



ARKANSAS

Real Estate Commission

N E W S L E T T E R

MARCH 2001

Arkansas Real Estate Commission
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Members of the Commission

Mary Bassett, Chairman
Fayetteville

Tom D. Baxley, Vice Chairman
Benton

P. Q. Gardner
Monticello

Ina Martin
Russellville

Virgil L. Miller, Jr.
Little Rock

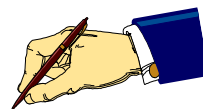
Commission Staff

Bill J. Williamson
Executive Director

Gary C. Isom
Deputy Executive Director

From the Desk of ...

The Executive Director



New Commissioner Appointed

P. Q. Gardner of Monticello was appointed by Governor Huckabee to serve a three-year term on the Arkansas Real Estate Commission beginning January 2001. He has lived and worked in Drew County all his life, except for a time during World War II when he served as a radio operator/aerial gunner, flying in a B26 bomber.

He is a member of the First Baptist Church in Monticello as well as the Veterans of Foreign Wars and the American Legion, where he serves as Commander of the local post.

He is also active in many other civic and fraternal organizations. He presently serves as chairman of the Drew Memorial Hospital Board and the Drew County Board of Election Commissioners. He is a 32nd Degree Mason, a member of Eureka Lodge #40 and the Order of the Eastern Star Chapter #374. He has served on the Monticello City Council and the Drew County Quorum Court.

Gardner attended Drew Central Schools, received his Bachelors Degree from Arkansas A&M (now the University of Arkansas at Monticello), and his Masters in Education Degree from the University of Mississippi.

Working in the field of public education, Gardner has served as a teacher, principal, and superintendent of schools.

Gardner has been a Real Estate Broker for over 40 years. He is a charter member and has served as President of the Southeast Arkansas Board of Realtors Association and recognized as their Realtor of the Year twice. He has a broad background in the business world, having purchased, operated, and sold a number of different types of businesses in Southeast Arkansas. When Gardner received notification of his appointment to the Arkansas Real Estate Commission he commented "This appointment is a highlight of my real estate career, and puts the icing on the cake. I am sure I can work with the Director and other



P. Q. Gardner

Commissioners to help make Arkansas a better business community."

He stated he was grateful to his family, friends and associates for their kindness toward him and supporting him throughout the years.

New Chairman and Vice Chairman

The Commission at its January 2001 meeting elected **Mary Bassett**, Co-owner and Executive Broker of Dykes Bassett Mix and Associates in Fayetteville as Chairman, and **Tom D. Baxley**, Co-owner and Principal Broker of Phillips Moudy Duke in Benton as Vice Chairman.

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From the Executive Director (Continued)

Legislation

Last year went by very fast and 2001 is speeding up. What will 2001 bring?

The Arkansas Legislature is currently in session. The Commission will support the following legislation that has been or will be introduced.

1. POST LICENSE EDUCATION. The proposed legislation if passed would require new salespersons or brokers to complete post license education within 12 months of the first issuance of the license, and if not completed the license would become Inactive. The post license requirement would not exceed 30 classroom hours. If this passes Regulations will be drafted which will outline the specific requirements.

2. OWNERSHIP OF A REAL ESTATE FIRM. Clarification that a person or other legal entity may own a real estate firm and may enter into real estate contracts in the name of the firm provided the real estate activity is performed by a Principal Broker or licensee employed by or associated with that Broker. This would also provide for the temporary operation of a real estate firm by an individual approved by AREC in the event of death, resignation, termination, or incapacity of the Principal Broker, or the closing of a real estate firm.

3. LICENSE FEES. The statute that sets the maximum the Commission can charge for license fees will be amended to authorize a future increase in license fees by \$10.00 if necessary. Current license fees are at the maximum authorized.

THE SCHOLARSHIP PROGRAM IS A HIT!

The 1,400 Scholarships available were applied for by mid-January and we have a lengthy waiting list. The Commission will fund another Scholarship Program for courses completed after July 1, 2001. This will offer continued opportunities for licensees to complete the Salesperson Course and Basic Broker Course in six-hour modules for which you can receive Continuing Education credit for an upcoming license renewal.

The Scholarship program allows you to complete the courses in six hour modules and receive reimbursement for the cost of the course, up to a maximum of \$35.00.

If your name has been placed on the waiting list, you will automatically be "first in line" for Scholarships that become available.

You will receive additional information about this prior to July 2001.

Advance Fees are Trust Account Funds

As you know by now, more real estate companies are beginning to collect advance fees in the form of flat listing fees or a menu of service fees.

Because of this trend, brokers and salespersons should review Commission Regulations 10.7(a)(2) and (3) which state as follows:

(2) A broker shall deposit all advance fees in the broker's trust account and shall disburse such funds only in accordance with the terms of a written agreement signed by the owner of the funds. If such written

agreement is not received within a reasonable time after payment of the advance fee, the fee shall be refunded to the owner.



(3) "Advance fee" means any fee charged for services to be paid in advance of the rendering of such services, including, without limitation, any fee charged for

listing, advertising, or offering for sale or lease any real property.

Therefore, when collecting advance fees, those monies should be deposited into the broker's trust account and disbursed according to the terms of a written agreement signed by the owner of the funds.

If you have any questions regarding the applicability of this regulation, please feel free to call or email the Commission.

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 August through December 2000. Formal Hearing Decisions that have been appealed are not listed.

Paul K. Amponsah, Principal Broker, Little Rock: In Formal Hearing #2005 the Commissioners ordered that "...Respondent Paul K. Amponsah's license be suspended for six (6) months, beginning September 1, 2000. Respondent Amponsah is required to complete a broker's course, approved in advance by the Executive Director of the Arkansas Real Estate Commission prior to the end of the suspension. The course is to be taken without any educational scholarship and it will not count toward continuing education credit. It is further ordered that Respondent Amponsah pay a penalty of \$1,000.00 to the Commission within sixty (60) days of the date of this Order."

The Commission found Mr. Amponsah guilty of violating Regulations 8.1(b), 10.8(b), (c), (d), (f), (g)(1) & (2), 10.9(b) and 10.10(a).

On December 20, 1999 the trust account information on file with AREC was not current and Mr. Amponsah completed a new form at the request of the Investigator. He closed said trust account on or about January 11, 2000 but failed and refused to notify the Arkansas Real Estate Commission.

Mr. Amponsah deposited trust funds into and maintained these funds in accounts that were not designated "trust" or "escrow" accounts.

He did not reconcile the bank statements for his trust accounts in writing at least monthly or balance the funds in the account to the total amount of trust funds deposited in the trust accounts that had not been disbursed.

He did not keep detailed records of the trust funds received or disbursed.

Mr. Amponsah did not give written agency disclosures to the buyer or tenants.

He did not see that all property management agreements with property owners and all rental agreements with tenants were reduced to writing.

On or about April 12, 2000 the adjusted bank balance in one account exceeded the amount of trust funds on deposit by \$757.04. Said funds exceeded six months' service charges and were not required as a minimum balance by the bank.

Lois Farmer, Principal Broker, Beebe: In Formal Hearing #2012 by Consent Order the Commission ordered that "The Respondent shall complete the 30-hour Broker Course, to be approved in advance by the Commission's Executive Director, as soon as practicable and no later than six (6) months after the date of this Order and she shall not be eligible to receive any scholarship offered by the Arkansas Real Estate Commission. The Respondent is issued a Letter of Reprimand that shall remain in her permanent license file."

The Commission found Ms. Farmer guilty of violating Regulation 10.3.

Ms. Farmer continued to use the REALTORS® insignia when she was no longer a member of said organization.

Brian C. Smith, Executive Broker, Fayetteville: In Formal Hearing #2013 the Commissioners ordered that "...Respondent Brian C. Smith is assessed a civil penalty of \$500.00 for each violation for a total of \$2,500.00, to be paid by Respondent Smith to the Arkansas Real Estate Commission within thirty (30) days of the date of this Order."

The Commission found Mr. Smith guilty of violating Arkansas Code Ann. §17-42-311(a)(7), (9) and (13) and Regulation 10.7(a)(1).

Mr. Smith engaged in real estate activities independently without the permission of his principal broker.

He did not turn in the earnest money to his principal broker.

Mr. Smith failed and refused to disclose to Complainants that HUD would not accept a conditional offer; he instructed Complainants to write conditions to their offer on their earnest money Money Order when HUD would not see said Money Order because Mr. Smith wrote in the contract that his firm would hold the earnest money rather than deliver same to HUD. He did not state any conditions or instruct Complainants to write said conditions in the HUD Sales Contract which HUD would review to determine whether to accept said offer.

Mr. Smith converted Complainants' funds to his own use and did not deliver said funds either to HUD or to Complainants when the subject transaction did not close.

He continued to conduct business under the name of his former company after the company was closed and his license had been transferred to Re/Max Associates whereby he could retain Complainants' earnest money rather than deliver same to his principal broker.

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Formal Hearing Decisions

CONTINUED

He failed and refused to obtain and timely deliver to HUD's representative a denial of credit letter applicable to Complainants as required by the Purchaser's Rights and Responsibilities described above.

Mr. Smith falsely represented to Complainants that he had submitted their earnest money to HUD when he had retained said funds for his uses.

A Recovery Fund Hearing was held. Pursuant to Arkansas Code Ann. §17-42-401 et seq., the Commission awarded the Complainants a Recovery Fund award in the amount of \$500.00.



Problems . . .

Seen by Investigators

COPIES OF DOCUMENTS

MERIT RECEIPTS

Everyone has heard the term, "*damage control*." One of the simplest forms of damage control in the real estate industry is having Buyers and Sellers sign some form of a receipt stating they received copies of the documents that were completed and signed in their transaction. Since a lot of real estate companies don't require any type of acknowledgment when Buyers and Sellers are given copies of documents, it is amazing the number of

Complaints the AREC receives where the Complainants allege they never received *any* paperwork connected with their transaction. Did they receive copies? The Agent and Broker said they gave them copies of everything!

Damage control! The short time it would take to have the Buyers and Sellers to sign a receipt could eliminate a lot of accusations if a misunderstanding arises from a transaction.

Jerry Bradshaw
Investigator



OWNER PROPERTY DISCLOSURE

The Owner Property Disclosure form is usually completed at the time a property is listed for sale. The Disclosure form is to be completed entirely by the Owners of the property. Don't make the mistake we have seen of an agent filling in some of the information at the beginning of the form, such as the approximate square footage or the sewer information. There have been instances when an agent has measured the house or checked court house records and included the approximate square footage on the form as a service to the Owner and then when there was a question later the Seller remarked he/she knew the square footage was a different figure. The agent may assume the sewer is provided by a

municipality and completes that portion of the Disclosure when in fact it is a septic system and the Owner knew that fact but did not complete ALL of the Disclosure.

There have been cases when the information was no longer correct because of possible deterioration of the property by storm, or lack of repairs. We all recently experienced one or two ice storms and many properties were damaged. It is suggested that you periodically review the Owner Property Disclosure forms of your Sellers and do so with an eye towards if there have been changes to that property, such as unrepaired damage or perhaps the owner/s have changed due to divorce or death.

We have seen instances where an agent had a property listed and then changed firms, the agent later listed the property with the new firm and used an old Owner Property Disclosure which was dated considerably earlier than the current listing. AND, by all means when a buyer is given a copy of the Disclosure get his/her signature and date so your files will be complete after closing if a problem were to arise.

Kay Lucy
Senior Investigator

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