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April 2021

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ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

Executive Director Comments

By Andrea S. Alford, Executive Director

Greetings from the Arkansas Real Estate Commission. I hope this newsletter finds you and yours safe and well. There are many things I could write about in this, my first official newsletter article as AREC Executive Director. For instance, I could tell you about our amazing staff and how diligently they've worked to serve licensees and consumers, all while adapting to the ever-changing landscape of 2020 and 2021. Or I could share a smidge of the positive feedback we've received from educators and licensees on the successes they have experienced in using AMI for CE courses. Perhaps I could even add a statistics table that will show the rise in new applicants and total licensee numbers, the highest we've seen in my 12 years at the Commission. For now, though, I believe I'll step aside and let you get to the really good stuff.

You're going to meet our new Commissioner, Suzett Sparks. Then you'll get to hear Chairman Tony Moore's thoughts on multiple offer situations and Tim Grooms' hot take on escalation clauses. Next you can read all about the Formal Hearing decisions made by the Commission since late 2019. We've packed quite a bit of educational material into this edition of the newsletter, and I hope it will be of use to you in serving your clients, customers, and fellow licensees.

Please Welcome our Newly Appointed Commissioner

Suzett Sparks, Managing Broker of Lindsey & Associates in Rogers, is a 27-year real estate industry professional. She is a servant leader, known for successfully leading agents through their commercial and residential real estate transactions for over 11 years. Ms. Sparks has her broker's license in Arkansas, Missouri, and Oklahoma. She serves on the Arkansas REALTORS® Association Board of Directors and served as president of the Northwest Arkansas Board of REALTORS® in 2017. In 2017, Ms. Sparks was honored with the local board REALTOR® of the Year award and was named one of the 2020 Women in Business Honorees. Ms. Sparks started the formal relocation department for Lindsey & Associates in 2005 and maintains relocation designations including Certified Relocation Professional and Global Mobility Professional. She also holds the C2EX designation through NAR. She is a native to Rogers and has been married to her husband, Rick, for 31 years. She is very proud of her wonderful daughters and sons-in-law and is a new "Grams" to William James.



Contemplations of a Commissioner: On the Presentation of Offers by Chairman Tony Moore

In the article below, Commission Chairman Moore shares his candid insights on presenting offers in multiple offer situations. Please bear in mind that this article contains advice that is rooted in best practice and offered by a member of the Commission who has many years of industry experience. To review the Commission's Rules on agency representation and the presentation of offers, go to www.arec.arkansas.gov and click "Commission Rules" on the home page. We also encourage licensees to speak with their Principal Brokers and contact the AREC any time they have questions or wish to seek clarification on complying with AREC License Law and Commission Rules.

Over the past few years, the number of complaints received by the Commission has dramatically increased in one specific area: buyers are routinely complaining their offer was not presented. Commission Rule 10.12 requires that all offers be presented "promptly." One impact COVID-19 is having on our industry at present is a further limiting of inventory here in Arkansas. You and I are aware of the current market conditions – we deal with them every day. But our clients aren't usually in the habit of studying up on Arkansas' current real estate trends. Accordingly, it falls to us as their agents to represent our clients well in light of and despite whatever market conditions may exist. Listing and selling agents alike owe their clients – and each other – this responsibility.

Let's start with listing agents. First of all, don't be lazy. It can be tempting to get in the habit of not providing a written response to every offering party; after all, we're busy people, right? Let me ask you this. Are you too busy to answer a complaint filed with the Commission by a buyer who is convinced you didn't present their offer? Any agent who has had to answer a complaint can tell you it takes much longer to write that answer than it would to provide a buyer with a written response to their offer. Beyond the question of time, buyers and their agents deserve to know their offer was presented, and you owe it to all parties, including your sellers, to be able to prove this with signatures, dates and

"It falls to us as their agents to represent our clients well in light of and despite whatever market conditions may exist."

times. Second of all, don't be greedy and don't play games. We all know there can only be one winner in a multiple offer situation. What we sometimes fail to properly consider is that multiple offers minus one winner equals multiple letdowns. Think about this for just a minute. Place yourself in Buyer #4's position. They don't know how the real estate world operates; furthermore, they don't care. They have just lost their

dream house. This makes them feel hurt, angry, frustrated and a thousand other things, with disappointment reigning supreme. Sure, we know they didn't get the house because another buyer's offer was more acceptable to the seller, but do you think a buyer who just submitted their personal best offer is more likely to believe the problem was with their offer or with the agent responsible for presenting that offer? You'd better believe it's the latter, and if you fail to provide buyers a written response, you've placed a target of your back with "aim your disappointment here" written all over it.

Spend some time really focusing on the position buyers are in, then act accordingly. Present every offer with the same enthusiasm and the same breakdown on it. Show the sellers every offer and present them in the order received. Even though the exact procedure isn't a requirement, many buyers

believe that it should be. Since you're presenting all offers anyway, what can it hurt to follow that pattern? It can't! It can only serve to reassure buyers their offer was presented fairly, and it may even keep all of us held in a little better light with the public.

Third, consider inviting the selling agents in on the presentation of offers. This may seem counterintuitive but ponder it a moment. Why not have the buyers' agent attend the presentation so they can witness the process firsthand and receive a prompt response to carry back to their buyers? Buyers' agents who attend these presentations should keep a few things in mind. First, the seller and listing agent set the time and location of the presentation. Second, you are the guest. The listing agent is in

“Write clean offers. Make them straightforward, direct and clear.”

charge, and you may or may not be allowed to participate in the listing agents' presentation. Ask the listing agent about this ahead of time. If you are allowed to play a role, accept it graciously and by all means stay in your lane. Answer the questions asked of you and take your leave. You may not stay unless you are invited to. Listing agents should be sure to notify selling

agents of the sellers' conclusions in a timely manner. Don't wait – do it now. After all, anxious buyers don't get less anxious over time, they only get more anxious.

My advice to buyers' agents is simple: always write your offer. More on this later, but for now, hear me say: put the offer in writing. Next, write every offer like you have competition. Now is the time for writing the best offer. No one owes you a counteroffer. Next, skip the fancy footwork of trying to put the seller and listing agent on a short leash and seeing if you can manipulate them with a 24-hour expiration. When the seller rejects your buyer's offer outright, who will have caused the problem for your buyer in that scenario? I'll give you a hint: you did. It's like I always say: if you don't start something, there won't be something. How do you like it when you get a 24-hour response time on an offer written Friday night at 8 pm? You don't? Then don't write one that way. Write clean offers. Make them straightforward, direct and clear.

“Anxious buyers don't get less anxious over time, they only get more anxious.”

Even though we've seen an increase in complaints over failure to present offers, there are many more frustrated buyers out there who never file a complaint with the Commission. These buyers still feel their agents failed to represent them well, but instead of telling the Commission, they tell their friends and family. They post it on Facebook. Their Facebook friends share those posts. And on and on it goes, with our industry taking it on the chin as all agents are viewed in the same dim light as the handful who can't be bothered to comply with the rules, much less aim for excellence and professionalism. Together, I believe we can change that. I hope this advice helps move us in that direction. Let us know at the Commission if this is helpful or if you have questions in the future.

New Rules Effective November 1, 2020

The Commission promulgated Rules 4.5 and 4.6 in compliance with Acts 820 and 990 of 2019, respectively. The new rules became effective November 1, 2020.

Act 820 of 2019 requires occupational licensing agencies to provide for automatic licensure for active duty service members, returning military veterans, and their spouses to engage in their chosen professions. The purpose of new rule 4.5 is to grant automatic licensure for a real estate broker or salesperson license for active duty service members, returning military veterans and their spouses when they hold an active license in another jurisdiction.

Act 990 of 2019 requires licensing agencies to promulgate rules for applicants for licensure who have criminal background records. The purpose of new rule 4.6 is to allow individuals with criminal background records to file a petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure as a real estate broker or salesperson and whether a waiver may be obtained.

Tim Grooms Weighs In on Escalation Clauses

AREC continues to receive questions regarding the use of escalation clauses in real estate contracts. While it is understandable that buyers and agents are looking for every possible advantage in such a competitive market, we would be remiss not to issue guidance and caution in this area. First, the Commission very strongly encourages licensees to consult an attorney prior to adding any language to a contract, including, but not limited to, an escalation clause.

We reached out to Tim Grooms and asked him to offer his thoughts as well. Here's what Tim has to say:

In Arkansas, a basic element of a binding and enforceable contract is a definite "meeting of the minds" on all material terms. Clearly, price is a (or perhaps "the") material term of a contract. When a contract contains a provision allowing for a competing and later offer to change a material term, contract enforceability becomes an issue. Going outside the "four corners" of a contract has been understood by Arkansas lawyers and courts as an impediment to contractual enforceability. I maintain: when a property is highly marketable with multiple potential buyers, a better practice is to make it clear that all potential buyers should submit the best financial offer within a defined timeframe and allow the seller to accept or counter the selected offer. Of course, the offer selection should be based on contractual terms and sellers (and their real estate licensee agent) should closely follow all state and federal laws outlawing discrimination and protecting fair housing practices.

AREC remains committed to helping licensees comply with law and rules while representing their clients' best interests. While the use of escalation clauses in contracts is not a new issue, it is one that has risen in prominence given current market conditions. As such, we are closely monitoring new developments in this area and will communicate any updates for licensees via educators, our website and future newsletters. In the meantime, if you have any questions regarding escalation clauses, please contact the AREC Investigations Department at 501.683.8010.

Meet AREC's Newest Deputy Executive Director



Melissa Goff was recently appointed Deputy Executive Director to the Arkansas Real Estate Commission. Ms. Goff has served the state of Arkansas for over 25 years and brings experience in many facets of state government. Ms. Goff previously served as the Manager of Student Financial Aid Programs for the Arkansas Department of Higher Education. She has also served as the Director of Admissions and Institutional Research at the University of Central Arkansas and as the Chief Fiscal Officer at the Department of Arkansas Heritage. Most recently, Ms. Goff served as the Office Administrator for the Capitol Zoning District Commission. She holds a Bachelor of Business Administration degree in Management and Finance from the University of Oklahoma and tells us that she is an obnoxious Sooner fan, but we're going to let that go. She and her husband, Kent, live in Little Rock and have three daughters, Courtney, Whitney, and Holli.

AREC Staff Directory

We are excited about our staff additions/promotions over the past year. For your convenience, our updated staff directory is shown below.

Administration	Title	E-Mail Address
Andrea S. Alford	Executive Director	andrea.alford@arkansas.gov
Melissa L. Goff	Deputy Executive Director	melissa.goff@arkansas.gov
Heather Garrett	AREC Supervisor	heather.garrett@arkansas.gov
Kristen Nelson Savage	Accountant	kristen.savage@arkansas.gov
Sandy R. Edgar	Executive Assistant	sandy.edgar@arkansas.gov
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Camesha Marks	Investigator	comesha.marks@arkansas.gov
Lakisha Broadway	Administrative Specialist	lakisha.broadway@arkansas.gov
Education		
Kortney Hinton	Education Specialist	kortney.hinton@arkansas.gov
Licensing		
Joyce Foreman	Licensing Examiner	joyce.foreman@arkansas.gov
Chenika Shockley	Licensing Specialist	chenika.shockley@arkansas.gov
Lisa Hill	Licensing Specialist	lisa.hill@arkansas.gov
Linda Alkire	Computer Support Technician	linda.alkire@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 August 2019 through December 2020. Formal Hearing Decisions still subject to appeal are not listed.

Respondent: Lisa Stassi, Unlicensed, Formal Hearing #3392

Violations: Arkansas Code Annotated §17-42-105(a)(1) and §17-42-109.

Sanctions: The ordered a penalty of \$5,000.00 assessed to Respondent Lisa Stassi. Additionally, Respondent Stassi was ordered to pay estimated Commission hearing costs.

Summary: Respondent Stassi was not licensed as a real estate agent in Arkansas when she entered into a contract representing herself as the buyer of the Complainant's property. Paragraph 13 of the contract, titled MARKETING, stated: "Upon execution of this Agreement, Buyer will have an equitable interest in this property and therefore will have the right to market that equitable interest in any way Buyer deems fit... Buyer may also assign its rights to this agreement." The Complainant did not knowingly agree for the Respondent to collect a fee for the marketing activities listed in the contract. At Respondent's request, the Complainant signed a Memorandum of Agreement which placed a lien on the Complainant's property until fees were paid to an entity associated with the Respondent. Respondent did not purchase the property and the Complainant accepted an offer brought by a licensed real estate broker. The lien placed by Respondent Stassi delayed closing for the Complainant and their buyer but was ultimately removed by the Respondent. Respondent Stassi also attempted to collect a commission from the Complainant when the property was sold.

At an initial hearing, the Arkansas Real Estate Commission ruled Respondent Stassi engaged in unlicensed real estate activity. The hearing was appealed and remanded back to the Arkansas Real Estate Commission for a ruling on the question of whether or not Respondent Stassi qualified for the owner exemption under license law.

At the Remand Hearing, the Commission ruled Respondent Stassi's equitable interest in the property did not qualify her for the owner exemption for licensure under the Statute as it existed in 2015, when the action occurred.

Respondent: Wesley N Johnston, Principal Broker, Central Arkansas Realty Team, Conway, Arkansas, Formal Hearing # 3641

Violations: Commission Rules 8.5(a), 10.7(b)(1) & (3), 10.10(a) and Arkansas Code Annotated §17-42-311(a) (2),(4), (7), and (11).

Sanctions: The Arkansas Real Estate Commission ordered Respondent Johnston to pay a penalty of \$5,000 and Respondent Johnston must appear before the Commission prior to any activation of his license.

Summary: Respondent Broker Johnston, acting as a dual agent, failed to ensure the agreement to the parties was reduced to writing by allowing a Delayed Occupancy Addendum to be altered after the Complainant Buyers signed the document. The alterations to the Addendum removed all payments from the Seller regarding the delayed occupancy. Respondent Broker Johnston failed to maintain complete records of real estate business handled by the firm. Respondent Broker Johnston also made a substantial misrepresentation to the Arkansas Real Estate Commission regarding business conducted by the firm.



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 August 2019 through December 2020. Formal Hearing Decisions still subject to appeal are not listed.

Respondents: Johnny Ball, Principal Broker and Ezekiel Langston Barrett, Salesperson, Whitetail Properties Real Estate, LLC, Little Rock, Arkansas, Formal Hearing #3635 - Consent Order

Violations: Commission Rules 8.5(a), 10.4(b), 10.4 (d), 10.10(a), and Arkansas Code Annotated §17-42-311(a)(2).

Sanctions: The Arkansas Real Estate Commission ordered Respondent Ball to pay \$5,500 in penalties and complete the 30-hour broker post-license course within six months of date of the order.

The Arkansas Real Estate Commission Ordered Respondent Barrett to pay \$4,500 in penalties and complete the 18-hour salesperson post-license course within six months of the date of the order.

The Arkansas Estate Commission ordered that Respondents Ball and Barrett jointly and severally pay the Complainant restitution in the amount of \$6,000 within thirty days of the date of the order. Upon proof of payment of restitution to the Complainant the Commission would reduce the disciplinary fines against Respondents Barrett and Ball by the respective restitution amounts paid by each Respondent.

Summary: Respondents acted as dual agents in the sale of the subject property which included acreage and a residence. The Complainant Buyer lived out of state and relied upon information provided by Respondent Barrett regarding the property. Respondent Barrett failed to properly reduce the agreements of parties to writing regarding requested repairs. Respondent Barrett further communicated to the Complainant Buyer that request-ed repairs were made without determining that the repairs were made to the Complainant Buyer's satisfaction. Upon moving to the property, Complainant Buyer discovered issues with the property. The Complainant Buyer decided to sell the property and accepted an offer. Following an inspection of the property it was discovered that repairs the Complainant was told were completed had not in fact been completed. The Respondent Broker resided in Little Rock, the Respondent Salesperson resided in Harrison, and the subject property was located in Leslie.

Respondent: Karen Dill, Principal Broker, Dill Real Estate Company, Little Rock, Arkansas, Formal Hearing # 3661

Violations: Commission Rule 8.5(a) and Arkansas Code Annotated §17-42-311(a)(2).

Sanctions: The Arkansas Real Estate Commission ordered Respondent Dill to pay a penalty in the amount of \$500 within six months of the date of the order and complete six hours of continuing education in Agency in a course approved by the AREC Executive Director.

Summary: Respondent Dill represented the Buyer in the purchase of a property. The property had moisture issues and a mold inspection was ordered. The preliminary inspection report indicated elevated levels of mold in the property, but the final report could not be completed until after the scheduled closing date. The Buyer decided to close on the property with the expectation of receiving the full mold report when it was completed. The Listing Broker delivered the mold report to Respondent Dill. Respondent Dill failed to provide the mold report to the Buyer in a timely manner.

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Inside This Issue

New Commissioner Appt.....1
Multiple Offer Solutions.....2
Escalation Clauses.....4
New Rules 4.5 and 4.6.....4
New Deputy Director.....5
Staff Directory.....5
Formal Hearing Decisions.....6

A Fond Farewell and Thank You

Most of you know that former Executive Director Gary Isom retired at the beginning of 2020, after over 40 years of service to the state of Arkansas. Without a doubt, the Real Estate Commission would not be where it is today without the leadership Gary provided along the way. We would like to congratulate Gary on his retirement and wish him all the best in the future.

In related news, Doyle Yates recently completed his service as a Commissioner. Doyle served on the Commission for 6 years, being first appointed by Governor Hutchinson in 2015, then reappointed in 2018. Doyle served two terms as Vice Chair and two terms as Chair. The Commissioners and staff are grateful for Doyle's service and leadership.

2021 Commission Meeting Dates

This year's remaining meeting dates are below. As of April 2021, in-person attendance at AREC meetings remains limited to Commissioners, staff and hearing participants, with a livestream option available to all other attendees. You can find each month's attendance details (i.e., Zoom webinar link or details on attending in-person once we have lifted that restriction) along with the agenda in the Calendar section of our website.

Monday and Tuesday, May 3-4
Monday and Tuesday, June 7-8
Monday and Tuesday, July 12-13
Monday and Tuesday, August 9-10

Monday, September 13
Monday and Tuesday, October 11-12
Monday and Tuesday, November 8-9
Monday and Tuesday, December 13-14

**Tuesday meetings are reserved as optional second days as needed. The Commission will announce whether each month's meeting will last one or two days by updating our website and the state's public calendar prior to each meeting.*