



A R K A N S A S
REAL ESTATE COMMISSION
 N E W S L E T T E R

SEPTEMBER 2003

612 South Summit Street
 Little Rock AR 72201-4740
 Phone: 501-683-8010
 FAX: 501-683-8020

E-mail: arec@mail.state.ar.us
 Investigations:
arecinv@mail.state.ar.us
 Licensing:
areclc@mail.state.ar.us

Web Site:
www.state.ar.us/arec

Members of the Commission

Virgil L. Miller, Jr., Chairman
 Little Rock

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 Fayetteville

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 Monticello

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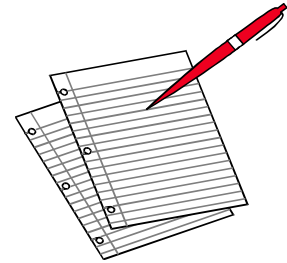
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Bill J. Williamson
 Executive Director

Gary C. Isom
 Deputy Executive Director

FROM THE DESK OF.

THE EXECUTIVE DIRECTOR. . .



**To Trust or not to Trust,
 That is the Question!**

Do you as Principal Broker have to maintain a Trust Account for funds received belonging to others?

The answer to this question is found in Commission Regulation 10.8. That regulation defines trust funds and instructs Principal Brokers on how to handle trust funds.

Paragraph (c) of Regulation 10.8 states as follows:

“A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties...”

So the answer to the above question is “no,” a Principal Broker does not have to maintain a firm Trust Account for trust funds received provided that the Principal Broker deposits those funds with an escrow agent.

Principal Brokers who do not maintain Trust Accounts generally deposit trust funds with closing companies such as Title or Abstract companies that act as escrow agent and hold the trust funds until the transaction is finalized.

If you as Principal Broker use an “Escrow Agent” that you select, be aware that you are still responsible for the trust funds just as if the trust funds were in your possession. If something happens and the Escrow Agent cannot come up with the trust funds you the Principal Broker received from the buyer or seller and delivered to the Escrow Agent, Regulation 10.8 holds you responsible and accountable for those funds.

So in closing make sure any Escrow Agent, that you as Principal Broker select to receive trust funds collected by your firm in lieu of maintaining a firm trust account, is able to account for and safeguard the trust funds for which you are responsible and accountable pursuant to AREC Regulations.

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 March through July 2003. Formal Hearing Decisions that have been appealed are not listed.

Christy Davis, Salesperson, Cabot: In Formal Hearing #2063 by Consent Order the Commissioners ordered that "...Respondent Christy Davis shall successfully complete an eighteen (18) hour real estate salesperson course, approved in advance by the Commission's Executive Director, within six (6) months of the date of this Order. The above course required for the Respondent shall be in addition to the annual continuing education hours required to renew a license...and shall not be eligible for any scholarship from the Commission for said course."

Rita Smith, Principal Broker, Stuttgart: In Formal Hearing #2064 the Commissioners ordered that "...Respondent Rita Smith be required to take a 30-hour broker course with

emphasis on property management; said class to be approved by the Executive Director of the Commission, and to be completed within six (6) months of the date of this Order. A Letter of Reprimand will be placed in Respondent Rita Smith's license file. Respondent Rita Smith will pay a penalty of \$500.00 payable within thirty (30) days of the date of this Order."

The Commission found Ms. Smith guilty of violating Arkansas Code Annotated §17-42-311 (a)(6) & (13) and Commission Regulations 8.5 (c), 10.8 (b) and 10.10 (a).

Ms. Smith did not have a written agreement signed by the parties regarding her management of Complainant's rental properties. She charged Complainant a \$400.00 fee for having supervised the repair of damage to the utility room in Complainant's property without any prior agreement with Complainant.

Ms. Smith did not cause rental income and other funds belonging to clients to be deposited into a designated trust account. She caused said funds to be deposited into Wallace Real Estate Rental Account and Wallace Real Estate Maintenance Account, neither of which was designated as a trust or escrow account.

While acting as agent for Complainant, she received compensation in

connection with her management of Complainant's property without full written disclosure to Complainant. Ms. Smith did not disclose in writing that she was part owner of R & S Service and would receive valuable consideration as a result of R & S doing maintenance work to Complainant's and other clients' properties that she was managing.

She did not account for or remit funds to Complainant. She did not provide copies of invoices requested by Complainant to account for repair expenses made by Respondent from insurance proceeds used by Respondent to repair a laundry room in Complainant's property.

Ms. Smith's failure to notify the housing authority of a tenant's change in apartments and that he was sharing an apartment with another person, and her acceptance of the rental subsidies for tenant for November 2001 through March 2001.

A Recovery Fund Hearing was held. Pursuant to Arkansas Code Annotated §17-42-401 et seq., the Commission ordered Ms. Smith to pay the Complainant damages in the amount of \$1,630.10.



To Trust or Not to Trust!

Continued

Some issues to consider when selecting an Escrow Agent are:

1. Will the trust funds be maintained by the Escrow Agent in an account designated as a Trust or Escrow account and hold only trust funds?
2. Does the Escrow Agent carry bonds or insurance adequate to cover any theft or misuse of trust funds?
3. What is the Escrow Agent's procedure or policy regarding return of trust funds if the transaction is not completed?
4. Is the Escrow Agent subject to any Regulatory oversight?
5. Does the Escrow Agent offer an Insured Closing letter issued by a title insurance underwriter who assumes responsibility to reimburse the parties to the real estate transaction for actual losses incurred in connection with settlement services provided by the Escrow Agent?

Remember if you the Principal Broker select the Escrow Agent, you are RESPONSIBLE.

Rick Stanley

INVESTIGATOR

Rick Stanley recently joined the Commission staff as an Investigator. Prior to his employment with AREC Rick held a position with Regions Bank in Little Rock. He obtained his real estate salesperson license in 1999 and later his broker license and was an Associate Broker with Rector Phillips Morse Real Estate in Little Rock. He holds the GRI Realtor designation and was involved with the Mediation Committee of the Arkansas Realtors Association.

For the past two years Rick has been an instructor at National School of Real Estate in North Little Rock where he taught the salesperson and broker pre-license course as well as continuing education.

Rick and his wife Cheryl have one daughter, Katharine. We welcome Rick to the AREC staff.



It's time to renew your Arkansas Real Estate License for 2004! Renewals for 2004 must be received in our office or postmarked by September 30, 2003 to avoid paying a late fee. *Remember*, you can renew on-line at our website: www.state.ar.us/arec.

Update Your TRUST ACCOUNT

Has the bank where your firm's Trust Account is maintained changed its name or address?

Has the name or account number changed for your firm's Trust Account?

If you responded "Yes" to any of these questions, contact AREC for a "Trust (Escrow) Account Information" form to update AREC's file.

ARKANSAS REAL ESTATE COMMISSION
612 SOUTH SUMMIT STREET
LITTLE ROCK AR 72201-4740

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CONTINUING EDUCATION TOPICS FOR 2004

Sixty minutes is required for the following topic:

Agency Representation and Disclosure

NOTE: AREC instructional materials must be used when teaching this topic.

The following topics are highly recommended by the Commission:

1. License Law and Commission Regulations
2. Agent and Broker Responsibility (Includes Post-Licensure Course Module IV)
3. Trust Account Record Keeping & Transaction Files Maintenance (Includes Post-Licensure Course Modules III & 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 & Practice (Includes Salesperson 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
12. Property Management and Landlord-Tenant Relationships
13. Environmental and Hazardous Substances Issues (e.g. Lead-Based Paint Disclosure and Mold – Federal Requirements)

Other Acceptable Topics:

14. Applied Construction and Land Use
15. Appraisal/Establishing Marketing Value Range
16. Commercial, Industrial and Investment Real Estate
17. Farm-Rural Property
18. Finance
19. Real Estate Tax Issues
20. Buyer Representation
21. Real Estate Auctions

These Topics Cannot Exceed Two (2) Classroom-Hours of Content:

22. Home Inspections With Emphasis on Inspection and Repair Clauses in Real Estate Contracts

23. New Technology Including Usage of Computers in Real Estate Activity (*Cannot include non-qualifying subjects listed in Arkansas Code Ann. § 17-42-503 (a)(2)*).
24. Real Estate Court Decisions
25. Real Estate Mortgage Products (i.e., HUD, FHA/VA, FmHA, Conventional, etc.)
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

NOTE: ALL TOPICS MUST BE REAL ESTATE-RELATED

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