

Report on the

Real Estate Commission

Montgomery, Alabama



Department of Examiners of Public Accounts

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Rachel Laurie Riddle, Chief Examiner



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August 18, 2021

Senator Will Barfoot
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Barfoot,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Alabama Real Estate Commission in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Alabama Real Estate Commission, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Laurie Riddle".

Rachel Laurie Riddle
Chief Examiner

Examiner
Daniel Dupree

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PROFILE

Purpose/Authority

The Alabama Real Estate Commission was established by Act No. 422, Acts of Alabama 1951. The Commission licenses and regulates real estate companies, brokers, salespersons, instructors, and schools in Alabama. Currently, the Commission operates under the authority of the *Code of Alabama 1975*, Section 34-27-1 through 34-27-101.

<u>Characteristics</u>	
Members and Selection	<p>Nine members, eight real estate professionals and one consumer are appointed by the Governor with the advice and consent of the Senate:</p> <ul style="list-style-type: none">• Real estate professionals are appointed from a list of three persons nominated by the governing body of the Alabama professional real estate society or trade association with the largest licensee membership – currently the Alabama Association of Realtors.• At least one person nominated for each position shall not be a member of the real estate society or trade association.• The consumer member is appointed directly by the Governor. <p>As of July 2021, there are seven members serving.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(a)(e)</p>
Term	<p>Members serve five-year terms and serve until their successors are appointed and confirmed. Members shall not serve more than two consecutive terms.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(c)</p>
Qualifications	<p>Real Estate Professionals</p> <ul style="list-style-type: none">• Resident of the state for at least 10 years prior to appointment.• Vocation of real estate broker or salesperson for at least 10 years prior to appointment.• Not convicted of any violation of federal or state real estate license law.

	<p>Consumer member</p> <ul style="list-style-type: none"> Registered voter, 21 or older, no felony convictions, and a resident of the state for at least 10 years prior to appointment. Owner of real property, not licensed as a real estate broker or salesperson for 10 years prior to appointment, and not related to, or employed by, a real estate licensee. <p><i>Code of Alabama 1975, Section 34-27-7(c)(e)</i></p>
Consumer Representation	<p>One consumer member required. One consumer member serving.</p> <p><i>Code of Alabama 1975, Section 34-27-7(e)</i></p>
Racial Representation	<p>One black professional member required. One black member serving.</p> <p><i>Code of Alabama 1975, Section 34-27-7(d)</i></p>
Geographical Representation	<p>Seven positions on the Commission are appointed from each congressional district. The black member position and the consumer member position may be appointed from any congressional district, with each successor appointed from a different district on a rotating basis.</p> <p><i>Code of Alabama 1975, Section 34-27-7</i></p>
Other Representation	<p>No other specific statutory requirement.</p>
Compensation	<p>Members receive \$300.00 per month and are reimbursed for travel expenses in the same manner as state employees.</p> <p><i>Code of Alabama 1975, Section 34-27-7(g)</i></p>
Attended Board Member Training	<p>Eight Commission members Executive Director Assistant Executive Director Nine employees</p>
<u>Operations</u>	
Administrator	<p>Vaughn T. Poe, Executive Director \$134,940.00 annual salary set by the Commission and approved by the Governor and State Personnel Director.</p> <p><i>Code of Alabama 1975, Section 34-27-7(h)</i></p>

Location	1201 Carmichael Way Montgomery, AL 36106 Office Hours: M-F 7:30 to 4:30
Employees	35
Legal Counsel	Starla Van Steenis, Deputy Attorney General, employee of the Commission, serves as General Counsel.
Subpoena Power	Yes, for witnesses and records. <i>Code of Alabama 1975</i> , Section 34-27-36(a) and 34-27-37(b)
Internet Presence	www.arec.alabama.gov Information available includes: <ul style="list-style-type: none"> • News / Calendar / Meeting minutes • Directory of commission members and staff • Law and rules • Licensee verification • Licensing forms / License renewal • Consumer complaint form and feedback survey
<u>Financial</u>	
Source of Funds	License fees and fines.
State Treasury	The Commission operates from the State Treasury: Fund 371 - Real Estate Commission Fund (Operating fund) Fund 372 - Real Estate Recovery Fund Fund 569 - Real Estate Commission Proportionate Fund <i>Code of Alabama 1975</i> , Section 34-27-4 and 34-27-31
Required Distributions	Real Estate Commission Proportionate Fund <ul style="list-style-type: none"> • Fees collected for research and education are disbursed quarterly to the Real Estate Research and Education Center. Interest or other income from investments in the proportionate fund are deposited into the operating fund. Funds are invested by the State Treasurer. Fund 372 Real Estate Recovery Fund <ul style="list-style-type: none"> • Interest or other income from investments in the recovery fund are deposited into the operating fund, with one-half transmitted to the University of Alabama Real Estate

	<p>Research and Education Center. Funds are invested by the State Treasurer.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-4 and 34-27-31</p>																		
Unused Funds	<p>Unused funds are retained at fiscal year-end.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-4</p>																		
<u>Licensure</u>																			
Licensees	<p>Active Licenses as of March 19, 2021</p> <table border="1"> <thead> <tr> <th>Type</th> <th></th> </tr> </thead> <tbody> <tr> <td>Company</td> <td>4,032</td> </tr> <tr> <td>Broker</td> <td>7,228</td> </tr> <tr> <td>Salesperson</td> <td>14,244</td> </tr> <tr> <td>Temporary Salesperson</td> <td>1,301</td> </tr> <tr> <td>Instructor</td> <td>458</td> </tr> <tr> <td>Administrator</td> <td>87</td> </tr> <tr> <td>School</td> <td>239</td> </tr> <tr> <td>Total</td> <td>27,589</td> </tr> </tbody> </table> <p><i>Source:</i> Commission staff</p>	Type		Company	4,032	Broker	7,228	Salesperson	14,244	Temporary Salesperson	1,301	Instructor	458	Administrator	87	School	239	Total	27,589
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Licensure Qualifications	<p>Salesperson License</p> <ul style="list-style-type: none"> • US citizen or legally present. • At least 19 years old. • High school graduation or equivalent. • Not have been convicted of a felony. • Not have had an application or license rejected or revoked in any state within two years. • Federal and state criminal background check. • Complete approved 60 clock hour pre-license course • Pass examination. • Complete 30-hour post license training course within 12 months of licensure. <p>Broker License</p> <ul style="list-style-type: none"> • Meet same requirements as salesperson. • In addition, must have held an active real estate salesperson license in any state for at least 24 months of the 36-month period immediately preceding the date of application. 																		

	<p>Company License</p> <ul style="list-style-type: none"> • Application made by qualifying broker. • Must maintain a place of business. • Must have a license for each separate location or branch office. <p>School License</p> <ul style="list-style-type: none"> • Furnish surety bond - \$20,000. • Name and have approved by the Commission a school administrator. <p>Instructor License</p> <ul style="list-style-type: none"> • Hold and maintain a current broker license. • Not have been found guilty of violating any provision of real estate license law. • Meet Commission requirements in education, industry experience, and teaching experience. <p>All licensees must complete application forms as prescribed by the Commission and pay all applicable license fees.</p> <p><i>Code of Alabama 1975, Section 34-27-32, 34-27-33, and 34-27-6 Administrative Rule 790-X-1-.07</i></p>																																
<p>Examinations</p>	<p>Applicants for a salesperson or broker license must pass a licensing examination. Real estate licensing examinations are administered at PSI Assessment Centers in Birmingham, Dothan, Huntsville, Mobile, and Montgomery. The exams are administered by appointment only, and exam fees are paid directly to PSI.</p> <p style="text-align: center;">Licensing Examination Statistics</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="4" style="text-align: center;">Salesperson Examination</th> </tr> <tr> <th></th> <th style="text-align: center;">Taken</th> <th style="text-align: center;">Passed</th> <th style="text-align: center;">% Passed</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2019</td> <td style="text-align: center;">5,118</td> <td style="text-align: center;">2,528</td> <td style="text-align: center;">49.4%</td> </tr> <tr> <td style="text-align: center;">2020</td> <td style="text-align: center;">5,271</td> <td style="text-align: center;">2,533</td> <td style="text-align: center;">48.1%</td> </tr> <tr> <th colspan="4" style="text-align: center;">Broker Examination</th> </tr> <tr> <th></th> <th style="text-align: center;">Taken</th> <th style="text-align: center;">Passed</th> <th style="text-align: center;">% Passed</th> </tr> <tr> <td style="text-align: center;">2019</td> <td style="text-align: center;">346</td> <td style="text-align: center;">293</td> <td style="text-align: center;">84.7%</td> </tr> <tr> <td style="text-align: center;">2020</td> <td style="text-align: center;">453</td> <td style="text-align: center;">374</td> <td style="text-align: center;">82.6%</td> </tr> </tbody> </table> <p><i>Source:</i> Commission Staff</p>	Salesperson Examination					Taken	Passed	% Passed	2019	5,118	2,528	49.4%	2020	5,271	2,533	48.1%	Broker Examination					Taken	Passed	% Passed	2019	346	293	84.7%	2020	453	374	82.6%
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Reciprocity	<p>Applicants who apply for a reciprocal license must submit proof of licensure in another state, complete at least six hours of course work in Alabama real estate, pass a written examination prepared by the Commission on the subject of Alabama real estate, and pay the applicable fee. There are no state specific agreements.</p> <p><i>Code of Alabama 1975, Section 34-27-32(b)(1)</i></p>
Renewals	<p>Licenses expire biennially on September 30. Renewals must be received by August 31 to avoid a late penalty. Online renewal is available.</p> <p><i>Code of Alabama 1975, Section 34-27-35(g)</i></p>
Licensee Demographics	<p>Demographic data is not collected by the agency.</p>
Continuing Education	<p>Salespersons and brokers must complete 15 hours of approved continuing education as a condition for license renewal. Pre-license and post-license instructors must complete 12 hours of approved training courses as a condition for license renewal.</p> <p><i>Code of Alabama 1975, Section 34-27-35(j)</i> <i>Administrative Rule 790-X-1-.10</i></p>

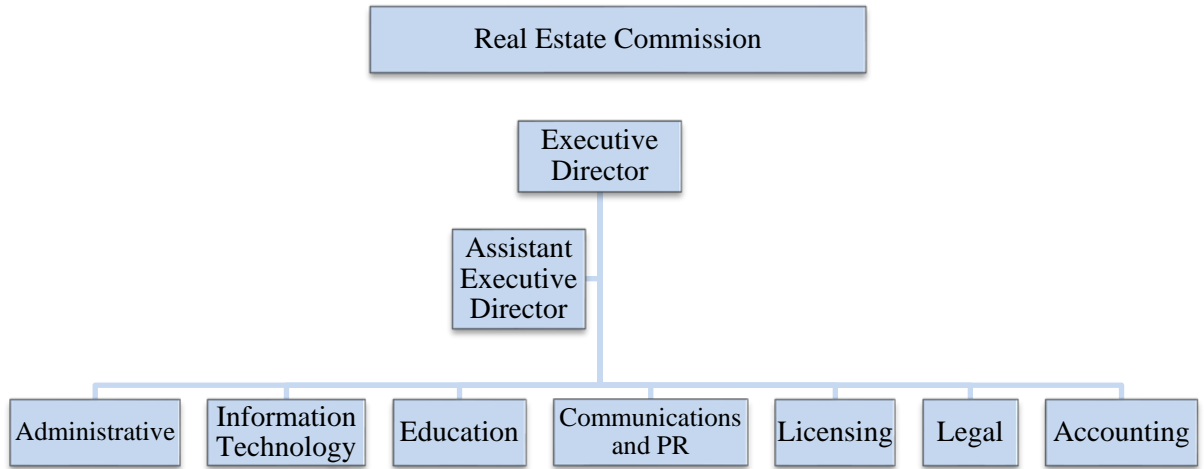
SIGNIFICANT ISSUES

There are no current significant issues.

STATUS OF PRIOR FINDINGS / SIGNIFICANT ISSUES

All prior findings and significant issues have been resolved.

ORGANIZATION



PERSONNEL

Schedule of Employees By Merit System Classification / Sex / Race						
	#	BM	WM	BF	WF	Salary or Salary Range
Unclassified / Exempt						
Executive Director	1	1				\$134,940.00
Assistant Executive Director	1				1	\$128,416.80
Accounting and Personnel Director	1				1	\$97,680.00
Executive Assistant	1				1	\$95,316.00
Classified						
Admin Support Assistant III	4		1	3		\$35,618.40-45,532.80
Admin Support Assistant II	2			1	1	\$25,838.40-29,959.20
Attorney II	1		1			\$84,350.40
Building Custodian I	1			1		\$25,207.20
Communications and PR Manager	1			1		\$80,210.40
Deputy Attorney General	1				1	\$97,696.80
Education Specialist I	3		1		2	\$80,210.40-82,281.60
Education Administrator I	1		1			\$102,712.80
IT Systems Specialist	2		2			\$84,350.40
IT Systems Specialist, Senior	1		1			\$110,738.40
Programmer Analyst	1		1			\$88,538.40
Programmer Analyst, Associate	1		1			\$53,976.00
Public Information Specialist	1			1		\$56,726.40
Real Estate Licensing Administrator	1	1				\$84,350.40
Senior Accountant	1				1	\$58,128.00
Special Investigator	3	2	1			\$52,653.60-59,556.00
Special Investigations Chief	1		1			\$76,365.60
Staff Accountant	4	1		1	2	\$64,077.60-65,695.20
State Intern	1				1	\$22,821.60
Total	35	5	11	8	11	

Legal Counsel

Starla Van Steenis, Deputy Attorney General and an employee of the Commission, serves as General Counsel.

FINANCIAL INFORMATION

Source of Funds – Permit fees and fines.

The Commission operates from the following three Special Revenue Funds maintained in the State Treasury:

Fund 371 – Operating Fund - The fund is used to accumulate and disburse fees, fines, charges and other money collected by the Commission, except Recovery Fund fees and portions of multi-year license fees held in escrow to fund operations during the second year of the Commission’s two-year licensing cycle.

Fund 372 – Real Estate Recovery Fund - Fees collected in lieu of bond from brokers and salespersons. Aggrieved parties may recover actual or compensatory damages sustained within the State of Alabama resulting from violations of the real estate licensing law by a broker or salesperson. Payments for claims based on judgments or settlements against any one person shall not exceed \$50,000 in the aggregate, and payments for claims arising out of the same transaction shall not exceed \$25,000 in the aggregate, regardless of the number of claimants. The State Treasurer may invest balances in the fund, with interest income divided equally between the Commission's operating fund and the University of Alabama Real Estate Research and Education Center.

Fund 569 - Real Estate Proportionate Fund - A portion of license receipts in escrow for use during the second year of the Commission's two-year licensing cycle. Balances in the fund may be invested, and income from investments must be deposited into the Commission's operating fund.

Schedule of Fees

Instructor License fees and course approval fees are set in *Administrative Rule* 790-X-1-.10; the bad check charge is set in Administrative Rule 790-X-1-.02.

Fee Type / Purpose ⁽¹⁾	Statutory Authority	Amount Authorized	Amount Collected
Company License & Renewal	34-27-35(c)(2)	\$170.00	\$170.00
Broker License	34-27-35(c)(1)	\$150.00	\$150.00
Renewal	34-27-35(c)(2)	\$190.00	\$190.00
Salesperson License & Renewal	34-27-35(c)(2)	\$170.00	\$170.00
Temporary Salesperson License	34-27-35(c)(1)	\$150.00	\$150.00
Late Renewal Penalty	34-27-35(g)	\$150.00	\$150.00
Transfer / License Change	34-27-34(b)	\$25.00	\$25.00
Recovery Fund Fee	34-27-31(c)(1)	\$30.00	\$30.00

Research & Education Fee	34-27-35(e)	\$30.00	\$30.00
Renewal	34-27-35(d)	\$15.00	\$15.00
Pre/Post Instructor License	34-27-6(i)	≤ \$100.00	\$100.00
Renewal	34-27-6(i)	≤ \$100.00	\$100.00
CE Instructor License	34-27-6(i)	≤ \$100.00	\$50.00
Renewal	34-27-6(i)	≤ \$100.00	\$50.00
School License	34-27-6(d)	\$500.00	\$500.00
Renewal	34-27-6(d)	\$250.00	\$250.00
Course Review Fee	34-27-6(j)	≤ \$100.00	\$100.00
Renewal	34-27-6(j)	≤ \$100.00	\$50.00
Certification of Licensure Fee	34-27-32(k)	\$10.00	\$10.00
List Request Fee	34-27-32(k)	\$10.00	\$10.00
Timeshare Registration	34-27-64(a)(b)	\$750.00	\$750.00
Renewal	34-27-64(a)(b)	\$750.00	\$750.00
Timeshare Examination	34-27-66(d)	\$75.00	\$75.00
Timeshare License & Renewal	34-27-66(d)(e)	\$50.00	\$50.00
Late Renewal Penalty	34-27-66(e)	\$15.00	\$15.00
TS Transfer / License Change	34-27-66(h)	\$50.00	\$50.00
TS Advertising Review	34-27-64(a)(b)	\$20.00	\$20.00
Bad Check Fee	8-8-15	\$30.00	\$30.00

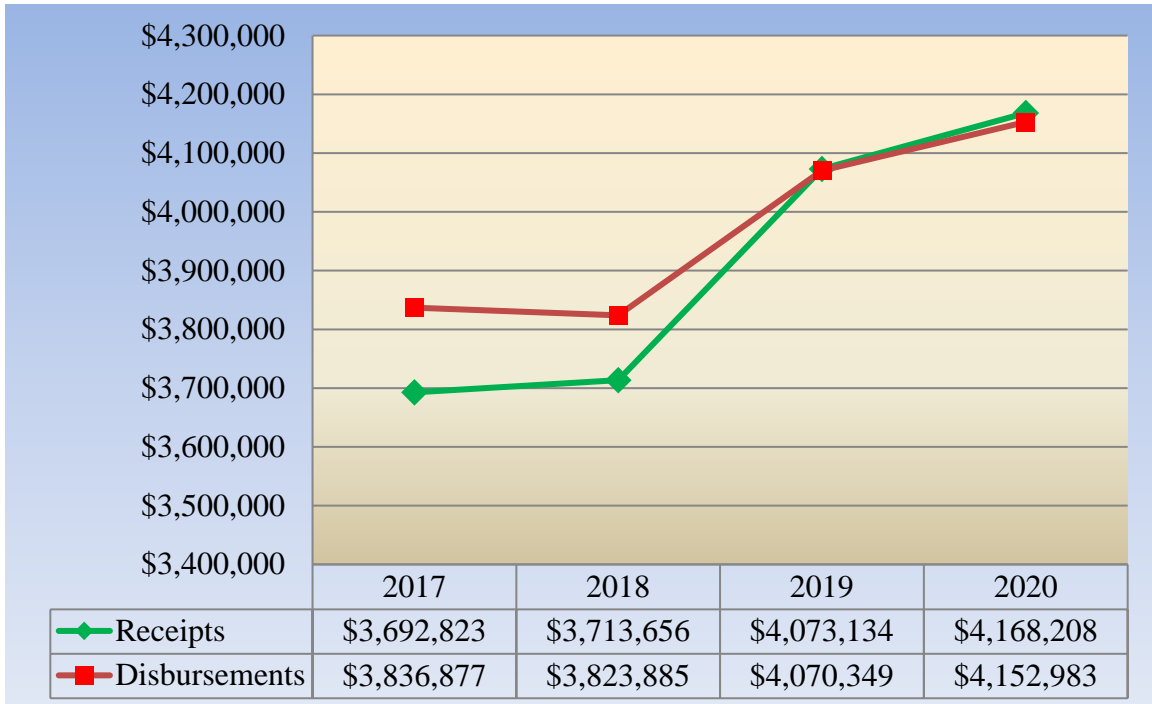
⁽¹⁾ Real estate, instructor, school, and course licenses renew every two years. Timeshare licenses renew annually.

Schedule of Receipts, Disbursements and Balances – Operating Fund

October 1, 2016 through September 30, 2020

	2019 - 2020	2018 - 2019	2017 - 2018	2016 - 2017
<u>Receipts</u>				
Licensing Fees	\$ 1,018,285.43	\$ 1,052,051.50	\$ 1,020,203.50	\$ 888,987.50
Fines and Penalties	161,660.00	189,200.00	123,700.00	180,900.00
Transfer from Fund 569	2,948,505.00	2,800,015.00	2,547,680.00	2,575,650.00
Interest Income	13,743.97	11,058.48	9,023.61	36,932.67
Docket and Copy Fees	15,890.00	12,000.00	12,390.00	9,570.00
Salvage Equipment	134.81	424.31	208.62	462.84
Prior Year Refunds	9,688.50	7,104.90	-	-
Unclaimed Property	-	830.00	-	-
Bad Check Penalties	300.00	450.00	450.00	320.00
Total	<u>4,168,207.71</u>	<u>4,073,134.19</u>	<u>3,713,655.73</u>	<u>3,692,823.01</u>
<u>Disbursements</u>				
Personnel Costs	2,578,122.61	2,242,177.90	2,118,923.62	2,121,791.49
Employee Benefits	927,995.49	840,503.65	793,427.44	785,317.89
Travel, In-State	56,747.94	91,444.19	83,073.67	85,759.71
Travel, Out-of-State	29,939.12	26,023.88	42,468.12	39,600.28
Repairs and Maintenance	21,626.62	18,672.21	20,819.32	18,562.91
Rentals and Leases	16,886.95	37,728.48	45,447.32	41,267.99
Utilities and Communications	143,467.50	137,138.13	122,933.89	122,923.55
Professional Services	232,424.37	409,941.64	408,186.03	520,222.46
Supplies, Materials, and Operating Expenses	126,937.72	126,336.43	105,719.48	84,403.19
Transportation Equipment Operations	2,291.43	3,073.19	4,511.81	4,915.39
Grants & Benefits	6,871.99	5,529.24	4,064.08	600.33
Other Equipment Purchases	9,670.78	131,779.73	74,309.76	11,512.15
Total	<u>4,152,982.52</u>	<u>4,070,348.67</u>	<u>3,823,884.54</u>	<u>3,836,877.34</u>
Excess (Deficiency) of Receipts over Disbursements	15,225.19	2,785.52	(110,228.81)	(144,054.33)
Cash Balances at Beginning of Year	<u>380,840.67</u>	<u>378,055.15</u>	<u>488,283.96</u>	<u>632,338.29</u>
Cash Balances at End of Year	396,065.86	380,840.67	378,055.15	488,283.96
Reserved for Unpaid Obligations	<u>(120,807.22)</u>	<u>(115,220.71)</u>	<u>(138,628.39)</u>	<u>(201,373.86)</u>
Unreserved Cash Balances at end of Year	<u>\$ 275,258.64</u>	<u>\$ 265,619.96</u>	<u>\$ 239,426.76</u>	<u>\$ 286,910.10</u>

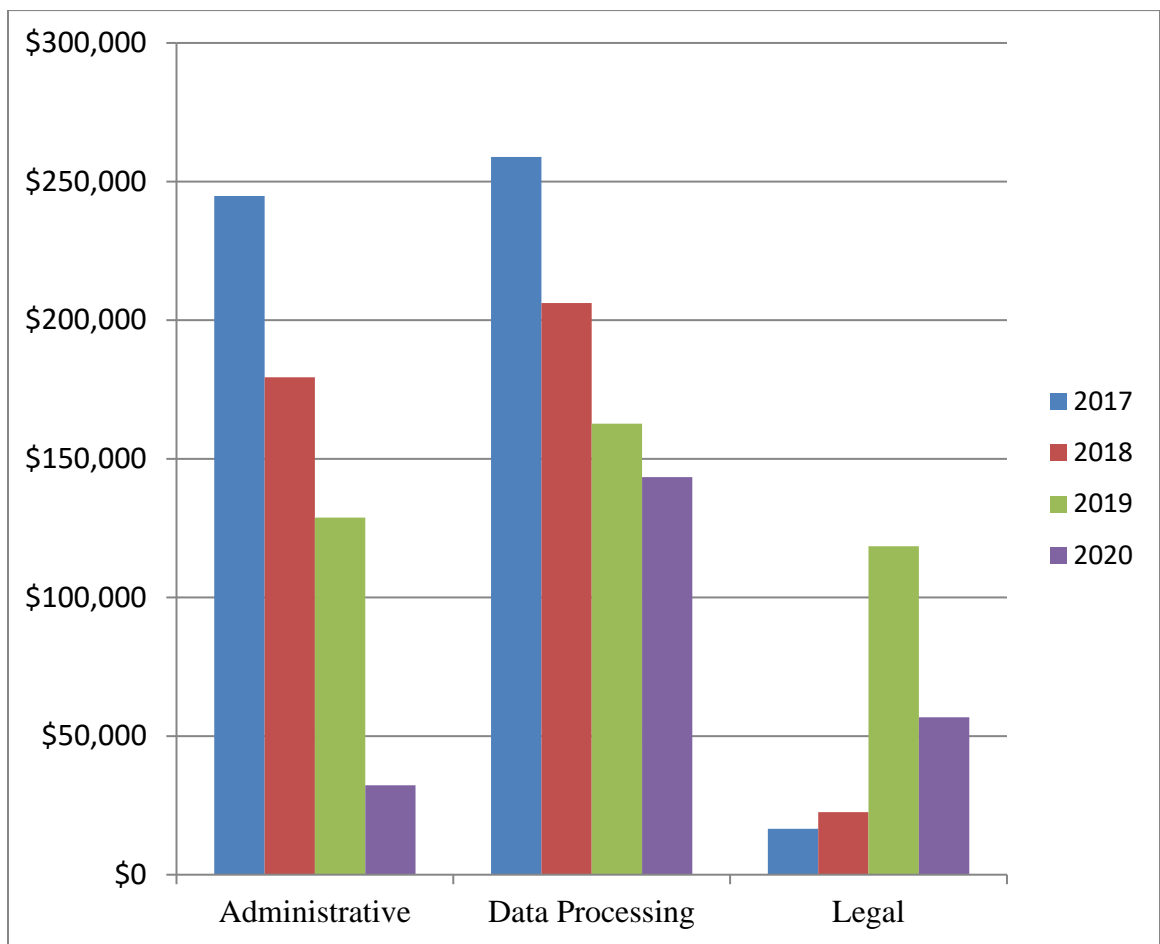
Operating Receipts vs. Operating Disbursements



SUMMARY SCHEDULE OF PROFESSIONAL SERVICE DISBURSEMENTS*				
October 1, 2016 through September 30, 2020				
Type of Service	FY 2017	FY 2018	FY 2019	FY 2020
Administrative	\$244,788.36	\$179,394.24	\$128,822.00	\$ 32,282.43
Data Processing	258,873.61	206,206.94	162,666.46	143,386.52
Legal	16,560.49	22,584.85	118,453.18	56,755.42
Total	\$520,222.46	\$408,186.03	\$409,941.64	\$232,424.27

*Detailed information presented in the appendix

Professional Service Disbursement Chart



Schedule of Receipts, Disbursements and Balances – Recovery Fund

October 1, 2016 through September 30, 2020

	2019-2020	2018-2019	2017-2018	2016-2017
<u>Receipts</u>				
Real Estate Recovery Fees	\$ 76,020.00	\$ 85,080.00	\$ 85,350.00	\$ 73,530.00
Investments - Gain on Sale	-	-	148.24	-
Investments - Interest	-	-	1,779.49	-
Total	<u>76,020.00</u>	<u>85,080.00</u>	<u>87,277.73</u>	<u>73,530.00</u>
<u>Disbursements</u>				
Grants & Benefits	123,106.00	33,263.92	9,178.18	4,510.34
Investments - Loss on Sale	-	-	1,927.73	-
Total	<u>123,106.00</u>	<u>33,263.92</u>	<u>11,105.91</u>	<u>4,510.34</u>
Excess (Deficiency) of Receipts over Disbursements	(47,086.00)	51,816.08	76,171.82	69,019.66
Cash Balances at Beginning of Year	<u>408,769.59</u>	<u>356,953.51</u>	<u>280,781.69</u>	<u>211,762.03</u>
Cash Balances at End of Year	361,683.59	408,769.59	356,953.51	280,781.69
Investments	761,179.89	750,408.71	729,074.60	733,325.14
Reserved for Unpaid Obligations	<u>(150,000.00)</u>	<u>(150,000.00)</u>	<u>(150,000.00)</u>	<u>(150,000.00)</u>
Fund Balance at end of Year	<u>\$ 972,863.48</u>	<u>\$ 1,009,178.30</u>	<u>\$ 936,028.11</u>	<u>\$ 864,106.83</u>

Schedule of Receipts, Disbursements and Balances – Proportionate Fund

October 1, 2016 through September 30, 2020

	2019-2020	2018-2019	2017-2018	2016-2017
<u>Receipts</u>				
Real Estate License Renewal Fees	\$ 5,098,245.00	\$ 114,670.00	\$ 4,701,705.00	\$ 115,420.00
Real Estate Original License Fees	2,360.00	301,840.00	615.00	243,260.00
Investment Proceeds	146,914.08	379,168.09	-	325,715.37
Cash Dividends	-	1,298.30	313.49	56.29
Interest Income	-	20,129.91	63,355.70	63,390.75
Gain on Sale of Investments	-	-	461.82	12,393.55
Unrealized Gain	54,651.75	1,527.69	3,870.00	234,215.95
Amounts Held in Custody for Others	1,470.00	210.00	319,140.00	-
Amounts Held for Other Funds	361,845.00	-	-	3,270.00
Total	<u>5,665,485.83</u>	<u>818,843.99</u>	<u>5,089,461.01</u>	<u>997,721.91</u>
<u>Disbursements</u>				
Transfer to Fund 371	2,948,505.00	2,800,015.00	2,547,680.00	2,575,650.00
Investments - Loss on Sale	-	1,868.64	7,010.68	1,555.96
Investments - Purchase	-	-	55,394.36	-
Investments - Unrealized Loss	1,565.83	255.35	1,725.97	2,110.95
Amounts Held in Custody for Others	-	-	-	302,885.00
Amounts Held for Other Funds	-	318,765.00	-	100.00
Total	<u>2,950,070.83</u>	<u>3,120,903.99</u>	<u>2,611,811.01</u>	<u>2,882,301.91</u>
Excess (Deficiency) of Receipts over Disbursements	2,715,415.00	(2,302,060.00)	2,477,650.00	(1,884,580.00)
Cash Balances at Beginning of Year	<u>2,756,270.00</u>	<u>5,058,330.00</u>	<u>2,580,680.00</u>	<u>4,697,365.00</u>
Cash Balances at End of Year	5,471,685.00	2,756,270.00	5,058,330.00	2,812,785.00
Investments	<u>2,745,767.33</u>	<u>2,832,547.00</u>	<u>3,074,769.84</u>	<u>3,072,974.23</u>
Fund Balance at end of Year	<u>\$ 8,217,452.33</u>	<u>\$ 5,588,817.00</u>	<u>\$ 8,133,099.84</u>	<u>\$ 5,885,759.23</u>

QUESTIONNAIRES

Commission Member Questionnaire

A letter was sent to all seven members of the Alabama Real Estate Commission requesting participation in our survey. Four participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. What are the most significant issues currently facing the Alabama Real Estate Commission and how is the commission addressing these issues?

Commission Member #1 – “We have an incredible commission and a gifted staff. The current issues are working through a political climate to establish better practices and new rules and regulations that will benefit all licensees.”

Commission Member #2 – “Covid has changed the way the staff works with many employees working from home. Under the leadership of the Executive Director and department heads the staff is pulling together and has become very efficient. Company audits are completed electronically, and the licensees statewide are receiving good service.”

Commission Member #3 – “Five commission positions require refilling in September 2021. Valuable experience will be difficult to replace. The best qualified candidates are critical to maintain effective enforcement of the AREC mission and purpose.”

Commission Member #4 – “I believe the most significant issue with AREC is the strained relationship with the trade association, Alabama Association of Realtors. The Commission has made several attempts to reach a working relationship, but it remains strained. The two entities need to work together, especially when it comes to creating legislation that is best for both.”

2. What, if any, changes to the Commission’s laws are needed?

Commission Member #1 – “We worked on revising RECAD and we are waiting for the correct time to introduce the bill.”

Commission Member #2 – “The commissioners are considering what changes are now needed and changes to law require legislative approval. Additional continuing education is one of the areas being discussed.”

Commission Member #3 – “First: Terms and makeup of the commission should be evaluated to ensure all aspects of RE in Alabama are represented. Positions for commercial, residential, rural, consumer, and property management/lease could be established in place of political districts. Terms of no less than 4 years with one reappointment and no extensions is reasonable. Mandatory staggered terms should be required. Second: Revocation periods for licensees should be at least six years and there should be an option to revoke permanently as in other professions. Third: Pre-course, post course, and CE requirements should be increased for all licensees. Licensees should have at least 6 years of active sales experience before becoming a broker. Fourth: Insufficient payments to the AREC should be handled as an

Commission Member Questionnaire

administrative issue and not a violation of RE Code. Nonpayment of license issuance or renewals should inactivate the license until sufficient payment is collected preventing any legal activity of a licensee. Fifth: CE should be completed annually. Renewals of license should be evaluated to see if it is feasible to renew annually instead of every two years. Renewals could be staggered monthly to eliminate the massive renewal period at one time every two years.”

Commission Member #4 – “The Commission has several items that need cleaning up and are hopeful we can accomplish them but it is difficult when the state trade association is not on board and working with us to create bills that are beneficial to both.”

3. Is the Commission adequately funded?

Yes	3	75%
No Opinion	1	25%

Commission Member #1 – “Yes. It is funded by licensees – with no other source.”

Commission Member #2 – “Yes. Most agencies usually can use additional funds to add extra values/services.”

Commission Member #3 – “No opinion. Undecided. The new Executive Director has done an exemplary job of reviewing the historical operations of the AREC and has eliminated waste and expenses to enhance the financial position. This is an ongoing focus to prevent the need for increased fees on licensees and keep the AREC operating effectively.”

4. Is the Commission adequately staffed?

Yes	4	100%
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Commission Member #1 – “Yes. We have a great committed staff.”

Commission Member #2 – “Yes. The addition of another staff attorney has given the commission more strength for legal matters.”

Commission Member #3 – “Yes. Staffing is always a fluid situation that requires constant management. However, the addition of the new Executive Director, attorney positions, and the continued talent in Assistant ED and Accounting personnel (as well as others in Education and Licensing) brings the needed management team to AREC. The IT department is outstanding and keeping us in contact with Commission, staff, and licensees. AREC's website and social media communications are excellent resources for consumers and licensees. The management team is focused, cohesive, and forward looking.”

Commission Member Questionnaire

5. Does the commission receive regular reports on the operations of the Commission from the Executive Director?

Yes **4** **100%**

Commission Member #1 – “Yes. We are all kept up to speed. And we are able to call as needed.”

Commission Member #2 – “Yes. A report is given at each monthly scheduled commission meeting and a detailed report is included in the packet for each commissioner prior to the meeting.”

Commission Member #3 – “Yes. The Commission receives reports monthly and on an as needed basis. Commissioners are always able to access any staff as needed with questions.”

6. Has the Commission experienced any significant changes to its operations?

Yes **3** **75%**
No **1** **25%**

Commission Member #1 – “Yes. We just hired a new executive director.”

Commission Member #2 – “Yes. Covid has required strong safety protocol and changes to the physical building systems.”

Commission Member #3 – “Covid 19 has changed the entire manner of operations at AREC. The staff must be complimented on their adaptability. They have managed the situation superbly. AREC has been able to function continually because of the great work of staff to place our hearings virtually and conduct desk audits of licensees. This has been a success story allowing more of the public to see how AREC works and carries out its mission. It also has allowed AREC to conduct more audits than traditional in person audits.”

7. What, if any, changes do the Commission plan to make to its operations?

Commission Member #1 – “We have started workshops - which has been great as there are always new commissioners.”

Commission Member #2 – “There are none that I am aware of now.”

Commission Member #3 – “Hopefully AREC will be able to bring all staff back into the office safely at some point and our hearings will be moved to our hearing room eventually.”

Commission Member #4 – “The staff is actively reaching out to licensees and the public through social media and other means to change with the times and being a resource for licensees and the public.”

8. Do you have any other comments?

Commission Member #2 – “Thank you for giving us an opportunity to express our thoughts.”

Commission Member #3 – “AREC operates openly, honestly, and with the highest integrity. The mission is clear and is taken very seriously. AREC's Sunset Reviews have had no findings and was recently placed on a 2-year rotation. There is no adequate justification for annual reviews in my opinion, however, AREC will dutifully comply.”

APPENDICES

Applicable Statutes

Section 34-27-1 Short title.

This chapter may be cited as the Alabama Real Estate License Law of 1951.
(Acts 1951, No. 422, p. 745, §1; Acts 1971, No. 2485, p. 3966, §1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1.)

Section 34-27-2 Definitions; exemptions from chapter.

(a) For purposes of Articles 1 and 2 of this chapter, the following terms shall have the respective meanings ascribed by this section:

- (1) ASSOCIATE BROKER. Any broker other than a qualifying broker.
- (2) BROKER. Any person licensed as a real estate broker under Articles 1 and 2 of this chapter.
- (3) COMMISSION. The Alabama Real Estate Commission, except where the context requires that it means the fee paid to a broker or salesperson.
- (4) COMMISSIONER. A member of the commission.
- (5) COMPANY. Any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may provide for from time to time, which is licensed as a company under Articles 1 and 2 of this chapter.
- (6) ENGAGE. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.
- (7) INACTIVE LICENSE. A license which is being held by the commission office by law, order of the commission, at the request of the licensee, or which is renewable but is not currently valid because of failure to renew.
- (8) LICENSEE. Any broker, salesperson, or company.
- (9) LICENSE PERIOD. That period of time beginning on October 1 of a year designated by the commission to be the first year of a license period and ending on midnight September 30 of the year designated by the commission as the final year of that license period.
- (10) PERSON. A natural person.
- (11) PLACE OF BUSINESS.
 - a. A licensed broker living in a rural area of this state who operates from his or her home, provided that he or she sets up and maintains an office for the conduct of the real estate business, which shall not be used for living purposes or occupancy other than the conduct of the real estate business. The office shall be used by the broker only and not as a place of business from which any additional licensee operates under his or her license. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.
 - b. All licensees located within the city limits or police jurisdiction of a municipality shall operate from a separate office located in the city limits or police jurisdiction. The office shall have a business telephone, meet all other regulations of the Real Estate Commission, and be properly identified as a real estate office. Hardship cases may be subject to waiver of this regulation upon application and approval by the commission.

c. All business records and files shall be kept at the place of business as required by law or Real Estate Commission rules.

(12) QUALIFYING BROKER. A broker under whom a sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may from time to time provide is licensed, or a broker licensed as a company to do business as a sole proprietorship who is responsible for supervising the acts of the company or proprietorship and all real estate licensees licensed therewith.

(13) RECOVERY FUND. The Alabama Real Estate Recovery Fund.

(14) SALESPERSON. Any person licensed as a real estate salesperson under Articles 1 and 2 of this chapter.

(b) The licensing requirements of Articles 1 and 2 of this chapter shall not apply to any of the following persons and transactions:

(1) Any owner in the managing of, or in consummating a real estate transaction involving, his or her own real estate or the real estate of his or her spouse or child or parent.

(2) An attorney-at-law performing his or her duties as an attorney-at-law.

(3) Persons acting without compensation and in good faith under a duly executed power of attorney authorizing the consummation of a real estate transaction.

(4) Persons or a state or federally chartered financial institution acting as a receiver, trustee, administrator, executor, or guardian; or acting under a court order or under authority of a trust instrument or will.

(5) Public officers performing their official duties.

(6) Persons performing general clerical or administrative duties for a broker so long as the person does not physically show listed property.

(7) Persons acting as the manager for an apartment building or complex. However, this exception shall not apply to a person acting as an on-site manager of a condominium building or complex.

(8) Persons licensed as time-share sellers under Article 3 of this chapter performing an act consistent with that article.

(9) Transactions involving the sale, lease, or transfer of cemetery lots.

(Acts 1951, No. 422, p. 745, §3; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §3; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, §1; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1996, No. 96-791, p. 1471, §1; Act 2003-298, p. 701, §1; Act 2008-141, p. 214, §3.)

Section 34-27-3 Nonresident may not act except in cooperation with licensed broker of state; written co-brokerage agreement to be filed.

(a) A licensed broker of another state may act as co-broker with a licensed broker of this state by executing a written agreement specifying each parcel of property covered by the agreement if the state in which the nonresident broker is licensed offers the same privileges to licensees of this state.

(b) Whenever an Alabama broker enters into a co-brokerage agreement with a nonresident broker to perform in Alabama any of the acts described in Section 34-27-30 the Alabama broker shall file within 10 days with the commission a copy of each such

written agreement. By signing the agreement, the nonresident broker agrees to abide by Alabama law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him or her in any court of competent jurisdiction in any county of this state in which a claim may arise.

(Acts 1951, No. 422, p. 745, §7; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §7; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3.)

Section 34-27-4 Real Estate Commission Revenue Fund and Real Estate Commission Proportionate Fund.

All fees, fines, charges, or other money, except as provided in Section 34-27-31, and except as provided in this section for multi-year licenses, collected by the commission shall be deposited in the State Treasury to the credit of the Real Estate Commission Revenue Fund and shall be disbursed by the state Comptroller on order of the executive director at the direction of the commission. A proportionate share of all money collected by the commission as license fees during each fiscal year of a multi-year license period or during the renewal period immediately preceding that first year, and all fees collected for research and education, shall be reserved in the State Treasury in the Real Estate Commission Proportionate Fund by the state Comptroller to be disbursed quarterly to the Real Estate Research and Education Center with the remainder to be disbursed for commission expenses incurred in that fiscal year or the subsequent fiscal years of that license period. The proportion for each fiscal year shall be determined by dividing the amount of money collected by the commission as license fees each fiscal year or during the renewal period immediately preceding the first year by the number of years within the multi-year license period. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments in the proportionate fund shall be deposited into the Real Estate Commission Revenue Fund for expenditure by the commission. All other money including penalty fees collected by the commission shall be disbursed during the fiscal year in which they are collected. The state Comptroller and State Treasurer are directed to pay all expenses incurred by the commission in performing its responsibilities and exercising its authority from the Real Estate Commission Revenue Fund in the State Treasury on warrants of the state Comptroller drawn on the State Treasury on order of the executive director. The commission may not incur expenses that exceed the total fees and charges collected and paid into the State Treasury; or that exceed the amount appropriated by the Legislature. No funds shall be withdrawn or expended except as budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96. All money remaining unexpended in the Real Estate Commission Revenue Fund at the end of each fiscal year shall be retained by the commission for the following fiscal year.

(Acts 1951, No. 422, p. 745, §11; Acts 1953, No. 513, p. 647; Acts 1963, No. 290, p. 734; Acts 1971, No. 2485, p. 3966, §11; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1979, No. 79-690, p. 1221, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1992, No. 92-177, p. 305, §3; Acts 1995, No. 95-679, p. 1483, §1.)

Section 34-27-5 County list of licensees.

The commission shall on the request of the probate judge of any county of this state provide the judge with a list of persons who are licensed by the commission and who reside in that county.

(Acts 1951, No. 422, p. 745, §15; Acts 1971, No. 2485, p. 3966, §15; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-6 Real estate courses and schools.

(a) For purposes of this section and rules adopted pursuant thereto, the following terms shall have the following meanings:

(1) ADMINISTRATOR. A person designated by a principal school or branch school and approved by the commission to be the person responsible to the commission for all acts governed by this chapter and applicable rules which govern the operation of schools.

(2) APPROVED COURSE. Any course of instruction approved by the commission that satisfies commission requirements for prelicense education, postlicense education, or continuing education.

(3) APPROVED SCHOOL. Any proprietary educational institution offering only commission approved continuing education courses and any accredited college or university that offers any commission approved course.

(4) BRANCH SCHOOL. Any school under the ownership of a principal school which offers commission approved courses at a permanent location.

(5) INSTRUCTIONAL SITE. Any physical place where commission approved instruction is conducted apart from the principal school or branch school.

(6) INSTRUCTOR. A person approved by the commission to teach approved courses in the classroom or by distance education.

(7) LICENSED SCHOOL. Any proprietary school that offers commission approved prelicense courses or postlicense courses, or both, only after being licensed and bonded by the commission.

(8) PRINCIPAL SCHOOL. Any institution or organization which is the primary school and not a branch school that is approved by the commission.

(9) PROPRIETARY SCHOOL. Any school that is not an accredited college or university and which offers commission approved prelicense courses or postlicense courses, or both, only after being licensed and bonded by the commission. Each branch school shall be licensed separately.

(b) The commission shall approve and regulate schools that offer commission approved prelicense, postlicense, and continuing education courses. The commission shall be the board, commission, or agency with the sole and exclusive authority to license proprietary schools and their branches for the limited purpose of their offerings of commission approved prelicense courses or postlicense courses, or both.

(c) The commission shall require proprietary schools to furnish a surety bond payable to the commission in the amount of twenty thousand dollars (\$20,000) with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to twenty thousand dollars (\$20,000) in the aggregate sum of all judgments which shall be recovered against the school for damages arising from the school's collection of tuition or fees, or both, from students, but failing to provide the

complete instruction for which such tuition or fees were collected. The bond shall remain in effect as long as the school is licensed. In the event the bond is revoked or cancelled by the surety company, the school shall have 10 days to obtain a new bond and file it with the commission. Failure to maintain a bond shall result in the immediate suspension of the licenses of the school and all of its branches. The bond shall be provided by the school and shall also cover any branch schools named in the bond or any endorsement or amendment thereto.

(d) The commission shall charge a license fee for each licensed principal school and shall charge a fee for each branch school in the amount of two hundred fifty dollars (\$250) per year for each year or portion of a year remaining in the respective license period. The renewal fee for each school license shall be one hundred twenty-five dollars (\$125) for each year of the license period.

(e) The commission shall require all schools to name and have approved by the commission a school administrator who shall be responsible to the commission for all actions of his or her respective school.

(f) Principal schools shall be clearly identified by signage as appropriate for the location. The signage shall set out the name of the principal school. Branch schools shall be clearly identified by signage as appropriate for the location. The signage shall set out the name of the branch school and the name of the principal school.

(g) The commission shall have the authority to reprimand, fine, suspend for a period up to two years, or revoke the license or approval of any school, administrator, or instructor for any violation of this section or any rule of the commission. The fine shall be not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per count.

(h) The commission shall approve, sponsor, contract for or conduct, or assist in sponsoring or conducting real estate courses for licensees, may charge fees, and may incur and pay the necessary expenses in connection therewith.

(i) The commission shall approve and regulate instructors who teach the commission approved prelicense, postlicense, and continuing education courses. The commission shall establish and collect fees as determined necessary, not to exceed fifty dollars (\$50) per instructor annually, to approved instructors who teach commission approved courses.

(j) The commission shall approve courses and establish and collect fees as determined necessary, not to exceed one hundred dollars (\$100) per application, to review each course.

(k) The commission shall establish one-year or multi-year approval periods for schools, instructors, administrators, and courses. Approval and license periods shall run from October 1 of the first year of the approval period through September 30 of the final year of the approval period.

(l) The commission shall promulgate rules and regulations as necessary to accomplish the purpose of this section in accordance with the Administrative Procedure Act.

(Acts 1951, No. 422, p. 745, §16; Acts 1971, No. 2485, p. 3966, §16; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1996, No. 96-791, p. 1471, §1; Act 2009-581, p. 1712, §1.)

Section 34-27-7 Real Estate Commission - Created; composition; qualifications of members; appointment; terms; compensation; organization; executive director and assistant executive director generally; seal; records; immunity from suit.

(a) There is created the Alabama Real Estate Commission. The commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate as hereinafter provided. The Governor's appointments to the commission, except for the appointment of the consumer member made pursuant to subsection (e), shall be made from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership, as evidenced by the filing of a verified list of paid members with the Secretary of State within 10 days of April 6, and annually by December 31 of each year thereafter. At least one of the persons nominated for each commission seat shall not be a member of the Real Estate Society or trade association. The Governor shall appoint one of the three nominated persons within 30 days following receipt of the list. If the Governor does not make an appointment within 30 days, the said Real Estate Society or trade association shall provide the Governor a list of three additional nominees. The Governor, upon receipt of the second list of nominees, shall appoint one of the six nominees within 30 days following receipt of the nominees. Appointments made at times when the Senate is not in session shall be effective ad interim. Any appointment made by the Governor while the Senate is in session shall be submitted not later than the third legislative day following the date of appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature.

(b) Ad interim appointments may be made by the Governor when the Legislature is not in session only for vacancies occurring by reason of death or resignation of a board member. Ad interim appointments shall be confirmed by the Senate at the next following regular or special session of the Legislature. Failure by the Senate to confirm shall result in a vacancy on the board that shall be filled by appointment by the Governor and confirmation by the Senate while the Legislature is in session. Any vacancy not acted upon shall remain a vacancy until it is filled at a subsequent session of the Legislature in the manner prescribed in this section.

(c) Each of the original seven appointees and their successors shall have been a resident and citizen of this state for at least 10 years prior to his or her appointment and whose vocation for at least 10 years shall have been that of a real estate broker or real estate salesperson. No person convicted of a violation of any federal or state real estate license law shall be eligible to serve. Not more than one member from any United States Congressional District shall be appointed to serve at the same time. The members of the commission shall serve five-year terms. On and after April 7, 1988, no member shall serve for more than two consecutive terms of office, except, however, each member shall hold office until his or her successor is appointed by the Governor and confirmed by the Senate. The period of time any member serves after the expiration of his or her term of office while awaiting the appointment and Senate confirmation of his or her successor shall not be considered as a consecutive term of office in determining the two consecutive terms of office limitation herein provided. All appointments shall expire on September 30 of the final year of a term, or on the date a successor to the member is appointed and confirmed. If a member does not serve his or her full term, the Governor shall appoint, in

the same manner as original appointments are made, subject to confirmation by the Senate, a member to serve the unexpired portion of the term.

(d) On September 30, 1988, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a Black member who meets all of the other requirements of subsection (c), who shall serve no more than two consecutive terms of office, who shall be a full voting member, and who may be appointed from any congressional district in the state. Each successor Black member shall be appointed from a different congressional district, to be rotated equally among the remaining congressional districts.

(e) On October 1, 1996, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a consumer member. The consumer member of the commission shall serve no more than two consecutive terms of office, shall be a full voting member, and shall be initially appointed from any congressional district in the state. Each successor consumer member shall be appointed from a different congressional district, on a rotating basis, among the remaining congressional districts. The consumer member shall meet all of the following requirements, that he or she:

(1) Is 21 years of age or older.

(2) Has been a resident and citizen of this state for at least 10 years prior to appointment.

(3) Is a registered voter in this state.

(4) Has no felony convictions.

(5) Is the owner of real property.

(6) Has not been a licensed real estate broker or salesperson for the 10 years preceding appointment.

(7) Is not related to, by blood or marriage, or employed by, a real estate licensee.

(f) On the appointment of a new commissioner, the commission shall meet and select from its members a chair.

(g) Each member of the commission shall receive as full compensation three hundred dollars (\$300) per month. The members of the commission, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission.

(h) The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence. The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state.

(i) The commission shall adopt a seal by which it shall authenticate records and documents. Copies of all records and documents in the office of the commission duly certified and authenticated by the seal of the commission shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the

office of the commission shall be open to public inspection during reasonable hours and under reasonable circumstances.

(j) No commissioner shall be liable for damages resulting from any act performed in carrying out his or her duties as a commissioner.

(Acts 1951, No. 422, p. 745, §4; Acts 1971, No. 2485, p. 3966, §4; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1979, No. 79-690, p. 1221, §1; Acts 1981, No. 81-386, p. 572, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1996, No. 96-791, p. 1471, §1.)

Section 34-27-8 Real Estate Commission - Quorum; rules and regulations; agency disclosure clause.

(a) A majority of the commission members shall constitute a quorum for the conduct of commission business. The commission may adopt and enforce all rules and regulations pursuant to the state administrative procedure statutes necessary for the administration of this chapter, and to otherwise do all things necessary and convenient for effecting this chapter.

(b) In addition to the powers granted in this section, the commission may adopt and enforce rules and regulations governing the requirements of agency disclosure by licensed brokers and salespersons.

(c) Each offer to purchase prepared after August 1, 1998, shall have prominently displayed the following AGENCY DISCLOSURE clause which shall be completed and initialed as indicated:

The listing company _____ is:

(Two blocks may be checked)

____ An agent of the seller.

____ An agent of the buyer.

____ An agent of both the seller and buyer and is acting as a limited consensual dual agent.

____ Assisting the _____ buyer _____ seller as a transaction broker.

The selling company _____ is:

(Two blocks may be checked)

____ An agent of the seller.

____ An agent of the buyer.

____ An agent of both the seller and buyer and is acting as a limited consensual dual agent.

____ Assisting the _____ buyer _____ seller as a transaction broker.

(Acts 1951, No. 422, p. 745, §19; Acts 1971, No. 2485, p. 3966, §19; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1995, No. 95-211, p. 341, §10; Act 98-618, p. 1359, §1.)

Section 34-27-8.1 Real Estate Commission - Legislative findings; rulemaking authority.

(a) The Legislature finds and declares all of the following:

(1) The power to make rules regulating the licensing of real estate brokers and salespersons includes the power to prohibit unqualified persons from being licensed as a real estate broker or salesperson.

(2) A primary goal of the provision of real estate regulation is to prioritize consumer protection in real estate transactions.

(3) The Alabama Real Estate Commission is in the best position to determine the real estate practices that prioritize consumer protection in real estate transactions.

(4) Prioritizing consumer protection may sometimes be at odds with the goals of state and federal antitrust laws, which include the prioritization of competition.

(5) It is the intent of the Legislature to immunize the Alabama Real Estate Commission and its members from liability under state and federal antitrust laws for the adoption of a rule that prioritizes consumer protection but may be anti-competitive.

(b) Subject to subsection (c), rules adopted under Section 34-27-8 may define and regulate the licensing of real estate brokers and salespersons in a way that prioritizes consumer protection, even if the rule is anti-competitive.

(c) A rule adopted under Section 34-27-8 may supplement or clarify any statutory definition, but may not conflict with any statute that defines an activity that requires licensing under this chapter.

(d) Nothing in this section shall be construed to constrict or expand the current rights and privileges of any individual governed by the Alabama Real Estate Commission beyond that which existed prior to the ruling in the United States Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

(e) Nothing in this section shall be construed to constrict or expand the current duties or responsibilities of the members of the Alabama Real Estate Commission in any context outside of state or federal antitrust immunity beyond that which existed prior to the ruling in the United States Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

(Act 2017-396, §§1-3.)

Section 34-27-10 Chapter cumulative.

(a) The requirements of this chapter shall be in addition to the requirements of existing or future laws or ordinances of any state, county, or municipality taxing, licensing, or regulating real estate brokers or salesmen.

(b) A licensee under this chapter shall not be subject to the requirements of Section 40-12-150 when he or she sells, offers to sell, or advertises for sale realty situated in another state or county.

(c) Licensees under this chapter shall be exempt from the provisions of Section 5-19-22. *(Acts 1951, No. 422, p. 745, §21; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §21; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1985, No. 85-750, p. 1204, §1.)*

Section 34-27-11 Penalties.

(a) Any person or corporation which violates any provision of this chapter commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(b) Any person who files with the commission any notice, statement, or other document or information required under the provisions of this chapter which is false or untrue or contains any material misstatement of fact commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(Acts 1951, No. 422, p. 745, §18; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-30 Required.

It shall be unlawful for any person, sole proprietorship, partnership, corporation, branch office, or lawfully constituted business organization, as the Legislature may from time to time provide, for a fee, commission, or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission, or other valuable consideration from another, to do any of the following unless licensed under Articles 1 and 2 of this chapter:

(1) Sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.

(2) Offer to sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.

(3) Negotiate or attempt to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate situated within the State of Alabama.

(4) List or offer or attempt or agree to list real estate for sale, rental, lease, exchange, or trade situated within the State of Alabama.

(5) Auction, offer, or attempt or agree to auction, real estate situated within the State of Alabama.

(6) Buy or sell or offer to buy or sell, or otherwise deal in options on real estate situated within the State of Alabama.

(7) Aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate situated within the State of Alabama.

(8) Procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.

(9) Procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.

(10) Present himself or herself, or be presented, as being able to perform an act for which a license is required.

(Acts 1951, No. 422, p. 745, §2; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Act 2006-601, p. 1647, §1; Act 2008-141, p. 214, §3.)

Section 34-27-30.1 License requirement or tax on certain real estate companies prohibited.

Amended and renumbered as §11-51-132 by Act 2008-141, p. 214, §3, effective April 10, 2008.

(Act 2007-364, §1.)

Section 34-27-30.2 Fees prohibited on signs advertising real property for sale by realtors; restrictions on signs.

(a) The rights of real estate licensees shall include the right to advertise real property for sale, lease, or transfer by other conveyance using signs affixed to or located on the real property. A municipal corporation or a political subdivision of the state may not impose any fee or tax for the use of signs affixed to or located on the real property which is for sale, lease, or transfer by other conveyance nor may a municipal corporation or a political subdivision of the state impose any fee or tax for the use of signs near such property directing people to such property.

(b) Notwithstanding the foregoing, nothing in this section shall limit the ability of a political subdivision to enact and enforce reasonable restrictions on the size, height, and placement of signs on private property or public right-of-way and to impose monetary penalties for a violation of such restrictions.

(Act 2008-383, p. 713, §1.)

Section 34-27-31 Recovery Fund created; fees paid to fund; injured party's recovery from fund; procedures, appeals, etc.; licensee to report any legal action taken against him or her.

(a) The commission shall establish and maintain a Recovery Fund from which an aggrieved party may recover actual or compensatory damages, not including interest and court costs, sustained only within the State of Alabama as a result of conduct of a broker or salesperson in violation of Article 1 or 2 of this chapter or the rules and regulations of the commission.

(b) Notwithstanding any other provision to the contrary, payments from the Recovery Fund are subject to the following conditions and limitations:

(1) The fund shall not be obligated for the acts or omissions of a broker or salesperson while acting on his or her own behalf or on behalf of his or her child, spouse, or parent regarding property in which he or she or his or her spouse, child, or parent has, or is attempting to acquire, an interest; or for the acts or omissions of an inactive licensee; or for the acts or omissions of a corporation, branch office, or partnership except through its licensed salespersons and brokers as individuals. The fund shall not be obligated for any judgment or settlement resulting from an act or omission of a broker or salesperson committed in conjunction with the marketing or development of a time-sharing project.

(2) Payments for claims based on judgments or settlements against any one person shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

(3) Payments for claims arising out of the same transaction shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate, regardless of the number of claimants.

(4) The fund shall not be liable for payments to a licensee or bonding company unless the licensee or bonding company was a principal party to a real estate transaction on which the judgment was based.

(c)(1) When any person makes application for an original license as a broker or salesperson, he or she shall pay, in addition to all other fees, a fee of thirty dollars (\$30) for deposit in the Recovery Fund. In the event the commission does not issue the license, this fee shall be returned to the applicant.

(2) Any salesperson licensee who has paid the additional fee and who has attained a broker license and has paid the additional broker fee shall be refunded, upon request, one of the additional fees and no other salesperson licensee shall be required to pay an additional fee upon attaining broker status.

(3) Payments made to the Recovery Fund in lieu of bond by a licensee shall be paid only one time when he or she is originally licensed by the commission.

(d) When the balance remaining in the Recovery Fund is less than five hundred thousand dollars (\$500,000), each broker and salesperson shall on order of the commission pay a fee of thirty dollars (\$30) per license for deposit in the Recovery Fund. A licensee on inactive status shall not be required to contribute to the fund at that time. A fee of thirty dollars (\$30) shall be paid at the time a license is activated.

(e)(1) When an aggrieved person commences an action for a judgment which may result in collection from the Recovery Fund, the aggrieved person shall notify the commission in writing, by certified mail, return receipt requested, to this effect at the time of the commencement of the action.

(2) When the commission receives the notice described in subdivision (e)(1), it may enter an appearance, file pleadings and motions, appear at court hearings, defend the action, or take whatever other action it deems appropriate either on the behalf and in the name of the defendant, or in its own name. The commission may also take any appropriate method of review either on behalf and in the name of the defendant, or in its own name. The commission may settle or compromise the claim. Any expenses incurred by the commission in defending, satisfying, or settling any claim shall be paid from the Recovery Fund.

(3) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a broker or salesperson on the grounds described in subsection (a) above, which occurred on or after October 1, 1979, the aggrieved person may, on the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, on 10 days' written notice to the commission, may apply to the court for an order directing payment out of the Recovery Fund of the amount unpaid on the judgment.

(4) The court shall proceed on the application immediately and, on hearing, the aggrieved person shall be required to show each of the following:

a. He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent.

b. He or she has obtained a judgment, as described in subdivision (e)(3), stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in the action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.

c. The following items, if recovered by him or her, have been applied to the actual compensatory damages awarded by the court:

1. Any amount recovered from the judgment creditor.

2. Any amount recovered from bonding companies.
3. Any amount recovered in out-of-court settlements.
- (5) The court shall order that the Recovery Fund pay whatever sum it finds due under this section.
- (6) Should the commission pay from the Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the commission. The commission may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent a year, the amount paid from the Recovery Fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.
- (7) If the balance in the Recovery Fund is insufficient to satisfy a duly authorized claim or portion of a claim, the commission shall, when sufficient money has been deposited in the Recovery Fund, satisfy the unpaid claims or portions, plus interest at the rate of 12 percent a year in the order that the claims were originally filed.
- (f) The sums received by the commission pursuant to this section shall be deposited into the State Treasury and held in a special fund to be known as the Real Estate Recovery Fund, and shall be held by the commission in trust for carrying out the purposes of the Recovery Fund. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments of the Recovery Fund shall be deposited in the Real Estate Commission Revenue Fund with one-half being transmitted to the University of Alabama Real Estate Research and Education Center.
- (g) The commission may transfer funds one time only from the Real Estate Recovery Fund to the University of Alabama Real Estate Research and Education Center. The amount of the transfer may not reduce the Real Estate Recovery Fund below six hundred thousand dollars (\$600,000).
- (h) When, on order of the court, the commission has paid from the Recovery Fund any sum, the commission shall be subrogated to all the rights of the judgment creditor, and all his or her right, title, and interest in the judgment, to the extent of the amount paid from the Recovery Fund, shall be assigned to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.
- (i) The failure of an aggrieved person to strictly comply with all of the provisions of this section shall constitute a waiver of any rights under this section.
- (j) Each licensee shall notify the commission within 10 days after notice to him or her of the institution of any criminal prosecution against him or her, or of a civil summons and complaint against him or her, if the subject matter of the civil complaint involves a real estate transaction or involves the goodwill of an existing real estate business. The notification shall be in writing by certified mail and shall include a copy of the summons and complaint. If a criminal charge is made, it shall include the specific charge made against the licensee together with a copy of any indictment or information alleging the charges.
- (k) Each licensee shall notify the commission in writing by certified mail within 10 days after he or she receives notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a real estate transaction or the goodwill of a real estate business has resulted in a judgment or been

dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee notice.

(Acts 1951, No. 422, p. 745, §5; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §5; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1979, No. 79-690, p. 1221, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1995, No. 95-679, p. 1483, §1.)

Section 34-27-32 Requirements for license; application; place of business; branch offices; multiple brokers; fees.

(a) A license for a broker or a salesperson shall be registered to a specific real estate office and shall be issued only to, and held only by, a person who meets all of the following requirements:

- (1) Is trustworthy and competent to transact the business of a broker or salesperson in a manner that safeguards the interest of the public.
- (2) Is a person whose application for real estate licensure has not been rejected in any state on any grounds other than failure to pass a written examination within the two years prior to the application for real estate licensure with Alabama. If the applicant's rejection for real estate licensure in any state is more than two years from the date of application for licensure with Alabama, then the applicant may not be issued an Alabama real estate license without the approval of the commissioners.
- (3) Is a person whose real estate license has not been revoked in any state within the two years prior to application for real estate licensure with Alabama. If the applicant's real estate licensure revocation in any state, including Alabama, is more than two years from the date of application for licensure with Alabama then the applicant may not be issued an Alabama real estate license without the approval of the commissioners.
- (4) Is at least 19 years old.
- (5) Is a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, or is an alien with permanent resident status.
- (6) Is a person who, if a nonresident, agrees to sign an affidavit stating the following and in the following form:

"I, as a nonresident applicant for a real estate license and as a licensee, agree that the Alabama Real Estate Commission shall have jurisdiction over me in any and all of my real estate related activities the same as if I were an Alabama resident licensee. I agree to be subject to investigations and disciplinary actions the same as Alabama resident licensees. Further, I agree that civil actions may be commenced against me in any court of competent jurisdiction in any county of the State of Alabama.

"I hereby appoint the Executive Director or the Assistant Executive Director of the Alabama Real Estate Commission as my agent upon whom all disciplinary, judicial, or other process or legal notices may be served. I agree that any service upon my agent shall be the same as service upon me and that certified copies of this appointment shall be deemed sufficient evidence and shall be admitted into evidence with the same force and effect as the original might be admitted. I agree that any lawful process against me which is served upon my agent shall be of the same legal force and validity as if personally

served upon me and that this appointment shall continue in effect for as long as I have any liability remaining in the State of Alabama. I understand that my agent shall, within a reasonable time after service upon him or her, mail a copy of the service by certified mail, return receipt requested, to me at my last known business address.

"I agree that I am bound by all the provisions of the Alabama Real Estate License Law the same as if I were a resident of the State of Alabama.

Legal Signature of Applicant"

The commission may reject the application of any person who has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude.

(b)(1) A person who holds a current real estate salesperson license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal salesperson license on a form prescribed by the commission. A person who holds a current broker license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal broker license on a form prescribed by the commission. The applicant shall submit proof that he or she has a current real estate license in another state as evidenced by a certificate of licensure, together with any other information required by the commission. The applicant shall also show proof that he or she has completed at least six hours of course work in Alabama real estate which is approved by the commission. Applicants for a reciprocal license shall not be subject to the complete examination or temporary license requirements of Section 34-27-33, but shall pass a reasonable written examination prepared by the commission on the subject of Alabama real estate. A person who holds a reciprocal license shall show proof of completion of continuing education either by meeting the requirements of Section 34-27-35 or by showing proof that his or her other state license remains active in that state. The fees for issuance and renewal of a reciprocal license shall be the same as those for original licenses pursuant to Section 34-27-35. The recovery fund fee for issuance of a reciprocal license shall be the same as for an original license pursuant to Section 34-27-31.

(2) A person who holds a current Alabama license who moves to and becomes a resident of the state shall within 10 days submit to the commission notice of change of address and all other license status changes.

(c) A person who does not hold a current real estate broker license in another state desiring to be a real estate broker in this state shall apply for a broker's license on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application, he or she shall submit all of the following:

- (1) Proof that he or she has had an active real estate salesperson's license in any state for at least 24 months of the 36-month period immediately preceding the date of application.
- (2) Proof that he or she is a high school graduate or the equivalent.
- (3) Proof that he or she has completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.
- (4) Any other information requested by the commission.

(d) A person who does not hold a current real estate salesperson license in another state desiring to be a real estate salesperson in this state shall apply for a salesperson's license with the commission on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application he or she shall furnish all of the following:

(1) Proof that he or she is a high school graduate or the equivalent.

(2) Proof that he or she has successfully completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.

(3) Any other information required by the commission.

(e) An application for a company license or branch office license shall be made by a qualifying broker on a form prescribed by the commission. The qualifying broker shall be an officer, partner, or employee of the company.

(f) An applicant for a company or broker license shall maintain a place of business.

(g) If the applicant for a company or broker license maintains more than one place of business in the state, he or she shall have a company or branch office license for each separate location or branch office. Every application shall state the location of the company or branch office and the name of its qualifying broker. Each company or branch office shall be under the direction and supervision of a qualifying broker licensed at that address. No person may serve as qualifying broker at more than one location. The qualifying broker for the branch office and the qualifying broker for the company shall share equal responsibility for the real estate activities of all licensees assigned to the branch office or company.

(h) No person shall be a qualifying broker for more than one company or for a company and on his or her own behalf unless:

(1) All companies for which he or she is and proposes to be the qualifying broker consent in writing.

(2) He or she files a copy of the written consent with the commission.

(3) He or she will be doing business from the same location.

A person licensed under a qualifying broker may be engaged by one or more companies with the same qualifying broker.

(i) A company license shall become invalid on the death or disability of a qualifying broker. Within 30 days after the death or disability, the corporation, or the remaining partners or the successor partnership, if any, may designate another of its officers, members, or salespersons to apply for a license as temporary qualifying broker. The person designated as temporary qualifying broker shall either be a broker or have been a salesperson for at least one year prior to filing the application. If the application is granted, the company may operate under that broker for no more than six months after the death or disability of its former qualifying broker. Unless the company designates a fully licensed broker as the qualifying broker within the six months, the company license shall be classified inactive by the commission.

(j) The commission shall require both state and national criminal history background checks to issue a license. Applicants shall submit required information and fingerprints to the commission, Federal Bureau of Investigation, Alabama State Law Enforcement Agency, or its successor, or to a fingerprint processing service that may be selected by the commission for this purpose. Criminal history record information shall be provided to the commission from both the State of Alabama and the Federal Bureau of Investigation.

The commission can use the provided criminal history for the determination of the qualifications and fitness of the applicant to hold a real estate license. The applicant shall assume the cost of the criminal history check. The criminal history must be current to the issuance of the license.

(k) The commission may charge a fee of ten dollars (\$10) for furnishing any person a copy of a license, certificate, or other official record of the commissioner.

(Acts 1951, No. 422, p. 745, §6; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §6; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 568, p. 1306, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1996, No. 96-791, p. 1471, §1; Act 2003-298, p. 701, §1; Act 2008-141, p. 214, §3; Act 2009-617, p. 1781, §1; Act 2016-322, §1.)

Section 34-27-33 Examinations; temporary and original salesperson licenses; post license course requirements.

(a)(1) In addition to other requirements of this chapter, every applicant for a broker's or salesperson's license shall submit to a reasonable written examination. The commission shall conduct examinations at places and times it prescribes. The commission may contract with an independent testing agency to prepare, grade, or conduct the examination.

(2) Effective October 1, 2001, and thereafter, the fee for each examination and the provisions for payment and forfeiture shall be as specified in the contract with the independent testing agency.

(b) Within 90 days after passing the examination, the applicant shall secure a qualifying broker and meet all requirements of this chapter and the board shall issue an active license or classify the license as inactive. In order to obtain an active license, the applicant's qualifying broker shall sign and submit to the commission a sworn statement that the applicant is in his or her opinion honest, trustworthy, and of good reputation and that the broker accepts responsibility for the actions of the salesperson as set out in Section 34-27-31. The applicant's qualifying broker shall be licensed in Alabama.

(c)(1) On passing the examination and complying with all other conditions for licensure, a temporary license certificate shall be issued to the applicant. The applicant is not licensed until he or she or his or her qualifying broker actually receives the temporary license certificate. A temporary license shall be valid only for a period of one year following the first day of the month after its issuance.

(2) The holder of a temporary license shall not be issued an original license until he or she has satisfactorily completed a 30-hour post-license course prescribed by the commission. The holder of a temporary license must complete the course within six months of issuance of his or her temporary license and have his or her original license issued, otherwise his or her temporary license certificate shall automatically be placed on inactive status by the commission. During the remaining six months his or her temporary license is valid, the holder of a temporary license may complete the course and have his or her original license issued. If the holder of a temporary license does not complete the course and have his or her original license issued within one year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse.

A temporary license is not subject to renewal procedures in this chapter and may not be renewed.

(3) In order to have a temporary license issued to active status, the applicant shall pay the Recovery Fund fee specified in this chapter. The holder of a temporary license shall, upon satisfactory completion of the course, pay the original license fee specified in this chapter to have his or her original license issued. An applicant for an original license who has paid the Recovery Fund fee specified in this chapter shall not be required to pay another Recovery Fund fee in order to have his or her original license issued.

(4) The holder of an original license who has satisfactorily completed the postlicense course and whose original license has been issued, shall not be subject to the continuing education requirements in this chapter for the first renewal of his or her original license.

(d) This section shall become effective for licenses issued beginning October 1, 1993.

(Acts 1951, No. 422, p. 745, §8; Acts 1963, No. 290, p. 734, §8; Acts 1971, No. 2485, p. 3966, §8; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1992, No. 92-177, p. 305, §3; Act 2001-310, p. 391, §1; Act 2008-141, p. 214, §3.)

Section 34-27-34 Who may serve as qualifying broker; responsibility of qualifying broker; change of broker; termination of qualifying broker's status.

(a)(1) A broker may serve as qualifying broker for a salesperson or associate broker only if licensed in Alabama, his or her principal business is that of a real estate broker, and he or she shall be in a position to actually supervise the real estate activities of the associate broker or salesperson on a full-time basis.

(2) A salesperson or associate broker shall not perform acts for which a license is required unless licensed under a qualifying broker. A qualifying broker shall be held responsible to the commission and to the public for all acts governed by this chapter of each salesperson and associate broker licensed under him or her and of each company for which he or she is the qualifying broker. It shall be the duty of the qualifying broker to see that all transactions of every licensee engaged by him or her or any company for which he or she is the qualifying broker comply with this chapter. Additionally, the qualifying broker shall be responsible to an injured party for the damage caused by any violation of this chapter by any licensee engaged by the qualifying broker. This subsection does not relieve a licensee from liability that he or she would otherwise have.

(3) The qualifying brokers' supervision responsibilities, as prescribed herein, over the real estate activities of associate brokers and salespersons licensed under him or her are not intended to and should not be construed as creating an employer-employee relationship contrary to any expressed intent of the qualifying broker and licensee to the contrary.

(b) Any salesperson or associate broker who desires to change his or her qualifying broker shall give notice in writing to the commission, and shall send a copy of the notice to his or her qualifying broker. The new qualifying broker shall file with the commission a request for the transfer and a statement assuming liability for the licensee. On payment of a fee of twenty-five dollars (\$25), a new license certificate shall be issued to the salesperson or associate broker for the unexpired term of the original license. A fee of twenty-five dollars (\$25) shall also be charged for any of the following license changes:

(1) Change of qualifying broker by a company or sole proprietorship. The fee is paid for the license or licenses on which the current and new qualifying brokers' names appear. In cases where a company has a branch office or offices and the main office qualifying broker is changed, the fee is paid for each branch office license and for the license of each branch qualifying broker.

(2) Change of personal name of a qualifying broker. The fee is paid for the license or licenses on which the current qualifying broker's name appears.

(3) Change of personal name of a salesperson or associate broker. The fee is paid for the license on which the name appears.

(4) Change of business location. The fee is paid for the license or licenses on which the address appears.

(5) Change of business name. The fee is paid for the license or licenses on which the name appears.

(6) Change of status from inactive to active. The fee is paid for each license being changed from inactive to active status. No fee is charged for the change from active to inactive status.

(c) A person who wishes to terminate his or her status as qualifying broker for a licensee may do so by notifying the licensee and the commission in writing and sending the licensee's license certificate to the commission or verifying in writing to the commission that the certificate has been lost or destroyed.

(d) A person who wishes to terminate his or her status as a qualifying broker for a company may do so by submitting written notice to the company or qualifying broker of the parent company and the commission.

(e) A salesperson or associate broker shall not perform any act for which a license is required after his or her association with his or her qualifying broker has been terminated, or if he or she changes qualifying brokers, until a new active license has been issued by the commission.

(Acts 1951, No. 422, p. 745, §9; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §9; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1982, No. 82-231, p. 282, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1996, No. 96-791, p. 1471, §1.)

Section 34-27-35 License certificates generally.

(a) The commission shall prescribe the form and content of license certificates issued. Each qualifying broker's license certificate shall show the name and business address of the broker. The license certificate of each active salesperson or associate broker shall show his or her name and address. The license certificate of each active salesperson or associate broker shall be delivered or mailed to his or her qualifying broker. Each license certificate shall be kept by the qualifying broker and shall be publicly displayed at the address which appears on the license certificate.

(b) The commission may establish a one-year or multi-year license period.

(c)(1) The fee for a temporary license shall be one hundred fifty dollars (\$150). The original fee for a broker's license shall be one hundred fifty dollars (\$150) and, beginning with the license period effective October 1, 2002, the renewal fee for a broker's license

shall be seventy-five dollars (\$75) per year for each year of the license period. The original fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year of the license period. The original fee for each company license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be sixty-five dollars (\$65) per year for each year of the license period.

(2) Beginning with the license period effective October 1, 2004, the renewal fee for a broker's license shall be ninety-five dollars (\$95) per year for each year of the license period. The original fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year of the license period. The original fee for each company license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be eighty-five dollars (\$85) per year for each year of the license period.

(d) (1) The renewal research and education fee shall be two dollars and fifty cents (\$2.50) per year for each year of the license period and shall be paid at the time of license renewal by all brokers and salespersons in addition to the license renewal fees set out in this section. Collection of this fee shall apply to all broker and salesperson renewals, except that brokers who hold more than one broker's license shall pay the fee for only one license at each renewal.

(2) Beginning June 1, 2014, this fee shall be seven dollars and fifty cents (\$7.50), and the proceeds shall be distributed to the Alabama Center for Real Estate.

(e) The original research and education fee shall be thirty dollars (\$30) and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of an original broker's license, and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of a temporary salesperson's license. The original research and education fee shall also be paid by reciprocal salespersons. This is in addition to the original license fees set out in this section. This thirty dollar (\$30) original research and education fee is a one-time fee which no person shall be required to pay more than once.

(f) The license of a salesperson who is subsequently issued a broker's license automatically terminates upon the issuance of his or her broker's license certificate. The salesperson's license certificate shall be returned to the commission in order for a broker's license to be issued. No refund shall be made of any fee or Recovery Fund deposit pertaining to the salesperson's, broker's, or company's license.

(g) The commission shall prescribe a license renewal form, which shall accompany renewal fees which shall be filed on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis for the following license period. If any of the foregoing are filed during the period from September 1 through September 30 of the final year of a license period, the one hundred fifty dollar (\$150) penalty set out below shall be paid in addition to the renewal fees. Failure to meet this September 30 deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all

reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in these cases. Licensees filing during the period from September 1 of the final year of a license period through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of one hundred fifty dollars (\$150).

(h) The renewal form shall be mailed by the commission to the licensee's place of business, if an active licensee, or to his or her residence, if an inactive licensee, prior to August 1 of the final year of each license period. Each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change.

(i) Every license shall expire at midnight on September 30 of the final year of each license period. An expired license may be renewed during the 12-month period following the license period for which the license was current. A licensee who fails to renew before the end of the 12-month period following the license period for which the license was issued has a lapsed license, and shall be subject to all requirements applicable to persons who have never been licensed, however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties. An inactive license must be renewed in the same manner as an active license.

(j)(1) Each applicant for renewal of an active salesperson or broker license issued by the commission shall, on or before September 30 of the final year of each license period, submit proof of completion of not less than 15 clock hours of approved continuing education course work to the commission, in addition to any other requirements for renewal. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in this case. Proof of attendance at the course work, whether or not the applicant attained a passing grade in the course, shall be sufficient to satisfy requirements for renewal. The 15 clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess of 15 shall not be cumulated or credited for the purpose of subsequent license renewals. The commission shall develop standards for approval of courses, and shall require certification of the course work of the applicant.

Time served as a member of the state Legislature during each license renewal period shall be deemed the equivalent of the 15 hours course work and shall satisfy the requirements of this subsection.

(2) This section shall apply to renewals of licenses which expire after September 30, 1986. An applicant for first renewal who has been licensed for not more than one year shall not be required to comply with this section for the first renewal of the applicant's license. Any licensee reaching the age of 65 on or before September 30, 2000, and having been licensed 10 years prior to that date shall be exempt from this section.

(3) Continuing education shall not result in a passing or failing grade.

(k) A licensee may request that the commission issue his or her license to inactive status. Inactive licenses shall be held at the commission office until activated. No act for which a license is required shall be performed under an inactive license.

(Acts 1951, No. 422, p. 745, §10; Acts 1963, No. 290, p. 734, §8; Acts 1967, No. 386, p. 973, §1; Acts 1971, No. 2485, p. 3966, §10; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599,

§1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1979, No. 79-690, p. 1221, §1; Acts 1982, No. 82-231, p. 292, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1986, No. 86-298, p. 427, § 1; Acts 1986, No. 86-418, p. 624, §1; Acts 1988, No. 88-214, p. 315, §3; Acts 1989, No. 89-284, p. 447, §4; Acts 1992, No. 92-177, p. 305, §3; Acts 1995, No. 95-679, p. 1483, §1; Acts 1996, No. 96-791, p. 1471, §1; Act 99-518, p. 1140, §1; Act 2001-310, p. 391, §1; Act 2003-298, p. 701, §1; Act 2005-314, 1st Sp. Sess., p. 646, §1; Act 2014-443, p. 1655, §1.)

Section 34-27-35.1 Errors and omissions insurance.

Repealed by Act 2003-298, p. 701, § 2, effective June 18, 2003.

(Acts 1992, No. 92-602, p. 1250, §§1, 2; Acts 1996, No. 96-791, p. 1471, §1; Act 99-425, p. 757, §1; Act 2001-310, p. 391, §1.)

Section 34-27-36 Disciplinary action - Generally.

(a) The commission or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The commission may issue subpoenas and compel the testimony of witnesses and the production of records and documents during an investigation. If probable cause is found, a formal complaint shall be filed and the commission shall hold a hearing on the formal complaint. The commission shall revoke or suspend the license or impose a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts set out in this section. The commission may revoke or suspend a license until such time as the licensee has completed an approved continuing education course and/or made restitution to accounts containing funds to be held for other parties. The commission may also stay the revocation or suspension of a license and require completion of an approved education course and/or the making of restitution to accounts containing funds to be held for other parties.

(1) Procuring or attempting to procure, a license, for himself or herself or another, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license.

(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.

(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.

(4) Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement.

(5) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salespersons or any medium of advertising or otherwise.

(6) Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed broker or salesperson.

- (7) Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom he or she acts.
- (8)a. Failing, within a reasonable time, to properly account for or remit money coming into his or her possession which belongs to others, or commingling money belonging to others with his or her own funds.
- b. Failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.
- c. Failing to keep for at least three years a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information.
- (9) Placing a sign on any property offering it for sale, lease, or rent without the consent of the owner.
- (10) Failing to voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document with reasonable promptness.
- (11) Paying any profit, compensation, commission, or fee to, or dividing any profit, compensation, commission, or fee with, anyone other than a licensee or multiple listing service. This subdivision shall not prevent an associate broker or salesperson from owning any lawfully constituted business organization, including, but not limited to, a corporation or limited liability company or limited liability corporation, for the purpose of receiving payments contemplated in this subsection. The business organization shall not be required to be licensed under this chapter, and shall not engage in any other activity requiring a real estate license.
- (12) Paying or receiving any rebate from any person in a real estate transaction.
- (13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.
- (14) If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.
- (15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing prominently on the advertising; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing prominently on the advertising.
- (16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.
- (17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.
- (18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.
- (19) Violating or disregarding any provision of this chapter or any rule, regulation, or order of the commission.

- (20) If a broker, accepting a "net listing" agreement for sale of real property or any interest therein. A "net listing" is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission.
- (21) Misrepresenting or failing to disclose to any lender, guaranteeing agency, or any other interested party, the true terms of a sale of real estate.
- (22) Failing to inform the buyer or seller at the time an offer is presented that he or she will be expected to pay certain closing costs and the approximate amount of those costs.
- (23)a. Having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.
- b. Having a final money judgment rendered against him or her which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.
- (24) Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.
- (25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.
- (26) Conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness.
- (27) Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.
- (28) Failing or refusing on demand to produce a document, book, or record in his or her possession concerning a real estate transaction conducted by him or her for inspection by the commission or its authorized personnel or representative.
- (29) Failing within a reasonable time to provide information requested by the commission during an investigation or after a formal complaint has been filed.
- (30) Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into his or her possession.
- (31) If a qualifying broker or company, failing to keep in their files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a period of three years.
- (b) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of Article 1 or 2 of this chapter or any rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with Articles 1 and 2 of this chapter or any rule or order of the commission. To prevail in an action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation.
- (c)(1) Notwithstanding any other provisions of law, the commission may issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. The order shall be entered by the executive director after a finding of probable cause by the commission staff. The order shall become final 15 days after its service upon the accused, unless the accused requests a hearing before the commission. Upon hearing the case and finding violations, the commission may make the cease and desist order final and the

commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(2) Notwithstanding any other provisions of law, the commission may decline to issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. In this instance, the commission shall proceed to give appropriate notice of the violations and hold a hearing thereon. Upon hearing the case and finding violations, the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fine or fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(d) The commission shall notify the licensee and qualifying broker in writing regarding the complaint.

(e) The commission shall notify the complainant, licensee, and qualifying broker in writing regarding the disposition of the complaint.

(Acts 1951, No. 422, p. 745, §12; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §12; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, §1; Acts 1989, No. 89-284, p. 447, §3; Acts 1992, No. 92-177, p. 305, §3; Acts 1996, No. 96-791, p. 1471, §1; Act 2003-298, p. 701, §1; Act 2005-314, 1st Sp. Sess., p. 646, §1; Act 2006-601, p. 1647, §1; Act 2009-617, p. 1781, §1.)

Section 34-27-37 Disciplinary action - Procedure in action.

(a) An action against an accused shall begin by serving the accused either personally or by certified mail with a copy of the formal complaint against him or her. The accused shall be given at least 15 days' notice of the time, date, and place of hearing. If the commission refuses to license an applicant, notice of the refusal shall be given to the applicant, and he or she may, within 15 days after delivery of the notice, file a request for a hearing. The applicant or accused shall have an opportunity to be heard in person or by counsel, to offer testimony in his or her behalf, and to examine witnesses. Hearings shall be held in Montgomery County unless the commission decides to hold the hearing in the county in which the applicant or accused resides, maintains his or her principal place of business, or any other county in which the commission has scheduled a meeting. At hearings, all witnesses shall be sworn by a member of the commission, the executive director, the assistant executive director, or a hearing officer. The commission shall render a written order within 30 days from the final date of hearing. If the matter alleged in the complaint is the subject of an action pending in any court, the commission may withhold rendering or implementing its order pending disposition of the court action.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records and documents, either at the instance of the commission or the accused. The process issued by the commission shall extend to all parts of the state, and

such process shall be served by a person designated by the commission or by mailing the process by certified mail. A subpoenaed witness who appears in a proceeding before the commission shall receive fees, mileage, and expense allowances as authorized by the commission. All fees, mileage, and expense payments shall be taxed against the party or parties subpoenaing the witness.

(c) If in a proceeding before the commission, a subpoenaed witness fails or refuses to attend or refuses to testify or fails or refuses to produce subpoenaed documents or records, his or her attendance and testimony or the production of the documents and records shall be enforced by any circuit court of this state, in the same manner as the attendance and testimony of witnesses is enforced in civil cases.

(d) An accused, applicant, or other party to a case heard by the commission who is aggrieved by a final decision, may file an application for rehearing specifying grounds for relief within 30 days of receiving notice of the decision.

An application for rehearing does not modify the effective date of the decision and is appropriate only if the final decision is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the commission;
- (3) In violation of a commission rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within 30 days from the filing of the application for rehearing the commission shall set a hearing date on the application, or shall enter an order without a hearing, or shall grant or deny the application. If the applicant is granted a rehearing, the commission will schedule a rehearing as soon as practicable. If the commission does not enter an order within 30 days from the filing of the application for rehearing, the application shall be deemed to be denied.

(Acts 1951, No. 422, p. 745, §13; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §13; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1988, No. 88-214, p. 315, §3; Act 2005-314, 1st Sp. Sess., p. 646, §1.)

Section 34-27-38 Disciplinary action - Appeals.

(a) Findings of the commission are final unless within 30 days after the date of the commission's final order, the applicant or accused files a notice of appeal in the Circuit Court of Montgomery County, or of the county of his or her residence, if an Alabama resident; or, if a corporation registered in Alabama, in the circuit court of the county of registration or the county in which the corporation has its principal place of business in Alabama. A party appealing a decision shall post a \$200 appeal bond with the clerk of the circuit court. The circuit clerk shall notify the commission of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the commission may be stayed by the court pending such appeal.

(c) The commission shall within 30 days of service of the notice of appeal, or within such additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the commission by the appealing party within 30 days after the notice of appeal is filed. Thereafter the action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. The commission's decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the commission decision or remand the case to the commission for further proceedings.

If the commission decision is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the commission is not affirmed, the court shall tax the costs of appeal against the commission.

(Acts 1951, No. 422, p. 745, §14; Acts 1963, No. 290, p. 734, §1; Acts 1971, No. 2485, p. 3966, §14; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, §1; Acts 1975, No. 563, p. 1276, §1; Acts 1978, No. 654, p. 932, §1; Acts 1983, No. 83-516, p. 781, §1; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-50 Definitions.

For the purposes of this article, the following terms shall have the meaning respectively ascribed to them by this section:

(1) ACCOMMODATIONS. Any hotel or motel room, condominium, or cooperative unit, cabin, lodge, apartment, or any other private or commercial structure designed for occupancy by one or more individuals or any recreational vehicle campsite or campground.

(2) BUSINESS ENTITY. Any individual, corporation, firm, association, joint venture, partnership, trust, estate, business trust, syndicate, fiduciary, and any other group or combination which engages in acts or practices in any trade or commerce.

(3) CONTRACT. Any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security, or other muniment conferring on the purchaser the rights, benefits, and obligations of a vacation time-sharing plan.

(4) COMMISSION. The Alabama Real Estate Commission.

(5) COMMISSIONER. A member of the Alabama Real Estate Commission.

(6) FACILITIES. Any structure, service, or property whether improved or unimproved made available to the purchaser for recreational, social, family, or personal use.

(7) SELLER. Any owner of a vacation time-sharing plan or any business entity, including but not limited to an agent, dealer, distributor, franchiser, subsidiary, assignee, reseller, broker, or any other representative thereof who, for a fee, commission, or other valuable consideration, negotiates or attempts to negotiate the listing, sale, auction, purchase, exchange, or lease of any real estate or the improvements thereon or collects rents or attempts to collect rents, or who advertises or holds himself or herself out as engaged in

any of the foregoing activities. Provided however, that the provisions of this article shall not be applicable to:

a. The resale of a vacation time-sharing unit week by the owner of such unit week, when the seller owns no more than four such unit weeks within the respective vacation time-sharing plan. Provided however, that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period.

b. Agencies and instrumentalities of the state or federal government nor to employees of any lender or public officials making appraisals for federal, state or local units of government, nor to anyone making appraisals through such employees for lending or governmental purposes; and provided further, that the sales licensure provisions of this article shall not be applicable to the sale or leasing of real estate by anyone who owns a fee simple interest of at least 10 percent therein, or to the attorney-at-law of such owner acting within the scope of his duties as an attorney-at-law. Ownership of stock in a corporation is not ownership of an interest in real estate owned by the corporation and does not exempt such stockholder from any provision of this article unless the stockholder owns or controls at least 10 percent of the stock of the corporation. This provision exempts owners from only the sales licensure requirements of this article. All other requirements of sellers under this article shall apply to owners of vacation time-sharing plans.

(8) VACATION TIME-SHARING OWNERSHIP PLAN. Any arrangement, plan, or similar device, whether by tenancy in common, sale, deed, or by other means, which is subject to supplemental agreement or contract for use of the time-sharing unit, whereby the purchaser receives an undivided fee simple ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

(9) VACATION TIME-SHARING LEASE PLAN. Any arrangement, plan, or similar device, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year. Such lease plans shall not include an arrangement or agreement whereby a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state accommodations, of companies which operate in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which no interest in real property is transferred.

(10) VACATION TIME-SHARING PLAN. Either a vacation time-sharing ownership plan or a vacation time-sharing lease plan as defined herein.

(11) TIME-SHARING UNIT. The actual accommodations and related facilities which are the subject of the vacation time-sharing ownership plan or lease plan.

(12) SUBSTANTIALLY COMPLETE. All structural components and mechanical systems of all buildings containing or comprising any time-sharing unit, facilities, or

accommodations are finished in accordance with the plans or specifications of the project as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect, or engineer.

(13) UNIT WEEK OR INTERVAL. A number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time-sharing plans by the sellers.

(14) RECEIVABLE. Any note, contract, promise, or any other agreement to pay a fixed or determinable amount of money which, for the purposes of this article, shall not be in arrears for more than 90 days.

(15) ESCROW AGENT. A federally insured financial institution doing business in this state or a bonded trust agent bonded in at least the amount of the trust; provided, however, that nothing contained in this article shall operate to prevent investment of funds escrowed pursuant to this article by the bank, trust company, or bonded agent and to pay all interest and dividends to the seller of vacation time-sharing plans.

(16) ESCROW ACCOUNT. Any funds held or maintained by an escrow agent.

(17) VACATION TIME-SHARING SALES LICENSE. A license issued by the commission authorizing individuals to act as sellers of vacation time-sharing plans.

(18) LICENSEE. A person having a vacation time-sharing sales license.

(19) EXCHANGE COMPANY. Any person or business entity owning and/or operating an exchange program.

(20) EXCHANGE PROGRAM. Any arrangement allowing owners to exchange occupancy rights with persons owning other timeshares; provided, however, that an exchange program shall not exist if all of the occupancy rights which may be exchanged are in the same time-share property.

(21) MANAGING AGENT. Any person engaged by the owners association to manage the time-share plan and the time-share property.

(22) QUALIFYING BROKER. A person who is licensed by the commission as a real estate broker as well as a seller of vacation time-sharing plans and who serves in a supervisory capacity to all other licensees acting in the name of the vacation time-sharing plan which the qualifying broker represents.

(23) TIME-SHARING PROJECT. All the real property contained as part of a vacation time-sharing plan.

(Acts 1983, No. 83-670, p. 1035, §1; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-51 Acts constituting violation of article - Sell, etc.; without license; failure to provide certain documents at time of registration; failure to follow rules of advertising.

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Sell, lease, encumber, or convey in any manner or to solicit or advertise such transactions unless the seller has been duly licensed under the provisions of Section 34-27-66 and unless the vacation time-sharing plan and the units thereby affected have first been registered with the commission. Provided, however, that the registration requirements of this article shall not apply to nor restrict the listing and resale of any vacation time-sharing plan when:

a. The vacation time-sharing plan to be resold is within an existing time-sharing facility currently registered with the commission pursuant to the requirements of this article; and
b. The vacation time-sharing plan to be resold is subject to the identical rules, regulations, conditions, or limitations on the use of the accommodations or facilities which affect all other vacation time-sharing plans within that time-sharing facility.

(2) Fail to provide, at the time of registration, to the commission the following materials, or fail to provide any amendments or changes therein made while sales continue:

a. A copy of the contract by which the rights and obligations of the parties are established.

b. Copies of promotional brochures, pamphlets, advertisements, or other material disseminated to the public in connection with the sale of the vacation time-sharing plan and verbatim scripts of all radio and television advertising in connection therewith.

c. A statement of the name and type of business entity through which the business of selling vacation time-sharing plans is carried out, including a list of the names and addresses of all of its directors, principal officers, and/or partners, as well as the names and addresses of any sales personnel soliciting in or from the State of Alabama, and the name and address of the business agent for service of process within the State of Alabama.

d. Copies of all rules, regulations, conditions, or limitations on use of the accommodations or facilities available pursuant to the vacation time-sharing plan.

e. Copies of all liens, mortgages, or other encumbrances on the accommodations or facilities which could affect the rights of the purchaser or his or her assignee, together with the location, date, and filing books and page number where such documents are recorded.

f. A synopsis of any sales presentation made or to be made by the seller to the purchaser over the telephone or other electronic device.

g. A projected budget of all recurring expenses which may become the responsibility of time-sharing purchasers.

h. A copy of the public offering statement to be provided to each prospective purchaser.

i. Evidence that the time-sharing plan owner or his agent shall furnish a surety bond payable to the State of Alabama in the amount of \$100,000 with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to \$100,000 the aggregate sum of all judgments which may be recovered against the vacation time-sharing plan owner or seller for any actual loss or damage arising against such vacation time-sharing plan owner or seller from the activities of the time-sharing plan owner or seller, or their agents or representatives, related to the time-sharing plan. Such bond must remain in effect for as long as the time-sharing plan shall be registered. In the event such bond is revoked by the surety company, the time-sharing owner shall have 10 days in which to obtain a new bond and file such with the commission. The lack of a bond shall be grounds for the suspension of the registration of the time-sharing plan.

Upon receipt of all items required by this section, the commission shall determine the sufficiency thereof and upon satisfactory compliance with this article, shall issue its order approving their use. The vacation time-sharing plan shall then be deemed registered.

Promotional or advertising material developed after the initial registration of a time-sharing plan may be used without prior approval of the commission provided that such

material is in compliance with this article and further provided that it is submitted to the commission within 10 days after its initial public use.

(3) Fail to include in all advertising of any vacation time-sharing plan a statement which clearly states that the seller is offering a time-sharing interest.

(4) Fail to include in all advertising of any vacation time-sharing plan which offers a time-sharing interest of less than fee simple a statement which clearly states that the interest being offered is less than a fee simple ownership interest.

(5) Effective October 1, 1985, fail to provide each prospective purchaser a public offering statement in such form and under such terms as shall be required by commission rules and regulations.

(Acts 1983, No. 83-670, p. 1035, §2; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-52 Acts constituting violation of article - Failure to keep certain items among business records.

It shall be a violation of this article for any owner or business entity offering vacation time-sharing plans for sale to the public to fail to keep among its business records the following:

(1) A copy of each item required to be submitted to the commission under Section 34-27-51.

(2) A copy of the contract from each sale of the vacation time-sharing plan, which contract shall be retained for a period of at least three years after parties to the vacation time-sharing plan have completely performed all of their obligations thereunder.

(3) A list of all employees and independent contractors involved in the development, sale, or advertising of the vacation time-sharing plan or plans, including their last known mailing addresses, which list shall include all current employees and all previous employees whose employment has been terminated within the preceding 36 months.

(Acts 1983, No. 83-670, p. 1035, §3; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-53 Acts constituting violation of article - Failure to utilize, etc., fully completed copy of contract.

It shall be a violation of this article for the seller of a vacation time-sharing plan to fail to utilize and furnish the buyer with a fully completed copy of a contract pertaining to such sale at the time of its execution which shall include:

(1) The actual date the contract is signed by all parties.

(2) The name and address of the seller.

(3) In immediate proximity to the space reserved in the contract for the signature of the buyer and in no smaller type than contained in the body of the contract:

a. In the case of a vacation time-sharing lease plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date. You may also cancel this contract at any time in case the accommodations or facilities are no longer available as provided in the contract. If you decide to cancel, you must notify the seller in writing of your intent to cancel by sending notice to (name of seller) by certified mail, return receipt requested at (seller's address)."

b. In the case of a vacation time-sharing ownership plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date, by notifying the seller in writing of your intent to cancel, sending his notice thereof by certified mail, return receipt requested."

c. It shall be a violation of this article for the seller of a vacation time-sharing ownership plan to fail to furnish the buyer with an inventory of all furniture, fixtures and appliances which will be located in the accommodation during the time period purchased under a vacation time-sharing ownership plan or at closing.

(Acts 1983, No. 83-670, p. 1035, §4.)

Section 34-27-54 Acts constituting violation of article - Failure, etc., to honor buyer's request to cancel contract.

It shall be a violation of this article for the seller of vacation time-sharing plans, or his or her assignees, to fail or refuse to honor a buyer's request to cancel a contract as provided by Section 34-27-53 if such request is made; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace, or reconstruct within a reasonable time the accommodations or facilities if destroyed or damaged; provided that such repair, replacement, or reconstruction shall bring such accommodations or facilities back to a state reasonably the same as before the damage or destruction.

(Acts 1983, No. 83-670, p. 1035, §5.)

Section 34-27-55 Acts constituting violation of article - Failure to refund all payments; failure to place all funds in escrow account.

It shall be a violation of this article for a seller of vacation time-sharing plans to:

(1) Fail to refund any and all payments made by the buyer under the contract and return any negotiable instrument, other than checks, executed by the buyer in connection with the contract or services within 20 days after receipt of notice of cancellation made pursuant to Section 34-27-53, if the buyer has not received any benefits pursuant to the contract.

(2) If the buyer has received any benefits pursuant to the contract, fail to refund within 30 days after receipt of notification of cancellation made pursuant to Section 34-27-53 or Section 34-27-54 any and all payments made by the buyer to the seller which exceed a pro rata portion of the total price, taking into consideration the cost of use of the time-share facilities at an average rental rate per unit for all time-share units, representing the proportion of any contract benefits actually received by the buyer during the time preceding cancellation.

(3) Fail to place in an escrow account 100 percent of the funds received from the purchasers of such plans, where the seller of the time-sharing plan transfers an interest herein to the purchaser, which escrow account shall provide that:

a. Its purpose is to protect the buyer's right to refund during the five day right to cancellation period provided in Section 34-27-53 or Section 34-27-54, and

b. Funds may be withdrawn by the seller upon transfer to the buyer after expiration of the respective cancellation period provided in such Sections 34-27-53 and 34-27-54.

(Acts 1983, No. 83-670, p. 1035, §6; Acts 1984, No. 84-259, p. 431, §1.)

Section 34-27-56 Acts constituting violation of article - Misrepresentation.

It shall be a violation of this article for any seller of vacation time-sharing plans, or his or her assignees, to misrepresent in any manner the buyer's right to cancel provided by this article.

(Acts 1983, No. 83-670, p. 1035, §7.)

Section 34-27-57 Acts constituting violation of article - Sell, etc., interest in plan to third person that substantially affects rights of other owners.

(a) It shall be a violation of this article for any seller of vacation time-sharing plans to sell, lease, assign, or otherwise transfer the seller's interest in the vacation time-sharing plan or the accommodations or facilities to a third party when such a sale, lease, assignment, or other transfer substantially affects the rights of other owners or lessees of the time-share units, unless:

(1) The third party agrees in writing to:

- a. Fully honor the rights of purchasers of the vacation time-sharing plan to occupy and use the accommodations or facilities; and
- b. Fully honor rights of purchasers of the vacation time-sharing plan to cancel their contracts and receive an appropriate refund as provided in this article; and
- c. Comply with the provisions of this article for as long as the third party continues to sell the vacation time-sharing plan, or for as long as purchasers of the vacation time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(2) The commission receives prior written notice of the intent to transfer the seller's interest; and

(3) Written notice is given to each purchaser of a vacation time-sharing plan affected thereby, by certified mail within 30 days of the transfer.

(b) The commission shall reserve the right to demand such additional information regarding the transfer as is reasonably necessary to determine to what extent the rights of other owners of units or unit weeks within the subject time-sharing plan shall be affected and to determine whether the registration of the plan should continue, should be amended, or should be suspended or revoked.

(c) The provisions of this section shall not be construed to apply to the sale of a single unit or to prevent the seller's right to sell, discount, or hypothecate for value receivables in favor of any bank, mortgage company, or other lending institution and such transactions shall be exempt from the requirements of the section.

(Acts 1983, No. 83-670, p. 1035, §8; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-58 Acts constituting violation of article - Failure to place 50 percent of cash, etc., received in escrow; failure to provide liability insurance, etc.

(a) It shall be a violation of this article for a seller of vacation time-sharing lease plans to fail to:

(1) Place in escrow 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of such escrow account is to protect the purchaser's right to a refund if at any time the accommodations and facilities are no longer available as provided in the contract; provided however, nothing contained in this section shall operate to deny the

seller the option to repair, replace, or reconstruct, within a reasonable time, the accommodations or facilities, if destroyed or damaged.

b. The purchaser shall be entitled to a refund from the escrow account upon the conditions described above in an amount which represents the buyer's pro rata share of the moneys therein.

c. Funds may be withdrawn by the seller from the escrow account in the ratio of the amount of remaining time available for use by the purchaser of the vacation time-sharing lease plan in relation to the total time available to the purchaser at the time of purchase.

d. The escrow agent shall release or dispense funds from the escrow account to the seller of a vacation time-sharing lease plan only upon receipt of a sworn statement from the seller that the accommodations and facilities have been available for use by the purchaser according to the terms of the purchaser's contract.

(2) In lieu of the escrow account provided in subdivision (1), a seller of vacation time-sharing lease plans may:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities or accommodations. Should net income from such escrowed receivables be insufficient to pay all liens or encumbrances as aforesaid, the escrow agent shall so notify the seller in writing, and the seller shall within 15 days after notice pay unto the escrow agent the amount of such deficit.

b. Sell, hypothecate, or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2)a. of subsection (a) of this section.

(3) Provide the purchaser with liability and property insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes, and assessments levied against the accommodations and facilities; or, in the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance repairs, and management fees.

(4) Provide the purchaser with an instrument, in recordable form, which provides notice to all subsequent creditors of the seller of the existence of the vacation time-sharing plan rights of the purchaser. Such instrument shall be provided to the purchaser by the seller at the time of signing of the contract. When recorded, such instrument shall serve to protect the purchaser's interest in the seller's accommodations from any claims by subsequent creditors of the seller.

(5) Provide a document which explains the content, purpose, and protection afforded to the purchaser by the documents described in subdivision (4) along with the procedure necessary to follow in order to secure to the purchaser the rights and protections which such documents provide.

(b) It shall be a violation of this article for a seller of vacation time-sharing ownership plans to fail to:

(1) Deposit with an escrow agent no less than 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of the escrow account required hereunder is to protect the purchaser's ownership interest in the accommodations or facilities and to provide funds from which periodic payments can be made to retire any outstanding indebtedness on the time-sharing facilities or accommodations.

b. The escrow agent shall release or dispense to the seller of the vacation time-sharing ownership plan funds from the escrow account, at least quarterly but not more frequently than monthly, in an amount which shall not exceed 100 percent of the sum of all accrued indebtedness secured by the time-sharing accommodations or facilities which funds shall be used by the seller solely for the retirement of that indebtedness.

c. Prior to the release or dispensing of such escrow funds, the seller shall furnish the escrow agent with a sworn statement which reveals by category the total amount of all liens or indebtedness secured by the time-sharing accommodations or facilities, the amount of indebtedness anticipated during the next succeeding reporting period, and the amount of any deficit or surplus accruing from the preceding reporting period.

(2) In lieu of the escrow account provided in subdivision (1) of this subsection (b), a seller of vacation time-sharing ownership plans may alternatively:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities and accommodations.

Should net income from such escrowed receivables be insufficient to pay all recurring debts as aforesaid, the escrow agent shall so notify the seller in writing and the seller shall within 15 days after notice pay into the escrow account the amount of such deficit.

b. Sell, hypothecate, or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2)a. of this subsection (b).

(3) Provide the purchaser with liability and casualty insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes, and assessments levied against the accommodations and facilities. In the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance, repairs, and management fees.

(c) Any escrow account kept pursuant to this section may be discontinued when all liens or encumbrances on the subject of time-sharing accommodations and facilities have been fully discharged. When the value of the escrow account equals the sum of all mortgages, liens, and indebtedness on the project secured by project property, the seller may reduce his or her payments into the escrow account to monthly amounts which will maintain the value of the escrow account at an amount equal to the total obligation represented by all mortgages, liens, and indebtedness.

(d) The commission may at its discretion waive the requirement for a time-share plan to maintain an escrow account pursuant to this section upon proof satisfactory to the commission that the unit weeks being sold or leased through the respective time-sharing plan are being released from all liens or encumbrances at, or prior to, the time of the sale or lease.

(Acts 1983, No. 83-670, p. 1035, §9; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-59 Acts constituting violation of article - Failure to disclose total financial obligation, etc., in contract.

It shall be a violation of this section for any seller of vacation time-sharing plans to fail to fully disclose in the contract in boldface type of a size no smaller than any other type used in the body of the contract to purchaser:

(1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject.

(2) Any individual or business entity which has or may have the right to alter, amend, or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed.

(3) The nature and duration of each agreement between the business offering the vacation time-sharing plans for sale and the individual or business entity managing the accommodations or other facilities.

(4) In immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of the same size as required by subdivision (3) of Section 34-27-53 a statement as follows:

"No purchaser should rely upon representations other than those included in the contract."

However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from oral statements.

(5) The date of availability of each amenity of the offered accommodations and facilities when they are not completed at the time of sale of such plan.

(6) The specific term of the contract.

(Acts 1983, No. 83-670, p. 1035, §10.)

Section 34-27-60 Acts constituting violation of article - Misrepresentation; waiver of rights of purchasers; sale, etc., without license; bad checks.

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Use any promotional device, including but not limited to sweepstakes, lodging certificates, gift awards, premiums, or discounts, without fully disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time-sharing plans and without fully disclosing the fair market value of each award or prize offered and the approximate odds of receiving each award or prize offered.

(2) Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time-sharing plans.

(3) Misrepresent the amount of time or period of time the accommodations and facilities will be available to any purchaser.

- (4) Misrepresent or deceptively represent the location of the offered accommodations and facilities.
- (5) Misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations and facilities.
- (6) Misrepresent the nature or extent of any services incident to the accommodations and facilities.
- (7) Make any misleading or deceptive representations with respect to the contents of the contract or the buyer's rights, privileges, or benefits thereunder.
- (8) Fail to honor and comply with all provisions of the contract with the purchaser.
- (9) Misrepresent the conditions under which a customer may exchange his rights to an accommodation in one location for rights to an accommodation in another location.
- (10) Include in any contract any provision purporting to waive any right or benefit provided for purchasers under this article, or to seek or solicit such a waiver.
- (11) Do any other act which constitutes fraud, misrepresentation, or failure to make a disclosure of a material fact.
- (12) Perform any act for which a vacation time-sharing license is required unless the seller is either exempted from the license requirement, a duly authorized and licensed qualifying broker, or a duly licensed seller acting under the sponsorship and supervision of a qualifying broker.
- (13) Allow an unlicensed person who is engaged or employed by him or her or who is under his or her control or supervision to perform any act for which a time-sharing sales license is required.
- (14) Present to the Alabama Real Estate Commission, as payment for a fee or fine, a check that is returned due to there being insufficient funds in the account upon which it was drawn or due to such account being closed or not in existence.
(*Acts 1983, No. 83-670, p. 1035, §11; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1.*)

Section 34-27-61 Hearing; refusal, suspension, or revocation of license; willful violation defined; escrow deficiency.

The commission may upon its own motion, or upon the verified complaint in writing of any person, hold a hearing regarding an alleged violation by any person or business entity of this article. Any person found guilty of having violated any provision of this article or any rule, regulation, or order of the commission shall be subject to the refusal of a license, if not licensed; or, if licensed, to the suspension or revocation of such license and/or a monetary penalty of not less than \$25 nor more than \$1,000.

Such hearing shall be held in a manner prescribed by the Alabama Real Estate License Law and the rules and regulations of the Alabama Real Estate Commission. The reinstatement of a license suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

The penalties and procedures outlined in this section shall not be construed to supersede or conflict with penalties and procedures outlined in other sections of this article.

Provided, that a deficiency in an escrow account required by this article, which results solely from the cancellation or worthlessness of receivables previously placed in escrow, shall not be considered a violation of this article. In the event of an escrow deficiency, a

lender who has advanced funds to a project shall have no liability to contribute funds to the escrow to cure the deficiency, and the lender's lien on the property shall not be affected by the deficiency.

(Acts 1983, No. 83-670, p. 1035, §12; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-62 Enforcement and implementation of article; acts constituting misdemeanors; voidability of sales of unregistered plans, etc.

(a) The Alabama Real Estate Commission shall be responsible for the enforcement and implementation of this article, and the Attorney General of the State of Alabama, or the district attorney of any county of the State of Alabama upon request by the commission, shall assist the commission in the enforcement of this article and the prosecution of violations hereunder. The provisions of this article shall not be construed to limit in any manner the right of any party to bring a private action to enforce the provisions of this article. In addition to the administrative enforcement of this article by the commission, the following shall be Class A misdemeanors triable in the courts of Alabama:

(1) It shall be a Class A misdemeanor for any person, natural or legal, while within the borders of the State of Alabama, to participate in the sale or attempted sale of any time-share plan unless licensed to do so by the commission or exempted from such licensure by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(2) It shall be a Class A misdemeanor for any person, natural or legal, to or attempt to, sell, lease, or otherwise market any interest in any vacation time-sharing plan not registered with the commission as a vacation time-sharing plan or exempted from such registration by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(b) Any time-sharing sale made in Alabama between a time-share purchaser and a seller for the purchase or lease of a time-share week or weeks in a vacation time-share plan which is not registered with the commission, or whose registration is under suspension, or which is under an order from the commission to cease and desist from sales, shall be voidable by the purchaser. An action to void such a transaction must be brought by the purchaser within three years of the date of the making of the lease or sales agreement. In any such action, the prevailing party may be awarded reasonable attorney fees as determined by the court.

(Acts 1983, No. 83-670, p. 1035, §13; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-63 Filing of plan relating to units not substantially completed requires filing of additional documents.

If a seller files with the commission any vacation time-sharing plan or any amendment thereto which describes or concerns time-sharing units, accommodations, or facilities not substantially completed, the seller shall file with the commission the following:

(1) A notarized statement showing all costs involved in completing each phase of the project.

(2) A notarized statement of the time of completion of construction of each phase of the project.

(3) Satisfactory evidence of sufficient funds to cover all costs to complete the project.

- (4) A copy of the executed construction contract and any other contracts for the completion of the project.
- (5) A 100 percent payment performance bond payable to the State of Alabama from a surety company authorized to do business in Alabama, covering the entire cost of construction necessary to complete the project.
- (6) If purchasers' funds are to be used in the construction of the project, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business with the state, which provides that:
- a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the project; architectural, engineering, finance, and legal fees; and other costs for the completion of the project in proportion to the value of the work completed by the contractor as certified by a registered surveyor, architect, or engineer on bills submitted and approved by the lender of construction funds or the escrow agent;
 - b. Disbursements of the balance of purchasers' funds remaining after completion of the project may be made only after either the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's liens has expired, or the right to claim those liens has been waived or other adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's lien; and
 - c. Any other restrictions relative to the retention and disbursement of purchasers' funds required under the rules of the commission have been met; and
 - d. Any other materials or information required under the rules of the commission have been provided.
- (7) The commission shall not register or issue any order approving any vacation time-sharing plan unless the commission determines, on the basis of materials submitted by the developer, that the time-sharing units, accommodations, or facilities or any additions thereto will be completed.
- (Acts 1983, No. 83-670, p. 1035, §14; Acts 1985, No. 85-750, p. 1204, §1.)*

Section 34-27-64 Registration fees; assessment of costs of investigating violation of article.

- (a) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). In addition to submitting an annual renewal fee, each time-sharing plan must submit an audited annual financial statement of the entity or person in whose name the plan is registered done by a certified public accountant and such other materials as the commission shall require for an annual registration renewal. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.
- (b) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). All books, files, accounts and other documents pertaining to the advertisement and sale of vacation time-sharing plans

located outside the state shall be subject to examination by the commission and the business entity whose documentation is being examined shall pay a fee of five hundred dollars (\$500) plus the actual expenses, including the cost of transportation, of the examiner representing the commission while he or she is absent from this office for purposes of conducting the examination. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(c) If the commission determines that the registration or operation of any vacation time-sharing plan violates the provisions of this article in such manner as indicates bad faith or dishonesty, the commission, after notice and hearing, may assess all reasonable costs of the investigation and prosecution of such violations.

(Acts 1983, No. 83-670, p. 1035, §15; Acts 1985, No. 85-750, p. 1204, §1; Act 2001-310, p. 391, §1.)

Section 34-27-65 Proceeds from sale, etc., of lease plan exempt from Transient Occupancy Tax.

The proceeds from the sale or resale of any vacation time-sharing lease plan shall be exempt from the Transient Occupancy Tax imposed by Section 40-26-1.

(Acts 1983, No. 83-670, p. 1035, §16.)

Section 34-27-66 Examination and license requirements; issuance and renewal of license; inactive status; change of address.

(a) Any person desiring to act as a seller of vacation time-sharing plans shall file with the commission a written application upon such form as the commission shall designate and shall pass to the satisfaction of the commission the examination hereinafter prescribed.

(b) Prerequisites for taking the vacation time-sharing sales examination are as follows:

(1) Evidence satisfactory to the commission that the applicant bears a good reputation for honesty and truthfulness.

(2) The applicant should not have been convicted of any criminal offense involving moral turpitude or of any felony in this or any other state.

(3) The applicant shall be at least 19 years of age.

(4) The applicant shall be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, or shall possess a certification of lawful permanent residence issued by the United States government.

(c) The commission shall prepare and conduct an examination on the fundamentals of this article and related topics and shall schedule such examination at least quarterly. No applicant shall be entitled to examination unless all prerequisites enumerated above have been met as determined by the commission. The minimum passing grade shall be 70 percent.

(d) Every applicant shall pay the sum of seventy-five dollars (\$75) for each examination taken. Should an applicant be scheduled and issued a permit for an examination and fail to appear, the entire amount of the examination fee shall be forfeited. Liability for forfeiture occurs at the time the examination permit is issued. The applicant shall be

allowed up to 60 days after notice of passing the examination to either be designated as a qualifying broker or to secure a qualifying broker under whom to be licensed. In the alternative, the applicant may place his or her license on inactive status with the commission within the allotted 60-day period. Every applicant shall also pay a license fee of fifty dollars (\$50) upon successful completion of the examination, provided he or she submits the license fee along with appropriate documentation to the commission within the allotted 60-day period. The 60-day period shall begin on the date which the results of the applicant's examination are made available to the applicant. The results shall be mailed from the commission office, and the applicant shall be considered to have received such notification three days from the date of mailing. Should an applicant not become licensed within 60 days after receiving notification of his or her having passed the examination, he or she shall be required to again meet the requirements of an original applicant before becoming licensed, including the taking and passing of the examination. The commission may contract with any outside source to prepare and conduct vacation time-sharing sales examinations in its behalf and to pay for the reasonable cost thereof from the examination fees collected.

(e) Vacation time-sharing sales licenses are due to be renewed annually on or before August 31, on a form prescribed by the commission. September 30 shall be the annual expiration date for such licenses. Any license renewed after August 31 and prior to January 1 of the following year shall be subject to a penalty fee of fifteen dollars (\$15) in addition to the annual license fee of fifty dollars (\$50). On January 1 of the year following the expiration of a vacation time-sharing sales license, the license may no longer be renewed, and the former license holder shall be required to again meet the requirements of an original applicant before again becoming licensed, including the taking and passing of the license examination. Upon submission of a renewal request in such form as the commission shall prescribe and payment of a fifty dollar (\$50) renewal fee, the commission shall issue the appropriate license.

(f) The qualifying broker for a vacation time-sharing plan shall meet all the general requirements for a time-sharing sales license and shall have a current, active real estate broker's license issued under the Alabama Real Estate License Law as well as a time-sharing sales license. If the qualifying broker is not licensed on active status with a real estate company, he or she may place his or her real estate broker's license on active status in the name of the time-sharing plan.

(g) Each qualifying broker shall supervise each seller licensed under him or her and insure that every seller licensed under him or her, as well as the vacation time-sharing plan for which he or she is the qualifying broker, complies with this chapter, and the broker shall be responsible to any injured party for actual damages caused to such party by any violation of this chapter by any vacation time-sharing plan or seller for whom he or she is acting as qualifying broker.

(h) There shall be a license transfer fee of fifty dollars (\$50) for any of the following: A change of qualifying broker; a change of name or address of the vacation time-sharing plan; a change of name of a licensee; a change of employment by a licensee; or the activation of an inactive license.

(i) A representative of the vacation time-sharing plan authorized to do so may designate an office located off the site of the time-sharing project as a branch sales office of the

vacation time-sharing plan provided that a qualifying broker is designated for each such branch sales office.

(j) A real estate company licensed by the commission may act as an agent for the purpose of reselling time-shares for persons who each own no more than four unit weeks of a given time-sharing plan provided that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period; and further provided that the qualifying broker for such real estate company be licensed as a time-share seller by the commission and that any sales agent of the company who participates in the sale of time-shares be licensed by the commission as a time-share seller.

(k) No applicant to be a seller of vacation time-sharing plans shall be issued a license by the commission unless the applicant is designated as a qualifying broker by a representative of a vacation time-sharing plan or real estate company authorized to make such a designation, or unless the applicant is sponsored by a duly authorized qualifying broker who has signed a written statement accepting sponsorship of the applicant, or unless the applicant has his or her license issued on inactive status and maintained at the office of the commission.

(l) No vacation time-sharing licensee shall perform any of the acts authorized by such license until the license certificate is in his or her actual possession, if the licensee is a qualifying broker, or in the possession of his or her sponsoring broker, if the licensee is not a qualifying broker.

(m) A licensee may place his or her license on inactive status with the commission for a period of up to 24 consecutive months and may renew his or her license while it is on inactive status. No license which is on inactive status shall be reactivated without the commission receiving evidence that the licensee's surety bond is in effect. Any license which has been on inactive status for longer than 24 consecutive months shall automatically expire as of the day following the 24-month period.

(n) Each licensee shall notify the commission of any change of address, business or residential, within 30 days of such change.

(Acts 1983, No. 83-670, p. 1035, §17; Acts 1984, No. 84-282, p. 472, §1; Acts 1985, No. 85-750, p. 1204, §1; Acts 1986, No. 86-375, p. 560, §1; Acts 1989, No. 89-284, p. 447, §3; Act 2008-141, p. 214, §3.)

Section 34-27-67 Registration required of every plan offered for sale.

Every vacation time-sharing plan for sale or offered for sale in this state shall be registered with the Alabama Real Estate Commission as follows:

(1) Upon receipt of an application for registration in the required form, the commission shall forthwith initiate an examination to determine that:

a. The seller may convey or cause to be conveyed the vacation time-sharing plan offered for sale if the purchaser complies with the terms of the offer.

b. The advertising material and general promotional plan are not false or misleading as determined by the commission.

c. The requirements of this article and the rules of the commission have been fulfilled.

d. The seller has not, or, if a corporation, its officers, directors, and principals have not been convicted of any crime involving land dispositions, any crime of moral turpitude,

any securities law violation, fraudulent business activity, or any aspect of the vacation time-sharing business in this state, the United States, or any other state or foreign country within the 10 years immediately preceding the date of application, and has not been subject to any injunction or administrative order within the preceding 10 years involving any of the activities above.

(2) Upon receipt of the application for registration in required form, the commission shall issue a notice of filing to the applicant. If within 45 days from the date of the notice of filing, the commission affirmatively determines upon inquiry and examination that the requirements of this article have been met, the commission shall enter an order registering the vacation time-sharing plan or rejecting the registration. If no order of rejection is entered within 45 days from the date of notice of filing, the vacation time-sharing plan shall be deemed registered unless the applicant has consented in writing to a delay. No reasonable request for an extension of time by the commission shall be withheld; provided that if the commission determines upon inquiry and examination that any of the requirements of this article have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

(Acts 1983, No. 83-670, p. 1035, §18; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-68 Commission may seek injunctive relief, etc., for violation of article; investigation; revocation of registration.

(a) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this article or rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with this article or any rule or order of the commission or to have a receiver or conservator appointed. To prevail in such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

(b) The commission may:

(1) Make any public or private investigation which it deems necessary, either within or outside of this state, to determine whether any person has violated or is about to violate this article or any rule or order hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder.

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the commission may determine, as to all facts and circumstances concerning the matter to be investigated.

(3) For the purpose of any investigation or proceeding hereunder, the commission or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books,

documents, or other tangible things and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence.

(4) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected hereby, the commission, through the Attorney General may apply to the circuit court for an order compelling compliance.

(5) Issue an order requiring the seller to cease and desist from any unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this article, if, after notice and hearing, the commission determines that a seller has violated any provisions of this article.

(6) Make findings of fact in writing that the public interest may be harmed by delay in issuing an order and in such case may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a cease and desist order to the seller. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

(7) Revoke or suspend the registration of a vacation time-sharing plan if, after notice and hearing, upon a written finding of fact, it determines that the seller or sellers in whose name the plan is registered, or any agent therefor, has:

- a. Failed to comply with the terms of any order of the commission; or
 - b. Been convicted in any court of competent jurisdiction subsequent to filing of the application for registration, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing; or
 - c. Had a final judgment rendered against him in any court of competent jurisdiction, when such judgment involved the sale, marketing, or operation of any time-share plan or real estate transaction; or
 - d. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of vacation time-sharing plan purchasers; or
 - e. Failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or advertisement; or
 - f. Made an intentional misrepresentation or concealed a material fact in an application for registration; or
 - g. Made a misrepresentation or concealed any material fact in the sale, marketing, or operation of a registered time-sharing plan; or
 - h. Failed to comply with the terms of a sales contract; or
 - i. Failed to make timely delivery of a deed to any purchaser to whom a deed is due to be delivered; or
 - j. Violated any other provision of this article or any rule or regulation of the commission.
- The reinstatement of a registration suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

(8) Issue a cease and desist order instead of revoking a registration if it finds, after notice and hearing, that the seller has been guilty of a violation for which revocation could be ordered.

(9) In lieu of, or in addition to, revoking or suspending a registration or issuing a cease and desist order, impose a penalty of not less than \$100 nor more than \$2,000 per violation upon the seller(s) in whose name(s) the plan is registered if it finds, after notice and hearing, that such seller(s), or any agent therefor, has been guilty of a violation for which revocation or suspension could be ordered.

(Acts 1983, No. 83-670, p. 1035, §19; Acts 1985, No. 85-750, p. 1204, §1.)

Section 34-27-69 Surety bond; suspension, etc., of license for violation of article; reinstatement; relicensure; board must be notified of initiation, etc., of legal action.

(a) Every applicant for a license under this article, either original or renewal, shall furnish a surety bond payable to the State of Alabama in the amount of \$5,000 if a time-sharing salesman or \$10,000 if a broker, with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein will pay up to \$5,000 or \$10,000, respectively, the aggregate sum of all judgments which may be recovered against such licensee for actual loss or damage arising from his or her activities conducted under this article. Said bond shall be filed with the Alabama Real Estate Commission prior to the issuance of such license. A new bond or a renewal or continuation of the original bond shall be required for each licensing period. If a continuous bond is filed with the commission prior to the issuance of such license, no such renewal bond must be filed as long as the continuous bond remains in force and effect. In the event the continuous bond is revoked by the surety company, it shall immediately notify the commission and the licensee shall have 20 days in which to file another bond with the Alabama Real Estate Commission or his or her license shall be suspended until such new bond is filed.

(b) If at any time a final judgment is rendered against a licensee under this article and the final judgment shall result from or involve any activity covered by this article, the license of the licensee shall be automatically suspended. A judgment shall be considered final when no further relief is available from the judgment in the appellate courts of Alabama. In case of such suspension of license, the commission shall give notice to the licensee that his or her license is suspended, and the licensee shall deliver this license to the commission for disposition. Upon request by the suspended licensee, the commission will set a date designating a time and place thereon for a hearing on the question of whether the license under suspension should be revoked, whether the suspension should be continued for a designated period or whether the suspension should be continued until terminated by the commission upon the fulfillment of reasonable conditions imposed by the commission. The hearing shall be conducted in accordance with Section 34-27-37 and such appropriate rules and regulations as may be adopted from time to time by the Alabama Real Estate Commission. No licensee under this article whose license hereunder has been revoked may apply for another license hereunder until at least two years after the date of such revocation; and, in the event of such application for reinstatement, he or she shall meet all the requirements imposed upon an original applicant for a license under this article; and, furthermore, shall not be relicensed without approval of such relicensing by a majority of the members of the Alabama Real Estate Commission.

(c) Every licensee under this article shall be required to notify the Alabama Real Estate Commission of any civil or criminal action filed or initiated against such licensee within 10 days of the receipt of notice by the licensee of the pending civil or criminal action when the civil or criminal action involves a transaction under this article, or involves the indebtedness of the licensee concerning expenses incurred in the development or continuation of a time-sharing plan, or involves an alleged act of fraud, theft, misrepresentation, embezzlement, or extortion, or involves an alleged felony. The notification shall be in writing and shall include a copy of any civil complaint or other document alleging a complaint or criminal offense; or, if the licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the substance of the civil or criminal action.

(d) Every licensee under this article shall be required to notify the Alabama Real Estate Commission of the outcome of any civil or criminal action of the type described in subsection (c) of this section within 10 days of the notice to the licensee of such outcome. This notification shall be in writing and shall include a copy of any judgment, order, or other pertinent document issued by the court having jurisdiction of the matter; or, if licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the nature of the verdict, settlement, dismissal, or other outcome of the subject civil or criminal action.

(Acts 1983, No. 83-670, p. 1035, §20.)

Section 34-27-80 Short title.

This article shall be known and may be cited as the "Real Estate Consumer's Agency and Disclosure Act."

(Acts 1995, No. 95-211, p. 341, §1.)

Section 34-27-81 Definitions.

As used in this article, the following words shall have the following meanings:

(1) AGENCY AGREEMENT. A written agreement between a broker and a client which creates a fiduciary relationship between the broker and a principal, who is commonly referred to as a client.

(2) BROKER. Any person licensed as a real estate broker pursuant to Articles 1 and 2 of this chapter.

(3) BROKERAGE AGREEMENT. A specific written agreement between a brokerage firm and a consumer which establishes a brokerage relationship. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services to be provided.

(4) BROKERAGE SERVICE. Any service, except for rental or property management services, provided by a broker or licensee to another person and includes all activities for which a real estate license is required under Articles 1 and 2 of this chapter.

(5) CONSUMER. A person who obtains information, advice, or services concerning real estate from a real estate licensee.

(6) CLIENT. A person who has an agency agreement with a broker for brokerage service, whether he or she be buyer or seller.

(7) CUSTOMER. A person who is provided brokerage services by a broker or licensee but who is not a client of the broker.

- (8) DUAL AGENCY. An agency relationship in which the same brokerage firm represents both the seller and the buyer in the same real estate transaction. Circumstances which establish a dual agency include, but are not limited to, one of the following:
- a. When two or more licensees licensed under the same broker each represent a different party to the transaction.
 - b. When one licensee represents both the buyer and seller in a real estate transaction.
- (9) INFORMED CONSENT. A consumer's agreement to allow something to happen which is based upon full disclosure of facts needed to choose appropriate brokerage services.
- (10) LICENSEE. Any broker, salesperson, or company.
- (11) LIMITED CONSENSUAL DUAL AGENT. A licensee who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as an agent for both the buyer and seller. Circumstances which establish dual agency include, but are not limited to, one of the following:
- a. When two or more licensees licensed under the same broker each represent a different party to the transaction.
 - b. When one licensee represents both the buyer and seller in a real estate transaction.
- (12) MATERIAL FACT. A fact that is of significance to a reasonable party which affects the party's decision to enter into a real estate contract.
- (13) QUALIFYING BROKER. A broker under whom a corporation, partnership, branch office, or lawfully constituted business organization, as the Legislature may from time to time provide, is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company, or proprietorship and all real estate licensees licensed therewith.
- (14) REAL ESTATE TRANSACTION. The purchase, sale, lease and rental, option, or exchange of an interest in real estate.
- (15) SINGLE AGENT. A licensee who is engaged by and represents only one party in a real estate transaction. A single agent includes, but is not limited to, one of the following:
- a. Buyer's agent, which means a broker or licensee who is engaged by and represents only the buyer in a real estate transaction.
 - b. Seller's agent, which means a broker or licensee who is engaged by and represents only the seller in a real estate transaction.
- (16) SUB-AGENT. A licensee who is empowered to act for another broker in performing real estate brokerage tasks for a principal, and who owes the same duties to the principal as the agent of the principal.
- (17) TRANSACTION BROKER. A licensee who assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.
- (Acts 1995, No. 95-211, p. 341, §2; Act 98-618, p. 1359, §1; Act 2008-141, p. 214, §3.)*

Section 34-27-82 Roles and duties of licensees; written disclosure documents; exceptions; brokerage agreements.

- (a) When engaged in any real estate transaction, the licensee may act as a single agent, sub-agent, a limited consensual dual agent, or as a transaction broker.
- (b) At the initial contact between a licensee and the consumer and until such time a broker enters into a specific written agreement to establish an agency relationship with

one or more of the parties to a transaction, the licensee shall not be considered an agent of that consumer. An agency relationship shall not be assumed, implied, or created without a written bilateral agreement establishing the terms of the agency relationship.

(c) As soon as reasonably possible and before any confidential information is disclosed to any other person by a licensee, the licensee shall provide a written disclosure form to a consumer for signature describing the alternative types of brokerage services, as identified in subsection (a), that are available to clients and customers of real estate brokerage companies. The licensee shall also inform a consumer as to the specific types of brokerage services that are provided by his or her company. A broker shall not be required to offer or engage in any one or in all of the alternative brokerage arrangements specified in subsection (a). The licensee will provide a written form to the consumer for their signature describing the alternative types of brokerage arrangements available. All rental or property management services are excluded from the requirements of this subsection.

(d) A licensee shall not be required to comply with the provisions of subsection (c) when engaged in transactions with any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, any partnership created under the Uniform Partnership Act (commencing at Section 10-8A-101), real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.

(e) After disclosure, the consumer may make an affirmative election of a specific type of brokerage arrangement that is available from the real estate brokerage company. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide. In the absence of a signed brokerage agreement between the parties, the transaction brokerage relationship shall remain in effect.

(f) When serving as a transaction broker, the duties of the licensee to all the parties to a real estate transaction are limited to those which are enumerated in Section 34-27-84. A signed brokerage agreement between the parties or, in the absence of a signed brokerage agreement, the continuation of the transaction brokerage relationship, shall constitute informed consent by the consumer as to the services the consumer shall receive from the broker.

(g) Disclosure forms shall be provided to buyers and sellers. All real estate brokerage firms operating within the State of Alabama shall use the same agency disclosure forms. Disclosure forms describing the alternative types of brokerage services identified above shall be written by the Alabama Real Estate Commission.

(h) Nothing in this section shall prohibit the consumer from entering into a written contract with a broker which contains provisions for services not specifically identified in the written disclosure form.

(Acts 1995, No. 95-211, p. 341, §3; Act 98-618, p. 1359, §1.)

Section 34-27-83 Agency disclosure office policy.

Any broker acting in a real estate transaction shall adopt a written agency disclosure office policy which specifically enumerates the types of brokerage service arrangements a licensee may offer or accept.

(a) The qualifying broker for each brokerage company shall provide every licensee a copy of the agency disclosure policy regarding the types of brokerage services offered by their company. This policy shall be explained to all licensees at least once a year.

(b) A form acknowledging receipt of the office policy statement and a satisfactory explanation of its contents shall be signed by each licensee and a copy retained by the brokerage company for three years.

(Acts 1995, No. 95-211, p. 341, §4.)

Section 34-27-84 Obligations of licensees.

(a) Licensees shall have all of the following obligations to all parties in a real estate transaction:

(1) To provide brokerage services to all parties to the transaction honestly and in good faith.

(2) To exercise reasonable skill and care in providing brokerage services to all parties.

(3) To keep confidential any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of this information is required by law, violates a fiduciary duty to a client, becomes public knowledge, or is authorized by the party in writing.

(4) To account for all property coming into the possession of the licensee that belongs to any party to the real estate transaction.

(5) When assisting a party in the negotiation of a real estate transaction, to present all written offers in a timely and truthful manner.

(6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.

(b) A licensee may provide requested information which affects a transaction to any party who requests the information, unless disclosure of the information is prohibited by law or in this article.

(c) When accepting an agreement to list an owner's property for sale, the broker or his or her licensee shall, at a minimum, accept delivery of and present to the consumer all offers, counteroffers, and addenda to assist the consumer in negotiating offers, counteroffers, and addenda, and to answer the consumer's questions relating to the transaction.

(Acts 1995, No. 95-211, p. 341, §5; Act 2005-314, 1st Sp. Sess., p. 646, §1.)

Section 34-27-85 Services licensees required to provide.

(a) In addition to the duties enumerated in Section 34-27-84, a licensee shall provide all of the following services to clients:

(1) Loyally represent the best interests of the client by placing the interests of the client ahead of the interests of any other party, unless loyalty to a client violates the duties of the licensee to other parties under Section 34-27-84, or is otherwise prohibited by law.

(2) Disclose to the client all information known by the licensee that is material to the transaction and not discoverable by the client through reasonable investigation and observation, except for confidential information as provided in subdivision (3) of

subsection (a) of Section 34-27-84. A licensee shall have no affirmative duty to discover the information.

(3) Fulfill any obligation required by the agency agreement, and any lawful instructions of the client that are within the scope of the agency agreement, that are not inconsistent with other duties as enumerated in this article.

(b) A broker who represents more than one client in a real estate transaction owes the duties as specified in subsection (a) to each client, except where the duties to one client will violate the fiduciary duties of the licensee to other clients.

(c) A broker may provide brokerage services as a limited consensual dual agent only with the prior written, informed consent of all clients of the broker in the transaction.

(Acts 1995, No. 95-211, p. 341, §6.)

Section 34-27-86 Misrepresentation or false information given by licensee.

(a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made by the client to the broker.

(b) A licensee shall not be liable for providing false information to a party in a real estate transaction if the false information was provided to the licensee by a client of the licensee or by a customer or by another licensee unless the licensee knows or should have known that the information was false.

(Acts 1995, No. 95-211, p. 341, §7.)

Section 34-27-87 Duties supersede duties based on common law.

The duties of licensees as specified in this article or in rules promulgated by the Alabama Real Estate Commission shall supersede any duties of a licensee to a party to a real estate transaction which are based upon common law principles of agency to the extent that those common law duties are inconsistent with the duties of licensees as specified in this article.

(Acts 1995, No. 95-211, p. 341, §8.)

Section 34-27-88 Violations.

A violation or disregard of any provision of this article shall constitute a violation actionable by the commission pursuant to Section 34-27-36, as amended.

(Acts 1995, No. 95-211, p. 341, §9.)

Section 34-27-100 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

(1) ACTUAL INTRODUCTION. a. When the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to the time the customer has executed a real estate brokerage services disclosure form or waived execution in writing or the customer has executed a buyer's agency agreement, property listing agreement, or a transaction brokerage agreement; or

b. For real estate transactions in which the law of this state does not require the presentation of a real estate brokerage services disclosure form, when the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity

seeking the referral fee prior to any contact between the buyer, seller, landlord, or tenant and the real estate licensee during which their real estate business has been discussed.

(2) INTERFERENCE WITH A REAL ESTATE BROKERAGE RELATIONSHIP.

Demanding a referral fee from a real estate licensee when reasonable cause for payment does not exist. The term "interference with a real estate brokerage relationship" may also include a threat by a third party to reduce, withhold, or eliminate any relocation or other benefits, or the actual reduction, withholding, or elimination of any relocation or other benefit, in order to generate a referral fee from a real estate broker when reasonable cause for payment does not exist. Notwithstanding the foregoing, either of the following shall not constitute interference with a real estate brokerage relationship:

- a. Communications between an employer or its representative and an employee concerning relocation policies and benefits.
- b. Advising a party of the right to allow a brokerage relationship to expire pursuant to its own terms or not to renew the brokerage relationship upon expiration.

(3) REAL ESTATE BROKERAGE RELATIONSHIP. A relationship entered into between a real estate broker or salesperson and a buyer, seller, landlord, or tenant under which the real estate broker or salesperson engages in any of the acts set forth in Alabama real estate license law, but the relationship does not exist prior to actual introduction of the relationship as provided in subdivision (1).

(4) REASONABLE CAUSE FOR PAYMENT. When an actual introduction of business has been made, a subagency relationship between brokers exists, a contractual referral fee relationship or other agreement exists, or a contractual cooperative brokerage relationship exists.

(5) REFERRAL FEE. Any fee or commission paid by a real estate licensee to any person or entity, other than a cooperative commission offered by a listing real estate broker to a selling real estate broker or by a selling real estate broker to a listing real estate broker. *(Act 2000-210, p. 277, §1.)*

Section 34-27-101 Violations; damages.

(a) No licensed real estate broker shall be required to pay a referral fee or commission when reasonable cause for payment does not exist.

(b) No third party shall knowingly interfere with the real estate brokerage relationship of a real estate licensee.

(c) Any person aggrieved by a violation of any provision of this article may bring a civil action in any court of competent jurisdiction. The damages recoverable in such an action shall be actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any violation of this article, plus reasonable attorney fees and expenses.

(Act 2000-210, p. 277, §2.)

Professional Services by Vendor

Administrative	2017	2018	2019	2020
Advertising				
Alabama Press Association	\$ 517.61	\$ 693.90	\$ 2,082.34	\$ 124.80
Legislative Services Agency	-	-	1,180.00	60.00
Education/Training Consultants				
AL Real Estate Educators Assoc	594.00	297.00	-	-
Ala Assoc Of Regulatory Boards	-	750.00	1,350.00	-
Alabama Association Of Realtor	1,300.00	-	-	-
Alabama Center For Real Estate	16,000.00	-	-	-
Alabama Society of Certified Public Manager	320.00	60.00	45.00	-
Alabama State Bar	500.00	-	-	-
ARELLO	3,450.00	3,225.00	2,805.00	1,890.00
Barbara Lancaster	564.00	-	-	-
E REPUBLIC INC	50.00	100.00	75.00	-
Fred Pryor Seminars	-	199.00	-	-
Government Finance Officers Assoc of AL	250.00	595.00	325.00	-
Laserfiche	-	350.00	-	-
LECC-NDAL Fund	-	-	250.00	-
National Business Institute	688.00	-	-	-
National Property Management Assn CCC	-	-	30.00	-
PRCA Montgomery Chapter	163.94	165.94	158.00	-
Public Relations Council Of AL	870.00	175.00	350.00	-
Real Estate Educators Association	-	398.00	675.00	-
Southern Public Relations Federation	1,050.00	-	1,850.00	-
Sterling Education Services	329.00	-	-	-
Food Services				
Chappy's Deli	128.40	-	-	-
Graphic Arts Services				
J Durham Design LLC	2,550.00	2,550.00	-	-
Housekeeping/Custodial/Building/Grounds				
Carpet Restoration Services	-	-	1,394.25	-
Clean Concepts, Inc	-	150.00	-	-
Clint Garrard	-	1,180.00	2,360.00	118.00
Deep South Lawn and Landscape LLC	-	-	-	3,950.76
Heroman Services Plant Co LLC	3,349.50	2,320.00	293.50	-
Hill's Janitorial Service Inc	-	-	-	2,445.00
Jenilyn's Creations Inc	-	-	1,710.00	3,310.00
Midstate Signs LLC	-	-	210.00	835.00
Stanley Steemer	-	100.00	-	-

	2017	2018	2019	2020
Information and Research Service				
ALACOURT.COM	508.00	1,237.50	1,550.00	2,279.00
ALRRS, LLC	1,299.00	999.00	999.00	999.00
Gwen Marshall, Clerk of Circuit Court	6.00	-	-	-
Kenneth C Baldwin	-	64.00	-	-
Legislative Reference Service	930.00	700.00	-	-
Legislative Services Agency	-	1,500.00	-	-
Mandy C Lynn	-	16.90	-	-
On-Line Information Svcs Inc	1,143.00	381.00	-	-
Pacer Service Center	-	-	-	19.80
Regions Bank	17.00	-	67.50	-
Sharon R Bock	-	-	10.50	-
U.S. Dept of Homeland Security	250.00	125.00	175.00	-
Inter-departmental Services				
Legislative Services Agency	-	-	100.00	100.00
Mailing Services				
Alabama Center for Real Estate	-	-	40,166.15	-
Personnel Department Services				
State Personnel Dept	11,516.00	12,868.00	12,147.00	12,258.00
Pest Control Services				
Cook's Pest Control	785.91	789.00	789.00	723.25
Terminix Processing Center	340.00	340.00	340.00	340.00
Whitaker Wildlife, LLC	3,298.00	-	-	-
Photographic Services				
Foster Photography	75.00	2,314.00	2,170.00	2,170.00
Program Consultants				
JDanny Cooper Consulting, LLC	191,250.00	143,875.00	52,125.00	-
Security and Monitoring Services				
CILVI, Corp.	-	-	1,039.76	659.82
Copeland Security Group, Inc.	696.00	876.00	-	-
Administrative Total	\$ 244,788.36	\$ 179,394.24	\$ 128,822.00	\$ 32,282.43

Data Processing	2017	2018	2019	2020
Alabama Interactive LLC	\$ 7,000.00	\$ 50.00	\$ -	\$ 5,500.00
Cyberbest Technology, Inc	74,500.00	35,000.00	44,000.00	44,000.00
Department of Finance				
Comptroller Services	19,303.65	18,929.43	17,562.93	13,643.32
Data Processing	35,043.38	44,828.98	-	-
FRMS Services / SBS Billing	3,492.12	1,406.68	11,731.51	14,900.58
Finance and IT Planning/Oversight	2,105.00	335.00	-	-
Imaging Services	38,495.32	6,433.03	-	-
Interfund Contract Services (Staars)	78,000.00	39,000.00	-	-
Mailing Services	934.14	1,392.44	1,348.30	766.00

	2017	2018	2019	2020
Google Inc	-	-	25.00	-
Office of Information Technology				
Data Processing	-	37,364.23	39,426.31	45,163.49
Finance and IT Planning/Oversight	-	1,948.30	2,179.91	2,174.22
Imaging Services	-	14,485.45	14,509.00	15,115.25
Information and Research	-	-	193.06	2,123.66
Office Management Systems	-	-	28,942.38	-
Shi International Corp	-	5,033.40	2,748.06	-
Data Processing-Professional Total	\$ 258,873.61	\$ 206,206.94	\$ 162,666.46	\$ 143,386.52

Legal

Court Reporter Services				
Bain & Associates Court	\$ -	\$ 495.00	\$ -	\$ 1,912.50
Baker & Baker Reporting & Video	2,357.00	1,950.00	-	-
Baker Realtime Reporting \$ Video	-	-	4,182.25	425.00
Boggs Reporting & Video LLC	3,089.45	1,478.25	971.75	-
Court Services				
Danny Sullivan	20.00	-	-	-
Holly Williams	-	175.87	-	-
Kim Leach	-	221.65	-	-
Lakeshia Jones	-	20.00	-	-
Lois Robinson & Associates	150.00	-	-	-
Loretta Largo	20.00	-	-	-
Michael Hawthorne	-	20.00	-	-
Molly Lusian	-	20.00	-	-
Thad Henry	20.00	-	-	-
Refunds Real Estate Commission	-	-	607.22	-
Hearing Officers				
James F Hampton	9,541.54	15,629.48	13,691.96	7,562.50
Tori L Adams	1,362.50	-	-	-
Legal Services				
Dorman Walker	-	48.75	-	-
Ed Haden	-	-	50,000.00	11,855.42
Kelly Pate	-	2,525.85	-	-
Steve Windom	-	-	49,000.00	35,000.00
Legal Total	\$ 16,560.49	\$ 22,584.85	\$ 118,453.18	\$ 56,755.42
Total Professional Services	\$ 520,222.46	\$ 408,186.03	\$ 409,941.64	\$ 232,424.37

Commission Members



1201 Carmichael Way / Montgomery, Alabama 36106
Phone: 334.242.5544 / Fax: 334.270.9118
arec.alabama.gov / arec@arec.alabama.gov

Vaughn T. Poe, Executive Director
Teresa D. Hoffman, Assistant Executive Director

March 15, 2021

Daniel Dupree
Examiners of Public Accounts
401 Adams Avenue Suite 280
Montgomery, AL 36104

Dear Mr. Dupree:

Following is the information requested for our current Commissioners: name, expiration of term and city.

Emmette Barran
Expiration Date: 09/30/2022
Decatur

Carole J. Harrison
Expiration Date: 09/30/2021
Auburn

Jimmie Ann Campbell
Expiration Date: 09/30/2025
Montgomery

Terri May
Expiration Date: 09/30/2021
Sawyer ville

J. Reid Cummings
Expiration Date: 09/30/2021
Mobile

Susan T. Smith
Expiration Date: 09/30/2023
Auburn

Joyce Shivers Harris
Expiration Date: 09/30/2023
Marion Junction

Respectfully,

Vaughn T. Poe
Executive Director

VTP/bl

	EMPOWER	Empowering the real estate professional and the consumer.
	CONNECT	Connecting the real estate professional and consumer to the resources they need.
	EDUCATE	Educating the real estate professional and the consumer.