



December 2014

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ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

Executive Director Comments

Commission Regulation 10.5 states as follows:

(a) A licensee may not advertise any property, including the licensee's own property, for sale or rent, or display a real estate sign without including in that advertisement or sign the name of the firm with whom that licensee is licensed.

(b) A principal broker and any persons licensed with said principal broker shall not advertise or otherwise conduct real estate brokerage business under any name other than the name in which the principal broker's license has been issued.

(c) In public advertising a principal broker shall be especially careful to present a true picture and should not permit licensees to use individual names or telephone numbers, unless the licensee's connection with the broker is obvious in the advertisement.

Many licensees are using advertising, including yard signs, that do not comply with this regulation. The Real Estate Commission has attempted to allow flexibility with team names, fictitious names, etc., as long as the advertising continued to display, in a prominent manner, the firm name with which the agent was licensed. Unfortunately, the Commission's flexibility is being abused. So, why is compliance with Regulation 10.5 important?

By not advertising in a manner that establishes their connection to their firm and thereby their Principal Broker, licensees are distancing themselves from their Principal Broker.

AREC's first concern is the consumer. Investigators with the Real Estate Commission are directed to ask consumers who call about a problem whether they have spoken to the Principal Broker. In many cases the consumer doesn't know who the Principal Broker is. We think AREC has helped Principal Brokers avoid complaints being filed when they have been given the chance to intervene. While Arkansas does not require the Principal Broker's name or license number be included in the advertising, as do some other states, we do want the consumer to be able to readily connect the licensee to his or her Principal Broker.

Next is the Pope County Bar Association decision referenced in Commission Regulation 10.10(c). This court decision is the primary avenue by which real estate agents are authorized to fill in the blanks of real estate forms, an act that actually constitutes the practice of law. Real estate agents have been given this authority, but, the authority is only available to licensees through their Principal Broker. If licensees distance themselves from their Principal Broker, the authority granted under Pope County becomes blurred. Licensees other than a Principal Broker cannot have an agency relationship directly with a consumer. Absent an agency relationship, the licensee has no legal authority to fill in the blanks of a real estate contract between a buyer and seller.

The final concern is a licensee's right to claim compensation. A licensee may only receive compensation through his or her Principal Broker. If a consumer refuses to compensate a licensee, that licensee may have no recourse to collect if their Principal Broker has been eliminated from the transaction. Arkansas Code Annotated 17-42-107 indicates that only an actively licensed Principal Broker may take legal action for compensation for the performance of brokerage services. So, if a Principal Broker cannot establish that he or she has been involved in an agency capacity with the consumer, the Principal Broker's ability to claim compensation from that consumer may be imperiled. And, according to the same statute, a salesperson, executive broker, or associate broker may only take action against their Principal Broker, and not the consumer.

While it is far from being widespread, we are starting to encounter licensees who don't know who their Principal Broker is, and we also have spoken to Principal Brokers who don't know persons who are licensed under them. The real estate profession in Arkansas will suffer in many ways if it continues in this direction. We encourage all licensees to take Commission Regulation 10.5 seriously. You need to know that this agency plans to do so.

Quick and Easy Online CE Verification: Are You in Compliance?

By Andrea Alford, Deputy Executive Director

Every January 1, we have to inactivate licensees who have failed to report their CE to the Commission. And for the next several weeks, even months, we hear from those licensees with the reasons why they either didn't complete or report their CE to the Commission by the deadline. Sometimes the reasons are very compelling – a licensee had a spouse or parent who was terminally ill for most of the year, or maybe even the licensee herself was ill. Those types of situations could actually be covered under the medical waiver provision in A.C.A. 17-42-307(c) (3). Some of the reasons, however, are not very compelling. We often hear that 'It was the school's fault' or 'I tried to go online and take my CE on December 31, but my computer crashed' or, my personal favorite, 'You didn't call to remind me that I hadn't taken it yet.' (I might point out that we send out multiple reminders each year to let licensees and their Principal Brokers know their CE is due.)

While we at the Commission are charged with administering the License Law and Commission Regulations – both of which lay out the requirements for CE compliance very clearly – we also want to provide licensees with every resource we can in promoting compliance. One of our best and most reliable resources is the online roster at www.arec.arkansas.gov. By visiting the online roster and searching by the name in which you are licensed, you will be directed to search results that have a column at the end that is titled 'Upcoming CE Filed?' If you see a 'Yes' in that field, you are good to go. If you see a 'No' in that field, that indicates that the Real Estate Commission has not received your continuing education. If you haven't taken your CE for the year, you will want to get that scheduled soon. If you have taken your CE for the year, but you still see a 'No' on the roster, either send the Commission your CE certificate or contact the school where you took your CE and work with them to see that we receive your CE.

One of the most common misconceptions regarding CE is that the schools should somehow be held accountable in the event that your CE is not reported properly and you are sanctioned for noncompliance. Please let me be very clear on this point: it is the licensee's responsibility – and the licensee's alone – to ensure that he reports satisfactory proof of completion of continuing education to the Commission. The schools' ability to report CE online for their students is a wonderful value-added service, and we are appreciative of the benefits of online reporting. We are not suggesting that online CE reporting is an unreliable method of reporting CE; on the contrary, it has proven quite effective and reliable. What we are suggesting is that you, as the licensee, take full responsibility for seeing that your CE has been reported to the Commission. One of the most direct ways of doing this is by checking the online roster as explained above. If we do not receive your CE by 12/31/2014, the school will not be penalized – you, as the licensee, will be inactivated and issued a fine and citation.

Please keep in mind that if you do not report your CE by 12/31/2014, your license will be placed on inactive status beginning January 1, 2015 (A.C.A. 17-42-307(b)(3)). Please also keep in mind that it is a violation to perform brokerage activities while your license is on inactive status (A.C.A. 17-42-308(a)(2)). Licensees who do not report their CE by December 31 will need to contact the AREC Investigations Department in order to activate their licenses.

Brokers, why not demonstrate the online roster for your licensees at your next sales meeting? Or how about handing out special treats at your holiday parties for licensees who can show you that they're CE compliant for the year? And by all means, if you or your licensees have not taken your CE, make haste – get yourself in a class soon.

Halstead promoted to AREC Supervisor

Yvonne Halstead was recently promoted to the position of AREC Supervisor. She has been with the Commission since 2008 in the position of AREC Investigator. Prior to working for the Commission, Yvonne worked for various state agencies and also had a career in real estate. Since becoming an AREC Investigator, Yvonne has earned both the Certified Real Estate Investigator and Certified Public Manager designations.

As AREC Supervisor, Yvonne will oversee the Licensing and Investigation departments of the Arkansas Real Estate Commission. There is no doubt her strong commitment to serving the citizens of Arkansas will serve Yvonne well in her new position.

Let's all congratulate and welcome Yvonne to her new position!



FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact and Conclusions of Law and Order issued by the Commission from July 2014 through November 2014.

Arkansas Real Estate Commission vs. Kenneth McConnell, Inactive Salesperson, Formal Hearing #3357

Violations: Arkansas Code Annotated §17-42-311(a)(2); Commission Regulation 10.16(a)

Sanctions: Respondent Kenneth McConnell's license is revoked.

On May 15, 2013, Respondent McConnell was convicted of a Class-A Misdemeanor-Public Intoxication, in the District Court of Faulkner County, Arkansas. Respondent McConnell failed to report the above conviction to the Commission within 30 days. On December 4, 2013, the Arkansas Real Estate Commission offered the Respondent a Consent Order and a fine of \$250.00 in lieu of a formal hearing. On January 17, 2014 Respondent requested the Consent Order be modified. On February 12, 2014 Respondent McConnell requested he be allowed to pay \$250.00 fine with monthly payments of \$500.00. On March 18, 2014, an Amended Consent Order was sent, which allowed Respondent McConnell until June 15, 2014 to pay imposed fine.

As of June 15, 2014, no payments had been made on Respondent McConnell's fine.

Respondent: Sim A. Wilson III, Principal Broker, CB Richard Ellis, Chattanooga, TN, Formal Hearing #3381

Violations: Arkansas Code Annotated §17-42-301(a), §17-42-311(a)(9); and Commission Regulation 6.3 (b).

Sanctions: Letter of Reprimand on file for 1 year; Pay \$500.00 penalty within 30 days of the order.

Respondent Wilson's broker license expired on December 31, 2013. Said license was renewed as active on August 21, 2014. Respondent as Principal Broker actively worked as a real estate broker for CB Richard Ellis, Inc. when Respondent did not hold an active broker's license.

The Commission's 2014 Educator's Retreat

By Heather Kilpatrick, Education & Instruction Specialist

Did you know there are thirty-two schools and associations currently approved to offer real estate education in Arkansas? They are spread throughout the state and across the country. Some providers specialize in continuing education while others focus on pre-license courses. They all have the opportunity to take part in training sessions led by the AREC.

In mid-October the AREC held its Annual Educator Retreat in Little Rock. Thirty-nine real estate instructors and administrators, along with nine members of the ARA Risk Reduction Committee, met at the AREC building for two full days of training. The retreat began with a cookout and reception at the Big Maumelle Pavilion which included good food, great fellowship, and special entertainment. During the retreat, participants received training in the recent changes to the ARA contract forms which was led by Sandy Ebel, Chair of the Risk Reduction Committee. AREC Deputy Director Andrea Alford led a session on the importance of writing learning objectives for courses. Instructors were trained on the 2015 Required Topic Course which all active licensees must complete in 2015. Educators also heard presentations from attorney Tim Grooms and AREC Executive Director, Gary Isom.

This retreat was the third educational workshop the Commission has held in 2014. As we work with educators to improve education offerings for real estate licensees, we look forward to future retreats and training opportunities.

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SAFETY EDUCATION INCREASING FOR ARKANSAS LICENSEES

While the Real Estate Commission has long been a proponent of safety education for real estate licensees, we are now working to increase the awareness and availability of safety education in Arkansas.

To begin, safety is now specifically listed as an approved topic for annual continuing education. Next, in 2015, licensees will be completing a 3-hour required topic, a section of which will be devoted to the topic of safety. Finally, safety education will be added to the salesperson post-license curriculum so that new licensees will encounter this topic early on in their real estate careers.

We are also working with the Arkansas Realtors® Association to ensure the availability of publications addressing safety in the real estate marketplace for agents and consumers alike. Rest assured that the Real Estate Commission intends to see that awareness of this issue becomes a permanent and key component of the practice of real estate in Arkansas.

The Times They Are Changing. Are You Keeping Up?

Change is a fact of life and of business. The real estate industry is no different with new technologies developing every day. Laws and regulations governing real estate licensure change regularly as well. How can you keep up-to-date on changes? There is an easy way: continuing education.

In June of 2014 the Arkansas Real Estate Commission mandated a required topic for continuing education in 2015. **All Arkansas real estate licensees must complete the 2015 AREC Required Topic to renew their license as active for 2016.** This three hour course was developed by Commission staff to cover a variety of topics including recent changes affecting real estate licensees.

The course will cover new law and regulations regarding education, time share activities, property management and alternative disciplinary procedures. Students will also learn about resources available on the AREC website and how to check your license information online.

Be sure that you complete the 2015 AREC Required Topic when you're getting your CE next year!