent Order, in Formal Hearing # 3157, the Commission voted that Respondent Principal Broker Smith shall receive a Letter of Reprimand to be placed in his license file for one year and pay a \$250 penalty to the Arkansas Real Estate Commission.

The Commission found Respondent Smith in violation of Arkansas Code Annotated § 17-42-311(a)(13).

Respondent Smith, as Principal Broker, advertised himself as a broker in Arkansas without an active Arkansas broker license from January 1, 2011 until May 4, 2011.

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Don't Ring in the New Year with an Expired License

Please remember that any license not renewed by December 31, 2011 will be expired for 2012. Online renewal is quick, easy and secure. Simply go to www.arec.arkansas.gov, click on the home page renewal banner (you can't miss it), follow the step-by-step instructions, and voila! Your license is renewed. If the process seems a little daunting, AREC offers free technical support. Just call us at 501-683-8010 and ask for online renewal assistance. You can even visit the Commission and we'll walk you through renewal on one of our own computers!

Remember: an expired license that was active at the end of 2011 cannot be renewed online. So do yourself a favor. Renew online and renew on time.

Educators to Gather for Annual Retreat

Plans for the 2nd annual Arkansas Real Estate Educators Retreat are in full swing. In late October, education providers from across the state will gather at DeGray Lake Resort State Park for two days of learning, collaborating and looking ahead. We'll cover a variety of topics, including the 2012 ARA Forms and recent legislative and regulatory changes. We'll also take a look at ways we can greet challenges presented by the ever-evolving practice of real estate through education and regulation.

- Andrea Alford, Deputy Executive Director

Principal, Designated Executive Brokers Responsible for Property Management Funds

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In a second situation, a Principal Broker filed a complaint because she suspected that a licensee/employee of the firm had stolen rental monies paid by cash. This PB had also contacted local law enforcement. The PB suspected that the licensee/employee had stolen cash from a desk drawer. The problem however, was that several other persons had access to that money which weakened the case. Again, the PB is responsible for those funds. The Principal Broker should not have allowed several people in the office to have access to a cash drawer where consumer funds were held until deposited.

Cash funds can be a problem. AREC has a sign posted at the front desk that instructs anyone who pays cash to request a written receipt for those funds. Real estate firms may want to consider posting such a notice.