



December 2012

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ARKANSAS REAL ESTATE COMMISSION NEWSLETTER

Several Issues Under Discussion For 2013 Legislative Session

By Gary C. Isom, Executive Director

The following legislation is being discussed for the 2013 legislative session:

Proposed legislation to provide alternate disciplinary procedures for technical violations: As you have read in recent newsletters, the Commission has entered into several Consent Orders with licensees who have allowed licenses to expire or renewed their licenses without having complied with their mandatory educational requirements. The preparation, negotiation and agreement by all parties to a Consent Order is not only a complex and labor-intensive process, it also represents a formal action against the licensee.

For expired licenses and delinquent education, the Commission hopes to obtain the authority to issue citations along with a fine which will be a less ominous proceeding for the licensee and represent a less serious action than the more formal Consent Order.

While an action taken by a Consent Order would show up on a licensee's license history whenever they apply for a real estate license in another state or for a different professional license in Arkansas, a citation with fine should not constitute an activity that is reported on a licensee's complaint history.

Proposed legislation to authorize the Real Estate Commission to process a claim for a state tax refund for a licensee or former licensee who owes money to the Commission's real estate Recovery Fund: Several agencies already have the authority to make a claim for a state tax refund due to a person who owes the state money. This proposed legislation would simply add the Real Estate Commission to the list of agencies that have the authority to process such a claim.

Proposed legislation to update time-share law: The current time-share law was written approximately thirty years ago. Since then, there have been several new products and terms introduced to the vacation resort industry. This proposed legislation is largely an update to address those new concepts.

Proposed legislation to address time-share resales: Over the past several years, the Real Estate Commission and the Attorney General have had numerous encounters with illicit marketing activities regarding the resale of timeshare properties. This proposed legislation is designed to clarify the Commission's jurisdiction over anyone who is involved in the transfer of time-share interests from one party to another. The Commission has long been of the opinion that persons involved in such activity should hold a real estate license and hopes to solidify that position.

Proposed legislation to increase the Commission's governance over real estate education: Currently, instructors and schools that provide mandatory real estate education for real estate licensure are regulated by the State Board of Private Career Education (SB-PCE). Working side-by-side with SBPCE, the Commission has had a significant role in real estate education, even more so in recent years. While we certainly have obtained quality real estate education in Arkansas, it is felt that the Commission must increase its governance of the schools and instructors in order to ensure that certain educational needs can be addressed and sustained on a long-term basis. The real estate industry's call for more abundant and improved broker-specific education has played a huge role in reaching this conclusion.

Proposed legislation to require broker applicants complete courses developed by the Real Estate Commission: The pre-licensing educational requirement states that applicants for a salesperson license must complete a minimum of thirty (30) hours on the basic principles of real estate. Following that rationale, the proposed legislation will require that applicants for a broker license complete a minimum of forty-five (45) hours in broker-specific education developed by the Commission.

Additionally, the Commission has developed a specific curriculum for broker post-licensure education that consists of thirty (30) hours in the classroom. The development of this broker-specific curriculum involved many stakeholders including brokers, salespersons, educators and staff of the Commission and has been several years in the making. It is also the result of many comments voiced by the industry to the Commission about the need and desire for education designed to improve real estate brokers' knowledge, skills and abilities.



FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from June, 2012 through November 2012.

HEARINGS

Respondent:

**Adred Carol Falwell, Principal Broker
Sink Realty
Newport, AR
Formal Hearing # 3240**

Violations:

Arkansas Code Annotated § 17-42-311(a)(11) and Commission Regulations 10.12(a), 8.5(a) and 10.13(b)

Sanctions:

Respondent is to pay penalties totaling \$2,500 payable to the AREC, and to take 30 hours of the AREC post-licensure course. Such course is in addition to the regular continuing education requirement, is to be approved in advance by the AREC Executive Director and is not eligible for scholarship.

On February 21, 2011, Respondent listed for sale 212 Vine Street, Newport, AR. The Property was owned by Charlie and Arlene Kunkel. Respondent included an Addendum to the Exclusive Right to Sell that stated in part, “the sellers hereby give Sink Realty the right to allow or disallow other real estate companies to show their property at 212 Vine, Newport, AR 72112.”

On August 19, 2011, Complainant Mary Bratcher Reid, Principal Broker of Bratcher Real Estate, showed prospective buyers, Cecil and Linda McDonald, several properties in Newport, AR. The McDonalds asked Complainant Reid to arrange for them to see Sellers Kunkel’s property at 212 Vine. Complainant Reid contacted Sink Realty and informed agent Massey with Sink Realty that she was asking for permission to show the property at 212 Vine Street, Newport, AR to prospective buyers. Respondent did not give permission to Complainant Reid to show the subject property to Buyers McDonald. Complainant Reid informed agent Massey that she would send prospective buyers to Sink Realty so they could arrange to see the subject property with one of Sink Realty’s agents.

Upon Complainant Reid’s advice, Buyers McDonald contacted Respondent’s firm and arranged to view the property with one of Respondent’s agents. Buyers McDonald viewed the property with an agent with Respondent’s firm.

On or about September 18, 2011, Buyers McDonald contacted Complainant Reid and told her they wanted to make an offer on the subject property. Complainant Reid prepared an Exclusive Buyer Agency Agreement which Buyers McDonald signed. Complainant Reid prepared Buyers McDonald’s offer for the subject property. Complainant Reid presented Buyers McDonald’s offer to Respondent Falwell. Respondent Falwell refused to present Buyers McDonald’s offer to Sellers Kunkel because the offer had been prepared by Complainant Reid.

On or about September 18, 2011, Respondent contacted prospective Buyers McDonald directly and told them they needed to make their offer on the subject property through the Respondent’s firm. Respondent Falwell prepared an offer for Buyers McDonald on or about September 20, 2011. The agency option on the offer prepared by Respondent Falwell indicated that the listing and selling firm were one and the same and represented both buyer and seller.

Respondent Falwell knew or should have known that Buyers McDonald may have entered into an exclusive buyer agency agreement with Complainant Reid of Bratcher Real Estate. Respondent Falwell did not contact Complainant Reid to confirm whether such exclusive buyer agency agreement existed. Respondent Falwell did not notify Buyers McDonald in writing to consult with an attorney regarding the risk of being liable for two (2) separate commissions.

Respondent Falwell presented Buyers McDonald’s offer dated September 20, 2011, to Sellers Kunkel. Sellers Kunkel accepted Buyers McDonald’s offer and the transaction was subsequently closed.

Respondent:

**Cynthia Curtis, Salesperson
The Danny Thomas Company
Little Rock, AR
Formal Hearing # 3248**

Violations:

Arkansas Code Annotated § 17-42-311 and Commission Regulations 10.1, 10.7(a)(1) and 10.5(b)

Sanctions:

Respondent Curtis’ real estate license was revoked.

Respondent Curtis was licensed as a salesperson with The Danny Thomas Company from April 17, 2007 until June 25, 2012. On or about February 24, 2011, Respondent was hired by Mary Williamson, owner of Lindell Square in Hot Springs, AR, as an independent contractor Property Manager. Respondent accepted rents, deposits, and signed leases on behalf of Mary Williamson. Respondent was paid a monthly fee and 25% commission on the first month’s rent from tenants. Ms. Williamson was not utilizing The Danny Thomas Company as a Property Manager.

On or about June 21, 2012, Complainant Kathy de Saint Felix located documentation showing that Respondent had been working as a Property Manager for Ms. Williamson without the knowledge of her Principal Broker, William Thomas of the Danny Thomas Company. Respondent in fact had been working as a Property Manager for Ms. Williamson without the knowledge of her Principal Broker, William Thomas of the Danny Thomas Company, and she did not deliver to her Principal Broker the rents and deposits she accepted through her work as a Property Manager for Ms. Williamson.



FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from June 2012 through November 2012.



CONSENT ORDERS

The following **Sales Agents** renewed their licenses as active for 2012 without having completed the required continuing education. A Letter of Reprimand was placed in each of their files for one year, and they were each fined \$50 payable to the AREC:

- **Lindsey Griffin**, Salesperson, Century 21/Reed-Whately-Moore, El Dorado, AR: Consent Order, Formal Hearing # 3212
- **Kevin Lyles**, Salesperson, Coldwell Banker/Village Communities, Jonesboro, AR: Consent Order, Formal Hearing # 3221
- **Larry Vise**, Salesperson, Rainbow Realty, Inc., Hot Springs, AR: Consent Order, Formal Hearing # 3235

The following **Brokers** renewed their licenses as active for 2012 without having completed the required continuing education. A Letter of Reprimand was placed in each of their files for one year, and they were each fined \$50 payable to the AREC:

- **Chris Jordan**, Principal Broker, Jordan & Associates Realty, North Little Rock, AR: Consent Order, Formal Hearing # 3220
- **Ted Upshaw**, Principal Broker, Accountable Property Management, Little Rock, AR: Consent Order, Formal Hearing # 3233

New Real Estate Auction Regulations Under Review

A public hearing was held on October 1, 2012, to receive comment on proposed changes to Section 15 of the Arkansas Real Estate Commission regulations concerning real estate auctions. The proposed changes are intended to address concerns expressed by real estate auctioneers and members of the public who attend auctions.

Those concerns involve alleged abuses in the auction of real estate with regard to absolute versus reserve auctions, and with the use of false bids being utilized to unfairly raise the prices of real estate being auctioned. Letters in favor of the proposed regulation changes were received from the Arkansas Auctioneers Association and the Arkansas REALTORS® Association. The changes will be implemented pending a favorable review by the Administrative Rules and Regulations committee of the Legislative Council.

The proposed regulations address the issues as follows:

- o Adds definitions to applicable terms
- o Specifies the content that must be included in an auction agreement
- o For absolute auctions, specifically requires a statement

in the auction agreement between the auctioneer and the seller by which the seller acknowledges the legal repercussions of agreeing to an absolute auction.

- o Adds language providing the legal meaning of standard auction practices such as bidding, retracting bids and the auctioneer's announcement of completion of the sale
 - o Establishes specific requirements applicable to advertising of an auction
 - o Sets out requirements for establishing validity of absentee and internet bidders
 - o Establishes record maintenance and retention requirements, specifically identifying documents that should be maintained for absolute auctions
 - o Identifies prohibited activities that can lead to disciplinary actions against the auctioneer and his or her supervising brokers
 - o Extends the jurisdiction of the Real Estate Commission to unlicensed individuals participating in a real estate auction
- The new regulations may be viewed at the Commission's website at www.arec.arkansas.gov.

How to Make Your Holidays Happier - Renew on Time!

By Andrea S. Alford, Deputy Executive Director

As the holder of an Arkansas real estate license, there are two things you can do to make sure you have a very merry Christmas and a happy New Year.

First, you can remember that any license not renewed by December 31 will be expired for 2013. Online renewal is quick, easy and secure. Simply go to www.arec.arkansas.gov, click on the home page renewal banner (you can't miss it), follow the step-by-step instructions, and voila! Your license is renewed. If the process seems a little daunting, AREC offers free technical support. Just call us at 501-683-8010 and ask for online renewal assistance. You can even visit the Commission and we'll walk you through renewal on one of our own computers! Also keep in mind that an expired license that was active at the end of 2012 cannot be renewed online after December 31st. So do yourself a favor. Renew online and renew on time.

Second, if you have renewed as active for 2013, you can make sure you have reported your continuing education to AREC. Checking this is also quick and easy. Use AREC's online roster search to check that your upcoming CE is filed (remember to search by license year 2013), and if you see a 'Yes', you're good to go! Remember that if you don't report your CE for 2013, your license will automatically be placed on inactive status starting January 1, 2013.

Here at the Commission, we've asked Santa to make sure every last one of you makes it into 2013 with a renewed, CE-compliant license. He told us it was a pretty tall order, but we're holding out for a Christmas miracle!



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AREC Introduces Newest Staff Members



Craig L. Tissue

Craig L. Tissue joined the Arkansas Real Estate Commission as an Investigator last year. Craig brings to his position 17 years of investigative experience. He graduated from the University of Arkansas at Little Rock (UALR) with a Bachelor's degree in Criminal Justice and a minor in English and Communications.

After graduation, Craig was employed as a Detective with the Pulaski County Narcotics and Vice Division, later entering the private sector as a private investigator.

Craig and his wife, Debbie, live in North Little Rock with their two sons, Cameron, 13, and Casey, 8. An avid outdoorsman, Craig enjoys hunting and fishing with his sons. He spends his remaining free time traveling with them to all of their sporting activities, which range from baseball and football to basketball.

Born and raised in Little Rock, **Kortney Hinton**, AREC Administrative Specialist, is a 2009 cum laude graduate of the University of Arkansas at Little Rock, where she received her Bachelor of Arts degree in journalism with a minor in piano music. While in school, she was Features Editor for the campus newspaper, *The Forum*.

Since graduation, Kortney has been a freelance contributing writer for *STAND! News* and various other publications. She enjoys writing poetry and short stories, and has written three novels. She is currently drafting her fourth novel in hopes of seeing her work on the New York Times Bestseller List in the near future.

Kortney, a photographer and budding cinematographer, specializes in documentary-style family and individual portraiture and weddings. Her most recent personal projects include an untitled poetry and photography book she plans to release in the spring of 2013.

In her spare time, Kortney enjoys reading, spending time with friends and family, nationwide and world travel, and is a strong advocate and connoisseur of living life to the fullest.



Kortney Hinton