



JULY 2000

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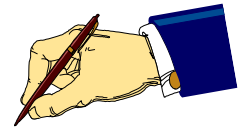
ARKANSAS

Real Estate Commission

N E W S L E T T E R

From the Desk of ...

The Executive Director



OUT of STATE Referral Fees

The last issue of the AREC Newsletter included a short article about Referral Fees, which prompted a number of questions. The majority of the questions concerned whether payment of referral fees to out of state brokers or referral firms not licensed in Arkansas is legal. The answer is "yes" provided no real estate activity as defined in Arkansas Code Ann. §17-42-103 (12) is performed in Arkansas by the out of state broker/firm. Payment can be made to a broker not licensed in Arkansas as long as the out of state broker does not perform any real estate activities in Arkansas. If the out of state broker only refers a customer or client to an Arkansas broker and the licensed Arkansas broker or salesperson handles the transaction in Arkansas, a fee can be paid to the out of state broker. If an out of state broker, licensee, or individual performs any real estate activity in Arkansas, an Arkansas real estate license would be required to

receive any portion of the fee.

PROPERTY MANAGEMENT Supervision

Many real estate firms are also in the property management business. We sometimes see situations where the Principal Broker delegates that responsibility to other licensees. We see situations where the Principal Broker does not want to assume the responsibility of managing property and allows a licensee in the firm to manage property independent of the Principal Broker. Property management transactions, like general brokerage transactions, must be conducted through the Principal Broker under his or her supervision. Licensees with a firm cannot manage property independent of the Principal Broker. All advertising for rent or lease must be done in the name in which the Principal Broker's license has been issued. All brokerage or property management business must be conducted under the supervision of the Principal Broker and in the name in which he or she is

licensed. Rents and security deposits belonging to others must be deposited into the Principal Broker's trust account. Rental transaction records are to be maintained by the Principal Broker and include the property management agreement, leases, monthly statements, receipts, and other documents necessary to make a complete record of each transaction. To summarize, if a firm manages one unit or 100 units for a client, it must be under the supervision of and responsibility of the Principal Broker.

REGULATIONS AMENDED

The Commission has adopted amendments to the following Regulations, which will be effective August 1, 2000.

Regulation 3.1 Fees. This Regulation was amended to increase the license fee for brokers and salespersons to the maximum authorized by ACA §17-42-304. Effective August 1, 2000 license fees will be \$70.00 for brokers

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and \$50.00 for salespersons.

Regulation 9.5 Hearings. This Regulation was amended to clarify the method that notice about a Hearing is served on a licensee.

Regulation 10.2 Expiration Date for Agency Agreements or Contracts. This Regulation was amended to recognize that licensees represent both buyers and sellers in agency agreements or contracts and that a specific deter-

minable or a specific expiration date shall be on all written agency agreements or contracts.

Regulation 10.10 Agreements to be Written. This Regulation was amended to recognize that licensees represent both buyers and sellers in agency agreements or contracts and strongly recommends that both listing and buyer representation agreements or

contracts be in writing.

Regulation 10.13 Listing Agreements; Agency Representation Agreements; Signs. This Regulation was amended to recognize that licensees represent both buyers and sellers in agency agreements or contracts and also to require licensees to advise clients to consult an attorney before entering into more than one agency representation agreement about the risk of being liable for two separate commissions.

FORMAL Hearing DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order which were issued for Hearings conducted by the Commission from December 1999 through April 2000.

Maryl's C. Turnage, Principal Broker, and Charles L. Turnage, Salesperson, Lake Village: In Formal Hearing #1985 by Consent Order the Commission ordered that "Respondents Turnage be and hereby are placed on probation for a period of one year from the date of this Order (12-14-99). The conditions of probation are that the Respondents shall comply with the Real Estate License Law, Arkansas Code Ann. §17-42-101 et seq. (Repl. 1995) and Commission Regulations. It is further ordered that the Respondents shall complete the thirty (30) hour Basic Broker Course by actual classroom attendance and provide documentation of same within one hundred and eighty (180) days of the date of this Order. Said course shall be in addition to the regularly required six (6) hours of Continuing Education required by Arkansas Code Ann. §17-42-501(a)(1)(B) (Repl. 1995)..."

The Commission found Marlys Turnage guilty of violating Regulations 8.1(a),

8.5(a), 10.4(b), 10.7(b)(2), 10.8(d) & (f), 10.9(d), and 10.12(b).

Ms. Turnage, as Principal Broker, did not exercise strict supervision of the real estate activities of Charles Turnage and did not protect and promote the interests of her clients, to wit: a) The real estate contract did not contain terms regarding the Buyer's financing of the property; b) Said contract contained inconsistent terms: a closing date of approximately 8-20-97 and a notation that permitted the Buyer up to a year after the 6-19-97 contract date to obtain financing; c) The real estate contract or any other document did not set forth the terms of the parties' agreement for the buyer to rent the premises prior to closing, including without limitation, the amount of rent, any security deposit, use of the premises, or consideration to the Respondents in regard to the rental of the premises; d) Charles Turnage, without written authorization, disbursed \$100.00 for the firm's commission from the rent deposited in the trust account; he also disbursed \$1,000.00 of the Buyer's earnest money to the Sellers contrary to the terms of the real estate contract and without other written authorization; and e) The Turnages did not have the Buyer apply for financing within 10 days of the date of their contract as provided therein.

The contract for a transaction did not contain the signature of the selling broker or the name of the listing broker.

In this transaction, after Mr. Turnage made a partial disbursement of the earnest

money to which the parties had not agreed in writing, Mrs. Turnage made no attempt to notify the Buyer in writing of the disbursement.

The trust account information on file with the Arkansas Real Estate Commission was not current; there were excess broker's funds in the two trust accounts maintained by Turnage Real Estate; there were no written agency disclosures for two property management files; and there was not a copy of a contract signed by all parties or a written agency representation disclosure in a transaction file.

The Commission found Charles Turnage guilty of violating Arkansas Code Ann. §17-42-311(a)(13) (Repl. 1995), and Regulations 8.5(a) and 10.10(a).

Mr. Turnage did not reduce all agreements to writing. The Buyer was to rent the premises prior to closing, but Mr. Turnage did not have the parties complete any written agreement concerning the terms of said rental, including without limitation, the amount of rent, any security deposit, use of the premises regarding Buyer's dogs, or consideration to be paid to the Turnages in connection with the rental of the premises.

Mr. Turnage did not protect and promote the interests of his clients: a) He did not include in the contract the type or terms of financing the buyer was going to obtain; b) He failed to have the parties reduce to writing their agreement regarding the Buyer's rental of the premises prior to closing; c) He did not make any effort to have the parties extend the closing date in

Formal Hearing Decisions - Continued

writing before the contract expired; and d) He did not have the Buyer apply for financing within 10 days as required by the contract.

Charles Turnage wrote Principal Broker Marlys Turnage's name on a contract as selling supervising broker. Said actions are conduct which constitutes improper dealings.

A Recovery Fund Hearing was held. Pursuant to Arkansas Code Ann. §17-42-401 et seq., the Commission ordered Maryls and Charles Turnage to pay damages of \$2,187.50 to the Complainant.

Donald F. Horton, Jr., Principal Broker, Marshall: In Formal Hearing #1992 the Commissioners ordered "...that Respondent Horton's license be revoked, effective immediately, and that a fine in the amount of \$5,000.00 be imposed."

The Commission found Mr. Horton guilty of violating Arkansas Code Ann. §17-42-311(a)(4), (5), (6), (9) and (11) (Repl. 1995), and Regulations 7.5(c), 7.6(b), 9.2(b), 10.4(d)(2) and 10.7(c).

Mr. Horton conducted a transaction after his real estate broker's license had expired.

He did not account for or remit to the Complainants the proceeds from the sale of the Complainants' property.

He failed and refused to conduct the real estate closing of the Complainants' property properly and in accordance with the agreement of the buyer and seller. He did not file the warranty deed or secure the title insurance.

Mr. Horton accepted down payment and escrow fees from another Complainant but failed to account for or remit those funds to the Complainant after the transaction did not close.

He made false promises to the Complainant that the transaction would close in order to induce the Complainant to pay him funds for the down payment and escrow fees.

Mr. Horton made a substantial misrepresentation to the Complainant that the Sellers had accepted his offer to purchase the Sellers' property and presented the Complainant with a copy of a Real Estate Contract (Unimproved Property) purportedly signed by the Sellers when Mr. Horton knew or should have known the Sellers had not accepted the Complainant's offer or signed said document.

Mr. Horton did not file an Answer to either complaint.

He failed and refused to notify the Arkansas Real Estate Commission that he had closed the office of Tri-Lakes Real Estate or where the company records are stored.

Mr. Horton closed his office but did not return all the licenses and pocket cards of those persons licensed with him or remove the company sign.

He did not keep the Arkansas Real Estate Commission notified of his current address.

A Recovery Fund Hearing was held. Pursuant to Arkansas Code Ann. §17-42-401 et seq., the Commission ordered Mr. Horton to pay two Complainants damages in the amounts of \$3,500.00 and \$816.50 for a total award of \$4,316.50.

Lois Carter, Principal Broker, West Memphis: In Formal Hearing #1983 the Commissioners ordered that "...Respondent Carter take a 30-hour broker's course approved in advance by the Executive Director of the Arkansas Real Estate Commission without assistance from scholarship. Said course to be completed within 120 days from receipt of this Order. This is in addition to the normal continuing education requirements. A letter of reprimand shall be placed in Respondent Carter's license file. The Commission imposes a fine in the amount of \$2,000.00 to be paid on or before 30 days from receipt of this Order."

The Commission found Ms. Carter guilty of violating Arkansas Code Ann. §17-42-311(a)(7) (Repl. 1995) and Regulations 8.3(a), 8.5(a) and 10.10(a).

Ms. Carter committed acts involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness. She allowed the Complainants to close on the purchase of her mother's property, which purchase was conditioned upon the closing of Complainants' property, and did not first disclose to the Complainants that a Buyer's application to assume the Complainants' mortgage on their property had been denied, or that the Buyers had rescinded their offer to purchase Complainants' property.

She failed and refused to promote the interests of her clients, the Complainants, as follows: 1) She knew that the Buyer was a licensed real estate agent but took no steps to disclose this fact in writing before Complainants entered into a contract to sell their property to the Buyer; and 2) She failed and refused to disclose to Complainants that the seller of property was her mother.

Ms. Carter did not have the Buyer sign as accepting the counter offer in the Complainants to Buyer transaction. The Complainants took possession of the property approximately five weeks before closing. Ms. Carter did not prepare any writing setting out the terms of their possession of the property before closing or complete a loan assumption agreement.

Ms. Carter acted as a dual agent in the sale of property without the prior written permission of the Complainants, the sellers. Therefore, Respondent Carter violated Commission Regulation 8.3(a).

Penny J. Whitson, Salesperson, Mountain Home: In Formal Hearing #1993 the Commissioners ordered "...that Respondent Whitson's license be revoked immediately."



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Formal Hearing Decisions - Continued

The Commission found Ms. Whitson guilty of violating Arkansas Code Ann. §17-42-311(a)(3) & (11) (Repl. 1995) and Regulation 10.16(a).

Ms. Whitson did not make a written report of her guilty pleas within thirty (30) days after her convictions.

Franklin D. Cox, Principal Broker, Eureka Springs: In Formal Hearing #1994 the Commissioners ordered "...that Respondent Cox's license be immediately revoked."

The Commission found Mr. Cox guilty of violating Arkansas Code Ann. §17-42-

311(a)(3) & (11) (Repl. 1995) and Regulation 10.16(a).

Mr. Cox pled guilty to and was convicted of violating 21 U.S.C. § 843(b), a crime that involves moral turpitude. His conviction as described violates the terms of the Commission's Order in Formal Hearing # 1944 and is grounds for the imposition of the balance of the one-year suspension ordered in that proceeding.

Mr. Cox failed and refused to report to the Arkansas Real Estate Commission his March 24, 1998 conviction described above.

Donald Dunn, Salesperson, Hot Springs:

In Formal Hearing #1995 the Commissioners ordered "...that Respondent Dunn's license is revoked immediately, and he is fined \$1,000.00, to be paid within sixty (60) days from the date of this hearing (2-10-00)."

The Commission found Mr. Dunn guilty of violating Arkansas Code Ann. §17-42-311(a)(13) (Repl. 1995).

Mr. Dunn solicited an advance fee of \$395.00 from the Complainant but failed to return or notify his Principal Broker to return the advance fee to the Complainant after a written contract was not received.

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AREC Staff Changes!

Jimmie Benning McDonald, AREC's Accountant for 17 years, retired in March. She is planning to travel and enjoy herself. Thanks for the years, Jimmie!

Judy Watson has joined us as AREC's new Accountant. Judy comes to us after 12 years with Parks and Tourism. Welcome, Judy!

