



ARKANSAS REAL ESTATE COMMISSION

N E W S L E T T E R

July 2006

Arkansas Real Estate Commission
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Members of the Commission

Doug Smith, Chairman
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Roy Rainey, Vice-Chairman
Little Rock

Cliff Goodin
Russellville

Col. Jimmie A. Creech
Pocahontas

Sylvester L. Smith III
North Little Rock

Commission Staff

Bill J. Williamson
Executive Director

Gary C. Isom
Deputy Executive Director

New Commissioner Appointed

Colonel Jimmie A. Creech of Pocahontas was recently appointed by Arkansas Governor Mike Huckabee to complete the unexpired term of Ina Martin-Mobbs until December 31, 2006. Colonel Creech is a retired U.S. Marine Corps Colonel with academic and professional expertise in the fields of electrical engineering, finance and management, and agriculture. His full military career spanned 28 years and included three tours in Vietnam between 1961 and 1966. A native of Kentucky, Creech and his wife Sharleen decided on Randolph County for retirement. The couple resides in Pocahontas, and owns a commercial cattle ranch.



Col. Jimmie A. Creech

Colonel Creech received a BS degree in Electrical Engineering from The Citadel in 1959, and an MS degree in Financial and Material Management at the U. S. Navy Post-Graduate School in Monterrey, California in 1971. His military tenure included a stint at the command of a Marine Attack Helicopter Squadron, combat experience with the AH-1 and CH-46, service as Operations Officer of a 107-plane Marine Air Group, and assignment as a fighter pilot flying the F-8.

His experiences in the military also involved extensive fund management responsibilities. After making full colonel, Creech on one occasion served as Program Manager negotiating a contract of \$2.5 billion, making him responsible for spending and oversight of roughly one-third of aviation's Research and Development budget.

In addition to his academic degrees, Creech did graduate work in Aerodynamics at the U.S. Navy Test Pilot School, and attended the Industrial College of the Armed Forces, the Program Management Course of the Defense Systems Management College, and the USMC Command and Staff College. His work in consulting has also required that he stay current and continue to learn, particularly in the field of technology.

Colonel Creech is a former member of the Arkansas Rural Development Commission, Black River Technical College Board of Trustees and the Arkansas Higher Education Coordinating Board.

Thank you Commissioner Martin

Commissioner Ina Martin-Mobbs of Russellville recently resigned because of health issues. Commissioner Martin served on the Commission from January 16, 1998 to June 14, 2006 and represented the elderly. We will miss Ina and thank her for her contributions to the Commission and Industry.

Arkansas State Residential Licensing Law

By Howard Williams, Administrator of the Contractors Licensing Board

In 1999 during the Legislative session Act 950 known as the Arkansas State Residential Licensing Law was passed and set in place by the appointment of committee members the first of October 1999. The next few months developed the rules and regulations and the operating process for the Residential Licensing Law.

The grandfathering period started July 1, 2000 and ran until July 1, 2001. The original statute had a three home exemption, which allowed an individual to build three homes in a calendar year without being required to have a contractor's license. However, during the Legislative session of 2003 that three home exemption was deleted from the act and effective mid-August of 2003 there has no longer been a three home exemption.

Any contractor who builds a home for the public, a custom home for an individual, or any home that they are building, unless it is their personal residence, needs a contractor's license. An individual can build their personal residence limited to one per calendar year without a contractor's license. One of the problems that we find is an individual will go to the permitting authority and indicate that they are building a home for their personal residence, pull a permit, start the building, and put a for sale sign out front. Once a for sale sign offering that home to the public is established then that residential exemption is null and void.

I hope this brief explanation is beneficial to the market. For further information, the Contractors Licensing Board may be contacted by phone at (501) 372-4661 or by going to our website at www.state.ar.us/clb. All written documentation is available on our website.

**FROM THE DESK OF
THE EXECUTIVE DIRECTOR...**

Commission Interpretation

At a recent Commission meeting the Commission reviewed Arkansas Code Annotated § 17-42-311 (a)(8) and Regulation 8.3(b) in response to a question from a Principal Broker regarding payment of commissions. The Principal Broker asked if part of the commission paid at closing could be paid directly to a licensee by the closing company, rather than to the Principal Broker or firm, if instructed to do so by the Principal Broker.

Arkansas Code Annotated § 17-42-311. Violations, lists acts, conduct, or practices that are prohibited and any licensee found guilty shall be subject to disciplinary action. Paragraph (a)(8) of this section states in part, "...accepting a commission or valuable consideration for the performance of any of the acts specified in this chapter from any person except the licensed principal broker under whom he or she is licensed."

Commission Regulation 8.3(b), states in part, "...a licensee shall not accept a commission, rebate, profit, payment, compensation or other valuable consideration in connection with a real estate transaction or real estate activity from any person or entity except the licensed principal broker under whom the licensee is licensed."

Based on the above section of the license law and regulation the Commission's interpretation of the law and regulation requires that any commission paid to a licensee be paid by the Principal Broker, not by a third party closing company. So at closing the commission check should be paid to the Principal Broker's firm and then the Principal Broker or firm would disburse the part of the commission due the licensee.

License Law and Commission Regulation Review

The Commission is reviewing the Real Estate License Law and Commission Regulations for update, rewrite and cleanup. If you have any suggested changes or revision you would like the Commission to consider please send your written suggestions to the Commission.

License Renewal

Renewal Deadline 9/30/06

It's time to start thinking about renewing your license for 2007. By the time you receive this newsletter you may have already received License renewal information. This year all renewal fees that are mailed in must be paid by Cashier's Check or Money Order. No cash, company checks, or personal checks will be accepted. To speed up the renewal process you may want to try renewing online by using a credit card at AREC's website: www.arkansas.gov/arec

Renewals are due by 9/30/2006. Any renewal postmarked or received after 9/30/2006 will result in a late fee payment before your license can be renewed. If you want an active license issued for 2007 make sure you complete 6 hours of CE by 9/30/2006. If you do not provide CE by 9/30/2006 with your renewal, your 2007 license will be renewed as inactive. To activate a 2007 license renewed as inactive, you must provide proof of completing 6 hours of CE and pay a \$30 fee to activate the license. If you have any questions about renewing your license, call Sandria Smith in the license department at 501-683-8017 or email Sandria at sandria.smith@arkansas.gov.

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 February 2006 through June 2006. Formal Hearing Decisions that have been appealed are not listed.

Douglas S. Brasel, Broker, Jasper, AR: By Consent Order, Formal Hearing # 3011 the Commission ordered that "...Respondent Douglas Brasel's broker license be, and it is hereby, revoked effective immediately, and that Respondent hereafter shall never apply for or be granted a real estate license." That "...Respondent Brasel shall pay a monetary penalty of one thousand dollars (\$1,000) to the Commission to be received within thirty (30) days from the Date of this Consent Order." (2/13/2006)

Elmer Watkins, Broker, Jonesboro, AR: In Recovery Fund Hearing # 3010 pursuant to Arkansas Code Annotated § 17-42-401 et seq., the Commission ordered that, "... Complainant is awarded \$10,000 from the Recovery Fund."



Earl Dye, Jr., Broker and Rebecca A. Cooper, Salesperson, Eureka Springs, AR: In Formal Hearing # 3013 the Commission ordered that "...Respondent Cooper and Respondent Dye will be issued a letter of reprimand to be placed in their license files, and secondly, Respondent Cooper and Respondent Dye are both ordered to attend a six (6) hour Contract Modular II Salesperson Post-Licensing course, to be completed within six (6) months of issuance of this Order, and that said course will not be eligible for scholarship funds."

The Commission found Respondent Earl Dye, Jr. guilty of violating Commission Regulation 10.4(b) and Respondent Rebecca A. Cooper guilty of violating Arkansas Code Annotated § 17-42-311(a)(13) (Repl. 2001).

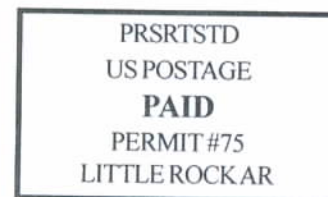
Knowing that the roof of the home that Complainant was considering purchasing had leaked & had been repaired subsequent to the sellers' execution of the Owner Property Disclosure, Respondent Cooper delivered an Owner Property Disclosure form to Complainant with a negative answer to the question, "*Has there ever been a problem with the roof of any of the improvements on the property, such as*

defective shingles, damaged shingles, leaking or otherwise, or have you become aware of possible problems with the roof of any of the improvements on the property that may occur in the future?"

Respondent Cooper failed to disclose the roof leak and repairs to Complainant.

Principal Broker Respondent Dye did not exercise strict supervision of Respondent Cooper's real estate activities. After learning of the leak and resulting repairs to the seller's property, Respondent Principal Broker Dye did not cause Respondent Cooper to have the seller's update their Owner Property Disclosure form or to otherwise disclose the above described roof leak and interior repairs to Complainant; Respondent Dye did not review that disclosure form that Respondent provided to Complainant to determine whether it had been updated by the seller to disclose that the roof had leaked.

A Recovery Fund Hearing was held pursuant to Arkansas Code Annotated § 17-42-401 et seq. The Commission ordered Respondents Dye and Cooper to pay Complainant \$2,645.50 within thirty (30) days of the issuance of the Order.



Inside This Issue
Newsletter July 2006

New Commissioner 1
Thank You Ina Martin-Mobbs.....1
AR Residential Licensing Law by
Howard Williams, Contractor Licensing
Board.....1-2
Executive Director Comments.....2
Formal Hearing Decisions.....3
Tax Rules.....4

**TAX RULES for Foreign Investors
in U.S. Real Property**

(This Article was provided by IRS to assist real estate licensees who deal with foreign investors)

U.S. realtors and rental agents/property managers are encountering an increasing number of situations that involve foreign persons, defined as persons other than U.S. persons, acquiring U.S. real property. The tax rules governing disposition of any U.S. real property interest by foreign persons vary in many ways from those that apply to U.S. persons. Understanding the tax laws is critical for real estate professionals to avoid personal liability for improper U.S. federal income tax compliance.

The disposition of a U.S. real property interest by a foreign person (transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States for the first time to tax foreign persons on disposition of U.S. Real Property Interests (USRPI).

A USRPI includes any sale of an interest in parcels of real property, as well as sale of any shares in certain U.S. corporations that are considered U.S. real property holding corporations. Any purchaser (transferee) of a USRPI from a transferor must withhold ten percent (10%) of the amount realized and remit such amount to the IRS within 20 days of the date of transfer, using **Form 8288** (PDF), and **Form 8288-A** (PDF).

The transferee of the property must determine if the transferor is a foreign person. If the transferor is a foreign person and withholding does not take place in accordance with the law, the transferee and the agent may be held liable for the tax.

There are exemptions to the withholding requirements of Internal Revenue Code section 1445. One of the most common exemptions to FIRPTA withholding is that the transferee does not have to withhold in a situation where the real property is purchased for use as a residence and the purchase price is not more than \$300,000. A listing of the exemptions from FIRPTA withholding is in IRS **Publication 515** **Withholding of Tax on Nonresident Aliens and Foreign Entities**, and at IRS.gov, using "FIRPTA" as a key search word.

In certain situations, such as when the tax due on the transferor's gain from the sale is less than the withholding, the foreign transferor (or the transferee) can request from the IRS a reduction or elimination of withholding. The **FIRPTA Withholding** section on IRS.gov has more information about reducing the withholding rate.

Withholding on Rental Income paid to a Foreign Person: If a foreign person owns U.S. rental property and receives rental/investment income not connected with a U.S. business, the renter must withhold a flat rate of 30% (without deductions) of the rents, unless a tax treaty provides a lower rate or an exemption. Here are some basic rules regarding withholding on rent:

- IRC section 1441 provides for the withholding of tax paid by a withholding agent to a nonresident alien on various items of income, including rental income. The person paying rent, as well as the real property manager who collects rent on behalf of a foreign owner, are considered withholding agents.
- The person making payment of U.S. source rents to a foreign person must withhold 30% unless the foreign person claims reduced withholding based on a tax treaty (W-8BEN) or makes an irrevocable election with the IRS to treat the income as effectively connected to a U.S. trade or business (W-8EIC).
- Withholding agents must use Form 1042 and 1042S to report the tax withheld.
- The requirement to withhold 30% extends to the manager of the rental property if the tenant has not met the 30% withholding. Property managers who do not comply with these rules will be held liable for 30% of gross rent, plus penalties and interest.

For more information go to: www.irs.gov