

REALTOR

ASSOCIATION OF THE MISSISSIPPI ASSOCIATION OF REALTORS®

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Summer 2005

**2005 CONVENTION & EXPO
UPDATE:** See special pull-out
section inside

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Real Estate LEADER is the official publication of the Mississippi Association of REALTORS®. The quarterly magazine provides Mississippi real estate professionals with timely information on trends and best practices, tools and resources for professional development, and news about innovative business and community leaders.

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REAL ESTATE LEADER

A PUBLICATION OF THE MISSISSIPPI ASSOCIATION OF REALTORS®

Summer 2005

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Hattiesburg broker Gwen James cautions agents about the safety risks inherent in real estate. Better safe than sorry...

10 Insights from MREC

Retiring Chief Investigator David Griffith from this Mississippi Real Estate Commission sheds light on the most common complaints received against licensees and what REALTORS® can do to protect themselves. And MREC Commissioner Robert Praytor shares his perspective on the increased risks associated with the influx of new licensees in Mississippi.

13 The do's and don'ts of unlicensed assistants

Are you up to speed with what MREC says an unlicensed assistant can and can't do? Read this checklist and keep your assistant's duties in check.

16 Defining agency relationships

Four prominent REALTORS® share their perspectives on the state of Agency Law in Mississippi and how it's being practiced across the state.

Pull-out section: Updated convention brochure

Pull out the updated convention brochure and get the latest information on the real estate profession's education and networking event of the year scheduled for Sept. 14-17, 2005 in Natchez. Register by August 1 and save \$150 off the onsite registration price.

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PRESIDENT'S PERSPECTIVE



Having attended NAR's Midyear Legislative Meeting & Expo this past month in Washington, D.C., I returned to Mississippi with a renewed sense of purpose for our state association and a tremendous

amount of respect for the collective power of our profession. REALTORS® truly do have an opportunity to bring about positive changes in their communities through meaningful legislation and sound public policy.

And I found great comfort in knowing that our colleagues from New York to Utah share many of the same challenges we face in our own state. Risk management issues, in particular, weigh heavily on the minds of REALTORS® from coast to coast. MAR's Past President Ellen Short of Tupelo is serving on NAR's Risk Management Committee, and I'm confident she will bring us new insights and innovative risk reduction strategies as a result of her participation.

We'll never be able to remove all of the risk from the real estate business. Nothing ventured, nothing gained, right? But there are certain steps we must take to minimize those risks. From REALTOR® safety to Agency Law, unlicensed personal assistant guidelines to a summary of federal real estate laws, computer password protection to the potential dangers of purchasing internet sales leads, our summer issue of *Real Estate LEADER* offers cautionary tales and risk management advice from seasoned Mississippi REALTORS®.

On page 16, brokers Cynthia Joachim, Judy Glenn, Al Brock and Ellen Short explore the challenges with disclosed dual agency as it's practiced today in our state. And nationally recognized speaker and certified agency instructor Dianna Brouthers suggests way that Agency Law could change in the future.

REALTOR® Gwen James, who was instrumental in urging MAR to pursue legislation that would clarify Mississippi's property disclosure laws, is featured on the cover, and suggests ways to practice safe real estate on page 14.

Mississippi Real Estate Commissioner Robert Praytor and his Chief Investigator David Griffith provide insights into the most common types of claims they're receiving at MREC and how the growing number of licensees will likely increase the number of those claims.

I hope you find this issue to be a useful resource.

Nancy Lane, CCIM
President

Word on the Street

REAL ESTATE NEWS BRIEFS

Bringing home a strong economy

More than 8,500 of the nation's more than 1.2 million REALTORS® convened in Washington, D.C., in May for NAR's Midyear Legislative Meeting & Expo to interact with Members of Congress and address salient issues that reinforce the capability of the real estate industry to continue to serve as the engine for economic growth and vitality. NAR's 2005 legislative agenda is comprised of three critical issues:

- Urging Congress to enact The Community Choice in Real Estate Act preserving the separation of banking and commerce.
- Preserving and protecting the historic housing mission of Fannie Mae and Freddie Mac.
- Enacting legislation that would permit small businesses to have access to the same type of group health insurance plans currently available to employees of large corporations and union workers.

Please respond swiftly and thoroughly to NAR calls to action on these critical issues and visit www.realtor.org for updates.

Mississippi's REALTOR® contingent met with Mississippi Congressmen on NAR's top legislative issues and found them to be generally supportive of the proposed legislation.

Clarification:

In the spring 2005 issue of *Real Estate LEADER*, the listing quiz adapted from the National Association of REALTORS® stated that a fee-for-service arrangement can include charging for a CMA. While legal in some states, charging for a CMA is not permitted in Mississippi.



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LEGAL EASE



BY RON FARRIS, ARMSTRONG ALLEN, PLLC

Legal Hotline info helps REALTORS® manage risks

Contracts, earnest money and arbitration

Mississippi REALTORS® commonly tangle with fundamental contracting concepts, earnest money disputes and the question of when and how to use arbitration and mediation procedures, recent calls to MAR's Legal Hotline indicate.

Do we have a contract?

REALTORS® calling the Legal Hotline routinely grapple with offers and counter-offers, and commonly have pending offers when a new offer comes in. In these situations, it is best to track the history of the transaction and remember fundamental concepts of contract law.

Basic contract law applies in a real estate transaction. The seller, by having the property listed, offers to sell the property on certain terms. If a buyer accepts the seller's offer to sell the property on the seller's terms, a valid and enforceable contract for sale is created. But if the potential buyer does not accept the seller's terms and offers to buy the property on different terms this is a counter-offer. It acts as a rejection of the original offer and constitutes a new offer by the buyer to buy the property on his terms. If the seller accepts the counter-offer, the parties have a binding contract; if the seller counters with different terms, he has made a counter-offer and by doing so rejected the buyer's counter-offer. This process goes on until both parties agree to the same terms or decide they cannot agree.

What if a new offer comes in while two other parties are exchanging offers and counter-offers? As experienced REALTORS® know, an offer from a third-party can be accepted or negotiated so long as another offer has not been accepted and a contract created. This means that seller A and buyer B can be exchanging offers and counter-offers, when new buyer C comes in with an offer that seller A likes better than buyer B's last counter-offer. Seller A can accept new buyer C's offer so long as buyer B and seller A have not consummated a valid contract.

The deal's off; who gets the earnest money?

REALTORS® constantly see pending contracts fail to close, leading to a whole new set of legal issues. Key among these is what to do with earnest money being held by one or the other REALTOR®.

As a practical matter, conditions and provisions for payment of earnest money in the event of breach should be clearly stated in the contract. MAR's standard Contract for the Sale and Purchase of Real Estate (available through ZipForm at www.msrealtors.org) clearly states that "The Broker has the authority to provide the earnest money to the rightfully entitled party based upon the terms of the contract. Any party who wrongfully terminates this contract shall forfeit their right to any earnest money funds." In the event of a breach by the buyer, the MAR standard contract provides that "Seller may at his option . . . accept the earnest money deposit as liquidated damages and this contract shall then be null and void, or . . . enter suit in any court of competent jurisdiction for damages for the said earnest money deposit . . ." If a seller breaches, the MAR contract provides that "Purchaser at his option may either . . . accept the return of the earnest money deposit and cancel the contract . . ." or choose to go to court.

When it is clear to the Broker from the clear and unambiguous language of

the contract that one party or the other is entitled to the earnest money, the Broker is fully authorized to deliver it. However, in cases where it is unclear to the Broker which party is entitled to the earnest money under the contract, it is not the Broker's responsibility to judge the dispute. In such cases, the parties should be encouraged to seek competent legal advice and the Broker should proceed to interplead the funds into court. (An interpleader form is available through MAR's Standard Forms & Contracts at www.msrealtors.org.)

We have a commission dispute; what about arbitration or mediation?

When disputes develop between broker/REALTORS®, it is a duty of membership to submit to arbitration all disputes specified in Article 17 of the NAR Code of Ethics and Part Ten of the NAR *Code of Ethics and Arbitration Manual* (2005 version). Part Ten, as adopted by MAR, requires REALTORS® to submit contractual or specific non-contractual disputes as defined in Standard of Practice 17-4 arising out of their relationship as REALTORS® to arbitration in accordance with the regulations of their board or boards rather than litigate the matter. Specific questions about this process should be addressed by REALTORS® to their local board.

Contractual disputes between REALTORS® and their clients may be arbitrated in accordance with local board regulations, provided that the parties agree to arbitrate and/or to be bound by the decision. In disputes with clients arising out of real estate transactions, generally MAR members should be fully familiar with the "Mandatory Arbitration" provision within the MAR standard real estate contract, as it protects REALTORS® from potential litigation by requiring any action against the REALTOR® to be filed separately from other claims arising out of a transaction and makes arbitration mandatory.

Mediation, which is a structured settlement discussion, must be available as a voluntary alternative when arbitration would be provided under Part Ten of the NAR *Code of Ethics and Arbitration Manual*. It is a very useful tool in attempting to resolve disputes before more costly and time-consuming arbitration and/or litigation processes are used. Parties using mediation routinely resolve their own disputes with the help of one mediator without going through the formal arbitration process creating a win-win situation for both parties. In contrast, the decision in an arbitration hearing is made by a panel of five who determines only one winner. The benefits of mediation far outweigh the benefits of arbitration. ■

Jo Usry, MAR's Vice President of Professional Development, contributed to this article.

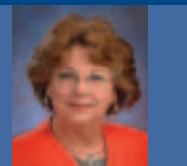
Call MAR's Legal Hotline

MAR's Legal Hotline (800-747-1103, ext. 25) offers free and confidential legal information relevant to broad-based real estate practices and applications, including MAR Standard Forms and Contracts, to MAR members, and is available Monday through Friday, 8:00 a.m. – 5:00 p.m. Calls received after 3:00 p.m. will be returned the following business day.



FOR THE COURSE OF YOUR CAREER

BY JO USRY



Online learning gains popularity among busy REALTORS®

True or false: Online courses are not a good way to learn key real estate concepts.

Answer: False, according to hundreds of Mississippi REALTORS® who have embraced online real estate education as a convenient alternative to the classroom.

The Mississippi REALTOR® Institute launched its online education platform in November 2003. Since then, there has been a steady increase in the number of online pre-licensing, post-licensing and continuing education students. Busy REALTORS® like the convenience of being able to take a course after supper, and pre-licensing students appreciate the fact that they don't have to use vacation time to complete the coursework to change careers. The most frequent comment on online course evaluations, regardless of the type of course, is "I liked taking a course at my own pace without having to go anywhere."

Here's what a few satisfied REALTORS® had to say about their online learning experience:



Roberts

• REALTOR® Chuck Roberts, a commercial broker in Southaven who has completed several of the commercial-specific online CE courses, says he's glad he doesn't have to sit in a classroom course designed predominantly for the residential practitioner. Because of his successful experience with online learning, Roberts says he is encouraging the agents in his office to take their courses online.



Gallegos

• REALTOR® Judy Gallegos, a new licensee with Century 21 David Stevens Real Estate in Clinton, recently passed her state exam saying that "almost everything on the state exam was in the online course". Gallegos indicated she is sold on online education and is anxiously waiting for the REALTOR® Institute's online salesperson post-licensing course to become available online.



LeFan

• Appraiser Kerry LeFan, Hattiesburg, says: "I enjoy the ability to stop and reread something I didn't grasp the first time, and I love the fact that there are resource buttons I can click on to learn more about a particular topic. I further like the fact that I'm not distracted by questions and comments that sometimes are distractions in the classroom."

The Mississippi REALTOR® Institute offers all required CE courses online, including License Law, Contract Law and Agency Law, as well as dozens of elective CE options. The Quadrennial Code of Ethics course required by NAR is also available online. A licensee's entire sixteen hours of required CE can be taken without ever leaving the comforts of his or her own home or office.

The 60-hour home inspection pre-licensing course is our newest online offering. And online courses for salesperson post-licensing and Broker A are coming soon. Visit www.realtorinstitute.org to learn more. n

Jo Usry is MAR's Vice President of Professional Development. E-mail her at jusry@realtorinstitute.org.



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Upcoming Classroom Courses

SALESPERSON PRE-LICENSE

July 18 - Aug. 15 (evenings)
Aug. 1 - 12
Aug. 22 - Sept. 2

Jackson
Gulfport

Jackson

SALESPERSON POST-LICENSE

June 27 - 30
July 18 - 21
Aug. 15 - 18
Aug. 29 - Sept. 1

Southaven
Columbus
Jackson

Tupelo

STATE EXAM REVIEW

July 22 (four hours only, 1-5 p.m.)
Aug 10 & 11 (evenings, 6 - 10 p.m.)
Aug 10
Aug 31

Jackson
Jackson
Gulfport

Jackson

BROKER PRE-LICENSE

Broker A

July 11-15

Southaven

Broker B

July 7-11

Jackson

BROKER POST-LICENSE

July 25-28

Gulfport

HOME INSPECTOR PRE-LICENSE

Aug 1-5, 22-26

Jackson

CONTINUING EDUCATION

ABR (GRI credit) June 21-22
License Law June 23
Contract Law June 23
Agency Law June 23
Buyer Representation in New Home Sales July 14
Technology Tour (GRI credit) Aug. 19
From Contract to Closing (GRI credit) Aug. 19

Jackson
Meridian
Meridian
Meridian
Southaven
Jackson
Jackson



CAPITOL WATCH

UPDATE ON LEGISLATIVE ISSUES IMPORTANT TO YOUR BUSINESS

New real estate license and disclosure laws take effect July 1

By Sarah J. Schmidt

MAR championed two primary initiatives during the recent legislative session and claimed success on both, setting the stage for much needed reform in license law enforcement and property disclosures. Governor Haley Barbour signed both initiatives into law earlier this spring. They take effect July 1, 2005. Here's what the laws mean for REALTORS®:

HB 1470 - Certain conditions deemed "non-material" and don't require disclosure

Sponsored by Rep. Greg Snowden (Meridian), this measure outlines three specific items that are not considered material to the physical condition of property, and are therefore, not

required to be disclosed in a real estate transaction. The items now considered non-material under the new law are facts or suspicions that a property is or was:

1. The site of a natural death, suicide, homicide or felony crime except for illegal drug activity that affects the physical condition of the property (such as the manufacture of methamphetamine, which leaves behind harmful contaminants);
2. The site of an act or occurrence that had no effect on the physical condition of the property;
3. Owned or occupied by a person affected or exposed to any disease that can't be transmitted through common occupancy of real estate (such as HIV/AIDS).

If, however, a seller fraudulently answers direct questions about such stigmas from a potential buyer, the seller is in violation of the law. *continued on page 12*

What's material? What's not?

Hattiesburg REALTOR® pushed for disclosure legislation

By Sarah J. Schmidt

A client finally found the home of her dreams at a price she could afford. It was perfect in every way...until she learned someone had committed suicide there. Ugh! It was just too creepy. She balked, and the deal came to a screeching halt.



That's the story REALTOR® Gwen James, Co-Owner of Coldwell Banker Don Nace, Inc. in Hattiesburg, tells about a buyer she encountered last year.

James Problem was, no one was sure whether anybody had done anything wrong in disclosing the suicide.

Some people could care less about that kind of information, but it was certainly something this buyer wanted to know. However, there was no affirmative duty on the seller to disclose that information, since it was arguably not material to the physical condition of the property. Situations such as this one that kept arising in Hattiesburg prompted James to contact MAR staff proposing a need for legislation to clarify Mississippi's property disclosure laws.

In the end, the buyer reconsidered her initial reaction and realized it was silly to pass on the perfect house that was in no way tarnished physically by the suicide. She bought the house and lived happily ever after. Thanks to property disclosure legislation that James suggested and MAR supported during this past legislative session, REALTORS® too can live happily ever after in situations involving stigmatized properties.

"We were between a rock and a hard place before this legislation passed," James said. She believes the majority of REALTORS® and property owners wanted to disclose material facts and operate within the law, but the issue was whether such information was really material. The new law gives direction to REALTORS® and property owners by identifying things like suicide that don't materially affect the value of the property. *continued on page 12*



Governor signs REALTOR® bills into law

Governor Haley Barbour signed two important pieces of REALTOR® legislation into law on Tuesday, April 19. Pictured from left to right (seated): Senator Merle Flowers, Southaven, who took up the REALTOR® licensee bill in the Senate; Governor Haley Barbour; and Representative Greg Snowden, Meridian, who took up the property disclosure bill in the House. Pictured from left to right (standing): Scott Brunner, CAE, Chief Executive Officer, Mississippi Association of REALTORS® (MAR), Jackson; REALTOR® Russell Wilcox, MAR Treasurer, Jackson; REALTOR® Janice Shows, MAR Executive Committee member, Jackson; REALTOR® Bruce Kammer, MAR Immediate Past President, Poplarville; Meridian REALTORS® Tom Coats and Marguerite Howell; REALTOR® Nancy Lane, CCIM, MAR President, Jackson; and MAR Lobbyist Quentin Whitwell, Hernando.



BEEN THERE, DONE THAT

REALTOR® GUEST COLUMNISTS SHARE THEIR STORIES

Buying internet leads and other feats of daring

Plan ahead, buy smart or lose big

By Richard C. Haase, CRB

The post-dotcom bust era seems to have brought out great creativity in the world of raising capital. In order to obtain greater return on their investments, on-line companies have come up with revenue models that might make sense more to their investors than to real estate sales associates.

Today, companies such as HomeGain, Service Magic, Lending Tree, House Values, House.com and many more are busy collecting potential home buyer and home seller names for the purpose of "selling" those names to the real estate industry in the form of a referral. Sounds good, right? Well, let's take a look at two relatively new developments and then you decide.

Internet enabled real estate leads aggregators have launched their businesses largely on the premise that they can identify, capture and "refer" real estate buyers and sellers for a fee. In the pre-dotcom bust era these companies were happy enough to make those referrals on what Mike Long, CEO, Homestore, Inc. accurately calls the "success" model. That is, when and if the referred party buys or sells through the receiving sales associate, a fee is earned and money changes hands.

Not so in the new era. Today, these internet leads aggregators are charging up front for leads in two new ways.

1) *Pay per click* – When a web surfer clicks on a link and that link takes them to your site you are charged a fee. The charge for each of these click-throughs ranges from a few cents to over 20 dollars. The tough news is that even though the charge is assessed, you still don't know the customer. Not by name, by number nor address (e-mail or otherwise). You have simply paid for a click-through and unless the anonymous web surfer slows down enough to fill out an online form or send you an e-mail, they remain just that...anonymous.

2) *Pay per lead* – The same basic concept applies except the web surfer's name and contact information is collected while they are visiting the initial website. The charge for this type of service ranges from about 25 to 100 dollars per lead name.

Remember that our business has always worked under the basic concept that a licensed real estate salesperson can refer a customer to another sales associate when necessary or advisable (and receive a fee for that service). The referring sales associate typically knows the customer they are referring, sometimes a family member, a past or current customer or a friend. Embedded in the act of allowing oneself to be referred is a bit of trust...trust that the referring sales associate will only refer the customer to another appropriately qualified sales associate. In other words, the customer trusts your judgment enough to work with the sales associate you have recommended.

Because a trusted advisor has made the recommendation, the customer has a sense of connection to the receiving sales associate.

Before you commit to paying up front for these internet leads ask yourself some basic questions: Is this truly a referral in the classic sense? Is there a traditional transfer of trust? How much effort time and money will you have to expend before this opportunity turns to income? How much have you budget-

ed monthly or annually for purchasing internet leads? Will other proven marketing activities be sacrificed to make room for this new expenditure? How is the online customer being enticed to fill out the form or click through to your website? Do they truly have an interest in buying or selling?

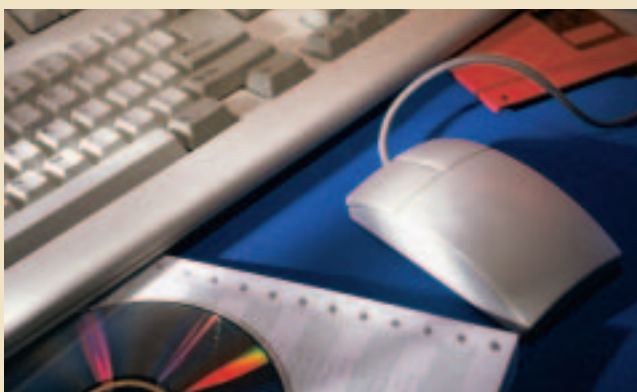
Adding to the complexity of this issue, one recent survey of real estate website surfers indicated that over seventy percent had no current desire to make contact with a real estate sales associate. These

are, in the vast majority of cases, very long sale cycle customers. With that in mind, how robust is your lead "incubation" system? What about your work habits and technical ability to communicate with the internet consumer through e-mail and over a long period of time?

Internet enabled companies which use pay per click or pay per lead methods of charging for "referrals" are able to do so at budget-busting rates. Before rushing in, determine whether you have the time, budget and follow-up systems or the willingness to pay a personal assistant to stay in touch. Keep in mind, you are very likely going to be paying up front for an anonymous click-through or for the name of someone who may not buy or sell for a over a year.

The good news is that sales associates don't have to go it alone. Real estate companies across the nation are providing these services for their sales associates and with good effect. Greater economies of scale and work force efficiencies mean that companies are able to negotiate lower click-through and pay per lead charges and afford salaries and training for specialized employees. These brokerage services allow sales associates to focus on providing just what customers want when they are ready to act.

Prudential Gardner, REALTORS®, for example, recently launched a suite of on-line marketing and communication tools that enable its sales associates to capture business from their personal websites, stay in touch using online and/or traditional methods with ease, and to do so without paying hefty upfront or referral charges. n

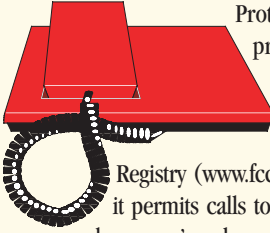


Richard C. Haase, CRB, is General Manager of Prudential Gardner, REALTORS®, the largest real estate company in Southern Louisiana and the Mississippi Gulf South with over 1,400 sales associates and employees.

The big ones: federal laws affecting real estate

Federal laws affecting the real estate profession change frequently. It's easy to get confused on their current applications. Here's a brief summary of the big ones that all REALTORS® must keep in focus:

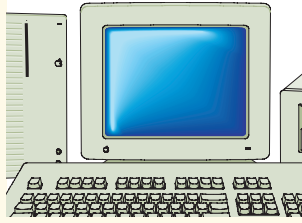
Do not call



Officially titled the Telephone Consumer Protection Act of 1991, this law prohibits telephone solicitations of individuals whose names appear on the National Do Not Call Registry (www.fcc.gov/cgb/donotcall), but it permits calls to existing customers with whom you've done business in the last 18 months. Businesses must update their calling lists monthly. Calls to FSBOs by real estate professionals who represent a potential buyer are not considered telephone solicitations so long as the purpose of the calls are to discuss the potential sale of the property to the represented buyer. Unfortunately, this does not apply to expired listings or FSBO calls if the purpose of the calls is to offer real estate services. Although NAR requested the FCC to clarify that all FSBO and expired listing calls would be outside the Do Not Call rules, the FCC declined to issue a blanket exemption. The law does, however, provide a safe harbor from prosecution for inadvertently calling someone on the do-not-call list if:

- your company has written procedures on calling;
- provides training on the do-not-call regulations;
- has accessed the national registry within the last three months, and
- maintains its own in-house list of numbers not to call.

Do not e-mail



The CAN SPAM Act, as it's commonly known, prohibits commercial e-mail solicitations of consumers unless senders abide by certain rules, depending on whether the e-mail is classified as commercial, transactional or informational. A determination of each classification depends on a reasonable interpretation of the subject line and the text of the message itself. Messages determined to be commercial must:

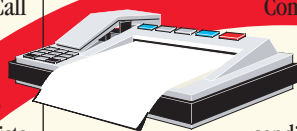
- not contain false or misleading information in the subject/header lines or sent/from lines;
- contain three disclosures in the body of the message:
 - a) clear and conspicuous identification that the message is an advertisement or solicitation;
 - b) clear and conspicuous notice of the opportunity to opt out, and

c) a valid physical postal address of the sender.

- include a functioning return e-mail address or similar internet-based mechanism for recipients to "opt out" of the sender's e-mail list (if a recipient opts out, then no further message may be sent to that recipient more than 10 business days after the recipient has opted out).

Do not fax


Although not an actual federal law, per se, this provision stems from a Federal Communications



Commission rule that would require senders to obtain signed, written permission before sending fax advertisements or solicitations to customers (even those with whom they may have an established relationship). The effective date of this law has been pushed back twice, most recently to July 1, 2005, thanks to efforts by NAR and other affected trade associations. Legislation is still pending to allow certain exemptions for businesses (most notably, real estate professionals). But unless Congress acts, REALTORS® should be ready to comply with the FCC rule this summer. If that happens, REALTORS® will need to:

- obtain customers' consent through such means as direct mail, websites, e-mails, or direct interaction with customers (a request for permission cannot be transmitted via fax);
- secure consent from the customer in writing
- include the customer's signature and fax number on the written consent.

Fair housing




Under the Federal Fair Housing Act of 1968 and its amendments, it is unlawful to discriminate on the basis of race, color, religion, national origin, sex, familial status or handicap in the sale or leasing of housing. Handicaps include:

- physical and mental impairments;
- AIDS/HIV;
- alcoholism; and
- prior drug addiction

Certain properties are exempt, however, such as housing for the elderly, dwellings operated by religious organizations, and rentals in owner-occupied properties of four or fewer units (with the exception of racial discrimination, for the latter). Salespeople are prohibited from providing information about the racial, religious, or ethnic composition of an area as a way to restrict a buyer's or renter's choice.

es. It's also unlawful to refuse information on available financing to persons in a protected class. Advertising that indicates a preference for or against any protected class of people is prohibited (applies even to owner-occupied properties with four or fewer units).


Lead-based paint



The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires owners and their agents to disclose the known presence of lead-based paint on properties built before 1978 that are being sold/leased. It also requires them to provide any available reports pertaining to lead-based paint hazards, although it does not require a property owner to test for the presence of lead paint. The law entitles buyers to arrange a lead-based paint inspection within a 10-day period. Agents must:

- give all prospective buyers/renters a copy of the federal pamphlet, *Protect Your Family from Lead in Your Home* (available in several languages at www.epa.gov);
- obtain a signed acknowledgement that the pamphlet was received;
- keep signed acknowledgments on file for three years as proof of compliance.

RESPA



The Real Estate Settlement Procedures Act of 1974, plus its accompanying HUD regulations, prohibit real estate practitioners from receiving referral fees or anything of value from service providers unless the salespeople actually perform a service that justifies the compensation. Fees paid merely for referring business are illegal.

It also prohibits practitioners and/or homebuilders from requiring buyers to purchase title insurance from a particular provider. Plus, it requires lenders to provide good faith estimates of closing costs, using the ubiquitous HUD-1 closing document.

If you or your salespersons have questions about these laws, log onto NAR's website (www.realtor.org) to find the latest updates on federal rules, regulations and statutes. MAR's Legal Hotline is also available to answer your questions.

Summary compiled from National Association of REALTORS® resources. Sarah J. Schmidt contributed to the report. For more detailed information, visit www.realtor.org. ■

To tell the truth: Risk reducing insights from MREC's chief investigator

By Sarah J. Schmidt

“Just treat everyone like you would want to be treated yourself. It's the Golden Rule, but it works in real estate just like in life.”

The Mississippi Real Estate Commission's chief investigator, David Griffith, retires this summer after 20 years of service. He's seen some surprising cases during his tenure, but there's one ugly offense that comes up time and time again: misrepresentation. Griffith says it accounts for more than half the complaints MREC handles every year – and the number of those complaints is rising annually. In the Q&A below, Griffith offers insights and valuable risk reduction tips from his years as an investigator:

Q: Why do you think misrepresentation occurs so frequently in real estate transactions?

A: Some licensees will tell a client anything to get a listing or sell a property. There are certainly cases where licensees make honest mistakes, but those are far and few between. I'd say that only about five percent of the cases we investigate turn out to be honest mistakes, so that means some licensees out there simply aren't telling the truth. There are a lot of violations that also go unreported because buyers/sellers don't want to get involved once the deal is done. That makes it easier for licensees to get away with misrepresentation.

Q: What can a licensee do if his/her client, the seller, refuses to disclose information, such as falsifying the property disclosure statement?

A: If the licensee knows it, then the licensee needs to call the seller's hand and urge him to correct the misrepresentations. If the seller still refuses, then the licensee should disclose whatever information he knows about the property and attach his own disclosure as an amendment to the seller's property disclosure statement. I've seen cases where this happened, and the amendment was enough to relieve the licensee's liability in those situations.

Q: What about licensees who represent buyers?

A: One of the best risk reduction steps they can do is to recommend a home inspection. Sometimes the licensee will tell a buyer he doesn't need an inspection because the house is in good shape, but then the buyer later discovers a problem. That's when we get the complaint. It would've been better for the licensee to give the buyer a list of licensed home inspectors, and let the buyer decide whether he wants an inspection. Of course, the licensee shouldn't recommend a particular inspector because that could lead to other liabilities. Just give the buyer the list and keep documentation in your files showing that you provided this information to the buyer.

Q: Describe a typical investigation. How does it affect a licensee?

A: MREC receives a sworn statement complaint and mails a copy to the licensee, who has 10 working days to respond. When MREC receives the response, we mail a copy to the complainant. Then, an investigator goes out and begins gathering facts, physical evidence, and other information necessary to the case. We usually interview the licensee during this stage and any other players who had a role in the transaction. This is probably the most stressful time for a licensee. It really shakes up a broker when we walk in and ask to audit their escrow account, especially those who have something to hide. If they've kept good records and documented everything like they're supposed to, it goes a lot smoother.

DAN

Once we've gathered all the evidence, we sit down with MREC's attorney, who reviews the evidence and decides what further action MREC will pursue. We, as investigators, work to protect the public and be fair to everyone. We work just as hard for the complainant as for the licensee. Our goal is to gather all the information, and then we let the chips fall where they may.

Q: What's the worst case you've ever seen?

A: There was one that started with misrepresentation but went well beyond it into fraud and some other offenses. The licensee purchased several properties and fixed them up, then turned around and resold them for significant profit. The appraisals all supported the sales price, but the amount of improvements the licensee made didn't really justify the profits. The closing documents showed buyers had put down certain amounts of money, but in reality, they didn't put anything down. It was a pretty big scam involving lots of people. MREC eventually revoked the licensee's real estate license and entered an agreement that prohibits the licensee from ever applying for a Mississippi license again.

Q: Are scams like this still happening in Mississippi?

A: Somebody is always trying to get away with something. We got a call the other day from a broker who had just gotten off the phone with one of her salespersons at a closing. The salesperson had discovered the mortgage company prepared two different HUD statements, one for the actual sale price and another for a much larger price. The mortgage company wanted the client to sign both of the HUD statements, but the salesperson had said no, and then called her broker for advice, who backed her up. The broker turned around and called MREC. It turned out that everybody was dirty in that case, from the mortgage company to the appraiser—everybody except the salesperson and the broker, who both did the right thing and helped bring down another scam.

Q: What can licensees learn from these examples?

A: To be honest and truthful to all buyers and sellers. Just treat everyone like you would want to be treated yourself. It's the Golden Rule, but it works in real estate just like in life. ■

■ New Rookie REALTOR® program to be offered at MAR Convention



Did you know that 70 percent of the agents who will quit real estate this year are "rookies" — agents who have been in the business less than two years? If you became a REALTOR® in 2004 or 2005, you're invited to three exclusive Rookie REALTOR® events — and invitation-only reception and two education courses especially for new agents — to be offered at no additional charge at MAR's 2005 Convention & EXPO, Sept. 14-17, 2005 in Natchez. See the special convention pullout section in this issue of the magazine.

The more the merrier?

Growing number of Mississippi licensees brings greater risks

By Sarah J. Schmidt

The growing influx of new licensees is changing the level of risk REALTORS® face, according to Commissioner Robert Praytor of the Mississippi Real Estate Commission (MREC).



Praytor

"It's a basic statistical principle, just like when you put more automobiles on the highways and the number of auto accidents increases," Praytor explains. "The more inexperienced people you have in the pool, the greater likelihood they'll create a situation where a claim could be filed."

Mississippi welcomed an annual average of 1,223 new licensees into the real estate profession over the last five years, according to MREC statistics. Those numbers appear to be growing steadily with figures on target to hit or surpass that mark again this year. As new licensees enter the profession, Praytor sees the number of complaints rising exponentially.

Rookies at greatest risk

Rookie licensees face even greater risks unless they receive proper guidance from their brokers. "This is still an industry that relies heavily on the 'shot gun approach'," he says, "meaning, you hire as many licensees as you can, then turn them loose on the world with little or no training." A better approach is to educate and mentor new licensees, especially during their critical early years.

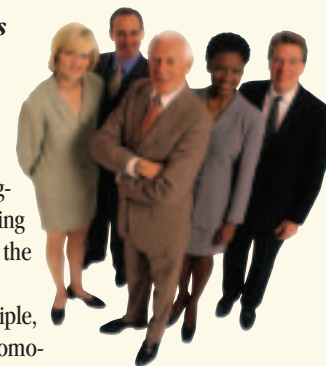
Brokers often assume the role of educator and risk reduction provider. Praytor thinks that's fine in limited circumstances, but typical brokers are saddled with so many management issues that few have time to provide the ongoing training that's necessary to offset risks. He suggests brokers hire a professional trainer from time to time, bring them in-house, and require all their licensees to attend.

Team trouble

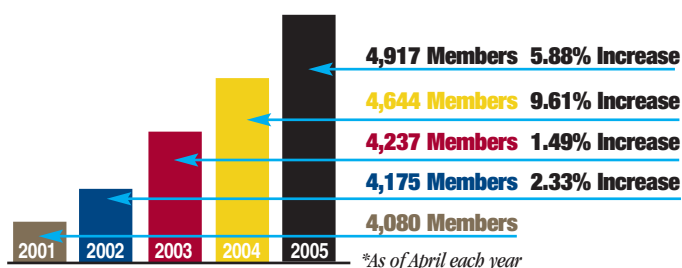
Another area of potential risk involves the operation of "teams" within a brokerage structure. Praytor describes this arrangement as groups of agents, salespersons and brokers plus their administrative staff. The risk comes from combining licensed professionals with unlicensed staff members. "They're all important parts of the team, of course, but there are tremendous legal and ethical distinctions between what the licensed team members can do versus what the unlicensed assistants can do," he says.

The key: make sure all team members understand the significance of the licensed/unlicensed distinction and know the limits to which each team member can perform. "Those unlicensed team members generally aren't accustomed to the rules and regulations that the licensed team members know and understand," he says. "That deficiency can put the whole team at greater risk."

See page 13 for detail on what unlicensed assistants can and cannot do in Mississippi. ■



Mississippi Association of REALTORS® Membership Statistics*



tial buyer, then the law allows a cause of action against the seller.

If a licensee has actual knowledge of one of the above factors and is asked, a licensee must also answer truthfully. The law only says these disclosures don't have to be made voluntarily.

The new law also clarifies that property owners and real estate licensees may disclose information about sex offenders who live in the vicinity of a property, but does not impose a duty to disclose such information unless a consumer specifically asks. It also clarifies that property owners and licensees will not risk legal liability if they disclose such sex offender information.

Because some state sex offender laws have been challenged on constitutional privacy grounds, this measure adds a necessary layer of protection for property owners and licensees at risk in cases both if they disclose and if they don't. This revision also helps insure that consumers get the information they want, enabling them to make better purchasing inquiries and decisions.

SB 2697 – Presenting proof of licensure at closing

Sponsored by Sen. Merle Flowers (R-Southaven), this amendment to the

Mississippi Real Estate License Law (MS Code §73-35-31) prohibits payment of any disbursement or commission to a salesperson unless he/she produces proof of Mississippi real estate licensure or a cooperative agreement with a Mississippi broker. This means attorneys and other professionals who handle real estate closings may not release disbursements to salespersons for any fees, commissions, or other compensation due until a salesperson produces proof of licensure.

Although the law does not specify what qualifies as "proof," documents such as a copy of the salesperson's real estate license or a copy of the salesperson's cooperative agreement with a Mississippi broker would be adequate. In some circumstances if such documents are unavailable for good reason, then other "proof" may be acceptable, but the obligation of providing that evidence still rests with the salesperson.

This revision to Mississippi's Real Estate License Law provides greater deterrence against unscrupulous salespersons and protects Mississippi consumers from unlicensed salespeople who cannot provide adequate service without the expertise and knowledge of state law that comes only with proper licensing and regulatory oversight. ■

Hattiesburg continued from page 7

affect the property, and therefore, need not be voluntarily disclosed. "Buyers who have a phobia about living in a house where somebody died, for example, should share that with their agents and raise the question if it's

important to them," James says. "Otherwise, this legislation clarifies that it's not a REALTOR®'s or property owner's responsibility to volunteer that information." ■

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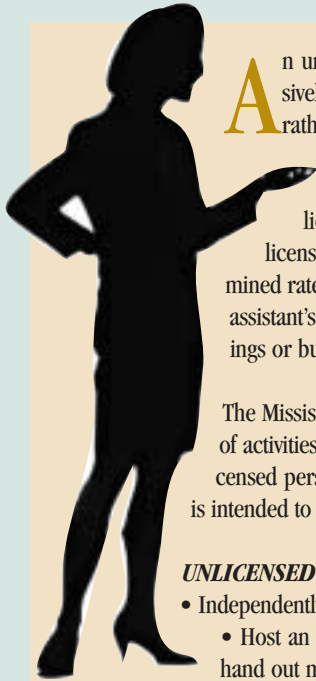
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Unlicensed personal assistants: The do's and don'ts

By Jo Usry



An unlicensed personal assistant who works exclusively for a licensee will ordinarily be an employee rather than an independent contractor under Mississippi and Federal tax, unemployment and workers' compensation laws. The licensee must follow all applicable laws. The licensee may pay an employee based on a predetermined rate that is agreeable to both parties as long as the assistant's compensation is NOT in any way related to listings or buyers solicited or obtained by the assistant.

The Mississippi Real Estate Commission has created a list of activities that can and cannot be conducted by an unlicensed personal assistant. The list is NOT exhaustive and is intended to serve as a guideline.

UNLICENSED assistants may NOT:

- Independently show properties that are for rent/sale.
 - Host an open house, kiosk, home show booth, fair, or hand out materials at such functions UNLESS a licensee is present at all times.
- Preview, inspect, or determine (measure) the square footage of any property unless accompanied by a licensee.
- Prepare promotional materials or advertising without the review and approval of a licensee and the principal broker.
- Negotiate, discuss or explain a contract, listing, lease, or any other real estate document with anyone outside the brokerage firm.
- Answer questions concerning properties listed with the firm, including giving out the list price, EXCEPT to confirm that a property is listed, to identify the listing broker or sales agent, and to provide such information as would normally appear in a simple, classified newspaper advertisement (location and/or address).
- Negotiate the amount of rent, security deposit, or other lease provisions in connection with rental property.
- Open properties for viewing by prospective purchasers, appraisers, home inspectors or other professionals.
- Attend pre-closing walk-through or real estate closings unless accompanied by a licensee.
- Place calls that would require a license such as cold calling, soliciting listings, contacting sellers, buyers or tenants in person or by phone, contacting expired listings, placing marketing calls or extending open house invitations.
- Represent themselves as being a licensee or as being engaged in the business of buying, selling, exchanging, renting, managing, auctioning, or dealing with options on any real estate or the improvement thereon for others.

Typically, unlicensed assistants MAY:

- Provide "general" information about listed properties such as location, availability and address (without any solicitation on behalf of the assistant.)

- Perform clerical duties, which may include answering the phone and forwarding calls.
- Complete and submit listings and changes to the MLS, type contract forms for approval by the licensee and the principal broker, pick-up and deliver paperwork to other brokers and salespersons, obtain status reports on a loan's progress, assemble closing documents, and obtain required public information from governmental entities.
- Write advertising and promotional materials for approval by the licensee and the principal broker, and arrange to place the advertising.
- Have keys made for listings and place signs on a listed property.
- Gather information required for a broker price option or a comparative marketing analysis.
- Schedule appointments for the licensee to show a listed property.
- Be compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate commission. Licensees may NOT share commissions with unlicensed persons who have assisted in transactions by performing any service with respect to a real estate closing. n



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Taking safety seriously

By Sarah J. Schmidt



Most folks mistake Mississippi's rural landscape and laid-back lifestyle as a fairly low threat environment, but statistics show that's not really true. Mississippi frequently ranks higher than the national per capita average for rapes and murders. In 2003, there were more than 16,000 arrests for robbery, burglary and theft-related crimes in Jackson alone. It's time REALTORS® take safety seriously, according to REALTOR® Gwen James, Co-Owner of Coldwell Banker Don Nace, Inc., in Hattiesburg.

"Fortunately, a lot of places in Mississippi are still low risk but certainly not every-

where," James warns. "If a REALTOR® is too trusting and doesn't take precautions, it could easily be her downfall – even in these areas we think of as low risk." She recognizes the safety risks inherent in the nature of real estate, such as showing property in remote locations, being in a car with virtual strangers, and entering unfamiliar buildings. To counter these known risks, she makes security briefings part of her routine training for agents.

Periodically, she invites a local police officer to speak with her agents and office staff about current crime trends. "We don't want to make our agents paranoid, but we've found this kind of training is valuable because agents get a greater sense of awareness about themselves and their surroundings," she says. "They learn to be aware and not get themselves into security situations that are uncontrollable."

The key, James believes, is awareness. "Our biggest emphasis in safety training is just to be attuned to the things going on around you," she explains.

On the road

James never leaves home without her cell phone. "Not only is it essential for doing business, it's one of your best protection tools," she says. She teaches all her agents the code for contacting emergency help on the road (dial star "*" then "HP" for the highway patrol). She called *HP once when her car broke down. Fortunately, it wasn't an emergency, but a patrol officer came right away and was happy to help, she recalls. Cell phones give REALTORS® a higher degree of security, but there are other steps REALTORS® should take on the road too. NAR recommends:

- Keep cell phone batteries charged at all times. Keep an extra cell phone charger and/or adapter in your car so you can plug into an energy source if batteries run low.
- Program emergency numbers into your cell phone.
- Use a hands-free phone adapter if you intend to talk on your cell phone while driving. Never take notes or rummage in your briefcase while driving. If you must take your hands off the wheel for such things, pull off the road for a moment.
- Get your car serviced and inspected regularly.
- Know how to change a flat tire. Keep emergency essentials in the trunk and know how to use them, including safety flares, a tire-inflation canister, basic hand tools, water, a flashlight and first aid kit.

On the job

James has designed her office so that the lobby is visible to at least two or three people at all times. The office conference room faces the receptionist and is enclosed in glass so someone can see what's going on inside. All outside doors except the front door have coded locks through which only the staff enter. "We've never experienced any security issues in our office, thank goodness, but it would be careless not to have these basic safety practices in place," James says.

Working with clients triggers a whole other set of concerns. "First of all, we almost never meet a new or potential client away from the office," James explains. "We like to have them come into our office so the receptionist can

CAUTION

at least see them in case someone has to identify them later." If an agent must meet clients away from the office, then they take another person with them, James says.

"A lot of clients become very good friends with their REALTORS®, so it's different under those circumstances, but you should get to know clients well before you put yourself in a risky situation with them," James advises. NAR recommends additional steps for safety on the job:

- Have new clients stop by the office and complete a Customer Identification Form (available at www.msrealtors.org), which includes a space for the client's car make and license number. Verify the client's employer and phone number(s) listed on the form. Attach a copy of the client's driver's license. Retain this information at the office where it can be easily located by your staff if necessary.
- Introduce the prospect to someone in your office; a would-be assailant does not like to be noticed, knowing a person could pick him/her out of a police lineup.
- Whenever possible, have the client follow you to the property in his/her own car.
- When showing a house, determine several "escape routes." Make sure all deadbolt locks are unlocked to facilitate a faster escape.
- Let the client "lead the way through the house" so you don't get backed into a room with no way out. Stay at or near the door of each room, where you could easily turn and flee out first if necessary.
- Don't let your car be blocked in the driveway. If possible, park on the street. Keep your keys with you at all times. Consider a keyless entry system if you don't already have one on your car.

James tells her agents to call the office anytime something seems suspicious. "Even if it's just a funny feeling, follow your instincts," she warns. "We tell our agents we value their life and safety over any commission they might ever earn, and we want them to value themselves that way too. Their well being is far too important to justify taking risks like these."

National averages and statistics were compiled from the FBI's Uniform Crime Reports. Local statistics were compiled from county records searched conducted by the online resource, Instant People Check. n

**Download MAR's
Guide to Etiquette & Safety at
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Secret Agent Man: REALTOR® of danger when they fail agents

By Sarah J. Schmidt

"With every move he makes, another chance he takes. Odds are he won't live to see tomorrow..."

Fans of Secret Agent Man, the classic 1960's TV series, remember those lines from the catchy theme song, but the prediction could be just as true for REALTOR® who don't understand their own risks as agents. Agency

law often confounds consumers. When REALTOR® don't properly define their agency relationships with customers, they take almost as great a risk as Secret Agent Man.

"What the consumers and practitioners don't understand about agency law, the attorneys certainly do. Agency law is complicated; it's difficult for both practitioners and consumers to understand, and yet the minute a deal blows up, attorneys are the first to point out agency law violations," says REALTOR® Cynthia Joachim, Broker/Owner of Century 21 Harry J. Joachim Inc., in Biloxi.

She manages five agents, all of whom are trained to discuss agency issues with potential clients. "There are many things we can do with a consumer that don't



Glenn

trigger a client/agent representation arrangement," Joachim explains, "but it's all a matter of consumer presentation and education."

REALTOR® Judy Glenn, Broker/Owner of Corinth Realty in Corinth, agrees. She describes it as "matching expectations with reality," meaning REALTOR® must communicate with consumers in such a way that both parties understand what services the consumer needs, wants, and expects from the REALTOR®. "You simply can't be on mental cruise control and think you're going to discharge your responsibilities under agency law," Glenn warns.

Simple premise

The premise of agency law is simple: an agent owes an undivided duty of loyalty to his/her client. It gets complicated, however, when an agent attempts to represent clients with opposing interests. Under the common law of agency in Mississippi, an agent must provide an equal level of competency to both clients in those situations. "Human nature being what it is, that arrangement is somewhat difficult—although not impossible," Glenn says. "An agent constantly has to be aware of what he/she is being asked to do and what effect that may have on the other client."

Mississippi permits these disclosed dual agency relationships, but only if



Joachim

both parties understand the specific duties of the representation and give their informed consent in writing. "You have to go into a dialogue with clients about how it affects them; you have to explain the rights they're giving up," says REALTOR® Al Brock, Broker/Owner of REMAX in Greenville. There's a lot riding on an agent's integrity in these situations, and therein lies the danger. "You have to explain it in a practical sense...explain that you cannot reveal information to one party that would be detrimental to the other party or to the negotiation process," Brock stresses. There can be no "secret agents." Mississippi law does not permit undisclosed dual agency arrangements.

Brock says he has never lost a client once he fully explained the practical implications of the arrangement, but clients always have questions. They ask things like, "Are you going to tell me if the property has termites?" Of course, Brock and his agents explain that REALTOR® must provide information about the physical aspects of the property, but they can't reveal other information detrimental to the negotiation, such as a buyer's top price or a seller's minimum price. Clients must be comfortable with the level of information an agent can and cannot provide in a disclosed dual arrangement. Otherwise, agents run the risk of unhappy clients and potential lawsuits, Brock cautions.

Glenn illustrates the point with a hypothetical story about a disclosed dual agent who maintains a good working relationship with a seller and buyer. As the negotiations proceed, however, the buyer begins to angle for more confidential information and advice from the agent. "Those questions are all invitations to a licensee to breach her fiduciary duties to the seller in that case. It's a very vulnerable position the agent finds herself in if she's going to preserve those fiduciary duties," she observes.

Form & presentation

Because of that vulnerability, Joachim doesn't offer disclosed dual agency as a matter of practice. "I represent either the buyer or the seller, but not both in the same transaction unless the conflict has already arisen, such as the time when we were representing a buyer and he asked to see some properties we had listed for the sellers," she explains. Joachim admits she's in the minority with this policy, but believes it's the best approach for her clients and agents.

"This blanket statement on the representation form [MREC's disclosed dual agency statement] isn't clear enough for consumers to understand what they've left on the table," Joachim says. "The problem I see with it is that many of us just whip out the form, shove it in front of a consumer, and say 'sign here.' Many consumers sign those forms without asking questions because they trust us." She believes it's relatively easy for licensees to gloss over con-



Brock

REALTORS® live a life of agent responsibilities

conflict of interest issues, leaving consumers with very little clarity about the rights they're giving up in a disclosed dual agency arrangement.

REALTOR® Ellen Short, Broker/Owner of TRI G.M.A.C. in Tupelo, thinks the problem is more systemic: "Quite often, my agents encounter potential clients who, when introduced to the agency disclosure form, say they've never even seen that form, although they've worked with other real estate companies." She believes there are still many licensees who simply don't use the form, either because they forget or don't fully understand the risks. Her policy is to meet customers first, talk about their needs, and properly formalize the agency relationship. But there are times when she's had to meet a customer on short notice, which left no option but to sign the agency form "on the hood of the car," as she describes it. In her whole career, she's only had two people who didn't sign, so she asked them to write a statement at the bottom of the form saying they'd been presented with the information but elected not to sign. In both cases, she was then able to show the property with all parties knowing exactly who she was or was not representing at the time.

Although the "hood of the car" approach is bound to happen, Al Brock says that's the one situation that creates "a sticking point" in his practice. In compliance with MREC Rule IV.E.2(h), licensees must present the agency disclosure form entitled, "Working with a Real Estate Broker," to prospective clients at the first substantive meeting. Brock thinks the "hood of the car" approach leaves too much room for misinterpretation. "We should, as professionals, be able to time that first substantive meeting in a manner and environment that's more appropriate," he says.

Changing times

When it comes to agency relationships, timing can make a world of difference between risk and rewards. It's the changing times that brought Mississippi REALTORS® to this uncertain point with agency relationships in the first place, explains Joachim. "The marketplace is constantly changing, and REALTORS® have to adapt," she says. "The days are gone when our only clients were people we'd known for years. Now, we're inundated with buyers who come from other states with more sophisticated agency laws, and they expect the level of professionalism they had elsewhere. When that doesn't happen, they're quick to bring complaints or lawsuits."

The camera pans tight on Secret Agent Man as the theme song rises.... "With every move he makes, another chance he takes." These days, REALTORS® must go the extra mile to provide a competitive level of professionalism and protect themselves in the process. ■



Short

Agency law: Is it time for change?

By Dianna Brouthers

Fred has been in the real estate business for more than 25 years, specializing in residential resales and new construction. His dedication to clients and the community has established him as one of the most successful companies in the area. Firmly grounded in the traditions of real estate brokerage that were passed on to him by his mentors, Fred follows the business plan that he made as a new broker/owner and has watched many "new and improved ideas" come and go. Fred has always applied the "if it ain't broke, don't fix it" theory and does not really care much for change. He is convinced that what has worked in the past will continue to work in the future.

Martha is also a seasoned agent. Having used her marketing background as a launch pad for her real estate career more than 10 years ago, she has stayed on the cutting-edge of her profession through early incorporation of technology for marketing her listings and searching for potential buyers. Martha's motto, unlike Fred's, is that if you "live in the past, you're history." Martha sees change as a challenge and is fueled by the excitement and opportunities it brings.

Matthew is a typical Gen-Xer who teathed on a computer mouse. Not one to stand on the sidelines when change comes along, he has established himself in his community as one of the most innovative agents around. His company is "virtual," his office "mobile," and his services "a la carte."

Each of these real estate professionals has a track record of success. Each has a good chance of remaining successful for years to come. Each is different, and yet each is the same when it comes to dedication to the industry and consumers they serve. At the same time, each must plan for the future — a future in which changes to the real estate industry are predicted to be swift and significant.

One area that has not seen rapid change is agency options. Defined as "the expressed authority to represent another in a transaction when dealing with a third party" agency has always been the cornerstone of the real estate business. The options of single and dual agency have remained constant over the years. Emerging alternatives of designated agency and even non-agency relationships have eluded the Mississippi real estate practitioner as regulations have not changed to allow these options. Designated agency allows the consumer a higher level of service from the practitioner when involved in an in-house transaction when compared to the restrictions of traditional dual agency. Non-agency allows the consumer to opt for the practitioner to move through the transaction without an agency relationship to either buyer or seller. Both are practiced nationwide and would require legislative change before becoming an alternative offering of the brokerage in Mississippi.

Just as buyer agency was once outside the mainstream, so are these agency alternatives. Fred might respond: "If agency ain't broken, don't fix it." Martha might say: "Let me investigate and see if these are options I can support as being good for both the consumer and the real estate professional." Matthew might respond with a "Bring it on!"

Fred, Martha, and Matthew are all correct in their responses based on their individual business needs. Each will deal with potential change differently. Each will have a different basis for making a decision, and each will develop both a business and emotional response to change.

No matter the changes that come our way, the basis of service to the consumer will remain constant. The questions to ponder are:

- Will I see change as a liability or as an opportunity?
- Will I be open to change without bias?
- How will I stay informed?
- How can I be involved?
- How can I have a voice in shaping real estate's future?

continued on page 18

Whether you are more like Fred or Martha or Matthew, you have invested much in your path to success. Yes, real estate will undoubtedly remain a "people" business, but the way we deal with people and the services we offer are sure to change dramatically. Continue to look to the Mississippi Association of REALTORS® for the information you need to make your personal decisions regarding these changes and to be your guide along the pathway to success. n



Dianna W. Brouters, DREI, CAI, ITI, GRI, LTG, is President of the College of Real Estate in North Myrtle Beach, S.C., and 2004-2005 REEA President. A certified agency instructor, she will teach two required Agency law courses at MAR's 2005 Convention. See the pullout section in this magazine for details.

Brouters

Be prepared for client reaction to dual agency

By Stanley F. Bronstein

Agents who ask their clients to give written consent to dual agency should expect to be asked several difficult questions, such as:

- What exactly is dual agency?
- Can you please tell us the benefits of consenting to dual agency?
- Please explain how the fiduciary duties you usually provide as an agent are limited by dual agency.
- Given a choice between working with a dual agent and one who represents us solely, which service choice serves us and why?
- Considering dual agency seems to be a reduction of service, would you be willing to reduce the commission you receive if we get into a dual agency transaction?
- Are you aware of any law firms in your area that permit their attorneys to represent adverse parties in the same manner, and can you tell us which firms allow that dual representation?
- Does your company allow a service choice of single agency only?
- Will you refer us to a knowledgeable attorney who can honestly advise us about the risks of dual agency?

Dual agency increases the level of complication of any real estate transaction, and lawsuits involving dual agency are becoming more and more common. Real estate brokers and agents should give serious thought to all potential consequences before entering into a dual agency situation. n



Stanley F. Bronstein is a real estate attorney in Scottsdale, Arizona.

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FOR THE TECH OF IT



BY MIKE DELAMATER

The power and peril of passwords

Are you one of those people who uses the same password for EVERYTHING? I bet you made it easy to remember, too... like your spouse's name, a kid's name or a pet's name. Maybe you even used the last four digits of your Social Security number or, my personal favorite, the word "password"!

Guess what? You are at the highest risk of being compromised. If someone wants into your machine, or website, or bank account, the first passwords they will try are what I mentioned above.

So what is good password policy? The best passwords are six to eight characters in length and have a mix of letters and numbers. Take the word "REALTOR®". To make that a more secure password, replace some of the vowels with numbers (the letter "O" and the number "0" or "E" and "3", or "A" and "4"). Then, "REALTOR®" becomes r34lt0r, a MUCH more secure password. To go one step further, change the case on some of the letters: R34lt0R

Another good policy to have is to use a different password for everything. If I guess your windows password, and you use the same one for e-mail, I can now intercept your e-mail.

Some people use a "system" to make it easy to remember complex passwords. For example, if it's a website you need a password for, make the website part of the password, then add a standard term. For example, if you needed a login/password at Microsoft's website – maybe something like "Mym1cr0s0ft" or "M1cr0s0ft4M1ke". If it's BestBuy's website – maybe use "MyB3stBuy" or "B3stBuy4M1k3".

There are several very good password managers available for your handheld devices to help keep track of all these passwords. CryptInfo (www.normsoft.com/cryptinfo) for the Palm OS and FlexWallet (www.twopeaks.com/) for Windows Mobile (handhelds and SmartPhones) are excellent choices.

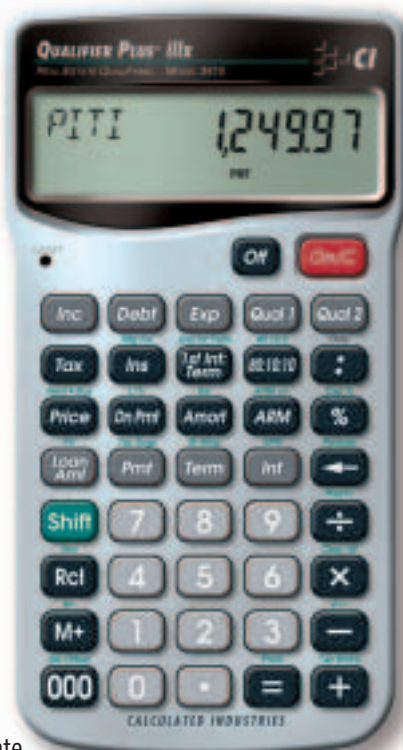
In today's age of online transactions and the ever present threat of identity theft, security is paramount. Passwords are your final line of defense.

Mike Delamater is MAR's Systems Administrator. E-mail bim at mdelamater@msrealtors.org.

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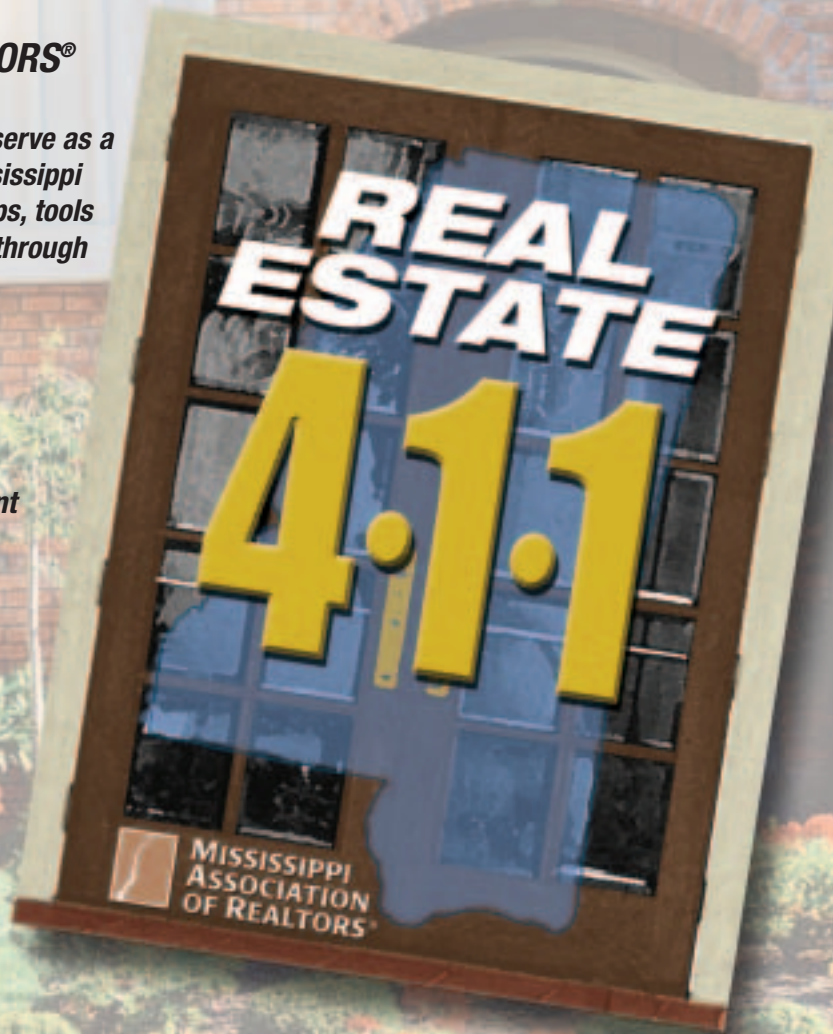
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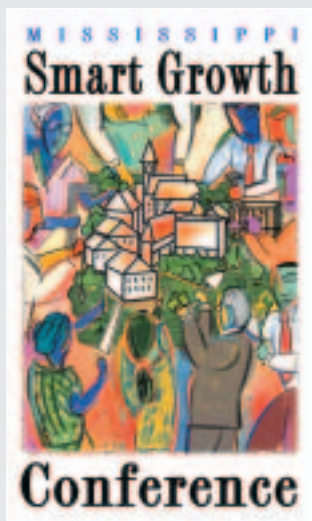
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Online voting begins Aug. 31



This year for the first time, in compliance with Bylaws provisions enacted October 2004, MAR will elect officers and directors via online voting. All members will be notified in August of online voting and password protection instructions as well the slate of officers/directors up for election. Mark your calendar. Online voting will open Aug. 31 and close at midnight on Sept. 15. Election results will be announced Sept. 16 at the General Membership Meeting at MAR's 2005 Convention & EXPO.

Smart Growth Conference encourages community collaboration



More than 150 REALTORS®, economic developers, builders, planning and development experts, local/county elected officials and legislators gathered at the Downtown Jackson Marriott on May 17 for MAR's Smart Growth Conference. Participants gained a greater understanding of key smart growth principles and how they relate to the quality of life in Mississippi. Special thanks to the many speakers and sponsors who made the event possible. Sponsors included:



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YOUR NECK OF THE WOODS

Local Board & AE Forum

In Mississippi, there are 21 local boards servicing REALTORS® in every corner of the state. Here's what's going on in their communities:

Biloxi-Ocean Springs

The MARPAC auction held April 27 was a huge success. A festive group of REALTOR® members, affiliates and sponsors were in attendance. Thanks to the hard work and coordination of the MARPAC Committee. We will again meet our contribution goal for 2005. Please note: The association office and board store moved to 2000A Bienville Blvd. in Ocean Springs.

Clarksdale

No information provided.

Cleveland

No information provided.

Four County

No information provided.

Golden Triangle

The association recently produced Lowndes County Maps as a fundraiser and a community service project. Maps were supplied to our Chamber of Commerce to aid in promoting our community. Map Committee Chairperson Gerry Holliman presented enlarged laminated maps to local fire departments and 9-1-1. In the political arena, the association reviewed candidates and contributed to eight campaigns using available local MARPAC funds.

Greenville

In April, Greenville REALTORS® worked with Habitat for Humanity. In May, they participated in Greenville Cleanup Day. Lila McRight had a HUGE birthday bash at the country club. REALTORS® and family attended.

Greenwood

The Greenwood Board of REALTORS® has a goal for the year to help our local REALTORS® get their CE hours locally. So far we have 16 hours of CE scheduled. We are continuing to serve at the Community Kitchen monthly and have recently donated 100 dinner plates.

Grenada

Under the leadership of President Stephanie LeClair, we are enjoying another successful year. Our 2005 officers include President-Elect Steve Couch and Secretary/Treasurer Kay Staten. Serving on the MAR Professional Standards are Ray Branscome and Bonnie Hankins. Our Board has been actively supporting our troops overseas and at home. We are especially proud of two of our own stationed in Babil, Iraq, Specialist Tommy Kerr and Captain Danny Sivley.

Gulf Coast

The Gulf Coast Affiliate Committee recently hosted our first "REALTOR® Night Out" which was a huge success . . . fun, food, relaxation and networking. In addition, our Political Action Committee held an RPAC silent auction in conjunction. Awesome items were donated by many . . . a week at Myrtle Beach; two

gourmet dinners prepared by member and chef, Charlie Green; a Beau Rivage Weekend Getaway; and more. Our Community Development Committee is hard at work on our Third Annual Charity Golf Tournament to be held August 6. Come on down!

Hattiesburg

The Hattiesburg Area Association of REALTORS® and the Greater Hattiesburg Home Builders have been heavily involved in campaigning for support of the Lamar County Bond Issue by running television, radio and print advertising. The Community Service Committee is sponsoring a HUGE fundraiser called "For the Kids" to raise money to purchase classroom supplies for area public schools in our jurisdiction. The fundraiser will consist of a public auction to be held in July.

Jackson

The Jackson Association negotiated special rates for its members for both the desktop and wireless versions of Pocket Real Estate and began giving the first 500 copies away free the week of May 2. Weekly classes on installation and use of PRE have begun, taught by Dane Skirtech, at the Association Office. The MLS Book is now provided to members in PDF format on CD.

Laurel

The Laurel Board of REALTORS® would like to welcome new members Janet Sims of Sims Realty and Russ Griffin of Coffin and Love Properties. Our board also welcomes four new affiliates: Jonathan Shows, Mitch Bryant, Mike Astin and Loranne Paige. The Laurel Board would like to thank our affiliates for all that they do for us.

Meridian

The Grievance Committee completed annual training. Laura Miller and Cathy Feltenstein attended NAR's MidYear Meetings in Washington, D.C. Spokesperson training was held in May. Our Picnic & "Best Legs Contest" will be held on June 14th. And eight hours of Law CE is scheduled for June 23.

Natchez

The Natchez Board would like to welcome new member Nancy Durkin, with Prudential Stedman & Assoc. We are getting ready for MAR's Convention & EXPO. We are looking for large attendance.

North Central

During our April membership meeting, the North Central Board of REALTORS® raised funds to be donated to the Family Readiness Group comprised of spouses, families and friends of deployed soldiers. The money raised will help send care packages to the men of the Oxford National Guard Unit, Alpha Company, 2-198 Armor, who are currently serving in Iraq.

Northeast

Our Board is growing! In the late 90's we averaged about 185 members, and we now have 249. In the past our Board has had annual fundraisers from luncheons to auctions to raise money for charity. But, after raising our local dues only \$10.00 this year, we were able to give Habitat for Humanity a check for \$2,250 and didn't need volunteers!

Northwest

NWMAR hosted a Ride for the Troops in April that raised over \$9,000 for local troops and their families. The event drew approx 460 motorcycle riders and was a huge success! Thank you to all who volunteered their time and effort to work the event! To see event photos, visit: <http://nwmr.net>.

Pearl River

On February 21, Cynthia Nelson came on board as our new Association Executive replacing Trey Crawford. Cynthia was originally hired on a part-time basis but due to exceptional performance and board progression she has recently been moved up to full-time. The Board held its Annual Banquet honoring their "Million Dollar Producers" on March 19, 2005.

Southwest

No information provided.

Vicksburg/Warren County

The Vicksburg-Warren County Board of REALTORS® kicked off spring by sponsoring a booth at the River City Home & Garden Show. The booth volunteers distributed pamphlets on reasons to use a REALTOR® and the advantages of buying as opposed to renting a home. The Board of Directors has designated August as Education month and courses for real estate licensees and appraisers have been scheduled. For more information visit www.vicksburgrealtors.com or call 601-638-6667.

Commercial Association of REALTORS®

About seventy MCAR members and guests got together on May 6 and enjoyed the course "Negotiating for a Win," taught by nationally-recognized commercial educator Mike Lipsey. Lipsey's presentation was interactive and entertaining, and gave attendees practical tools that will help them better represent their clients through negotiated settlements.

Local boards and association executives can submit 50-word news briefs for publication in the next issue of *Real Estate LEADER* by Aug. 9, 2005. Send items for consideration to Angela Cain, Editor, at acain@msrealtors.org.

Successful REALTORS® who are extraordinary MARPAc contributors

**As of May 6, 2005*

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		Pam Beard Vicksburg	Marshall Holyfield Gautier		Jerry Brewer Senatobia
					
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Dottie Farris Hattiesburg	Cathy Feltenstein Meridian	Joan Ferguson Hernando	Sue Gardner Tupelo	Charles Green Pascagoula	
					
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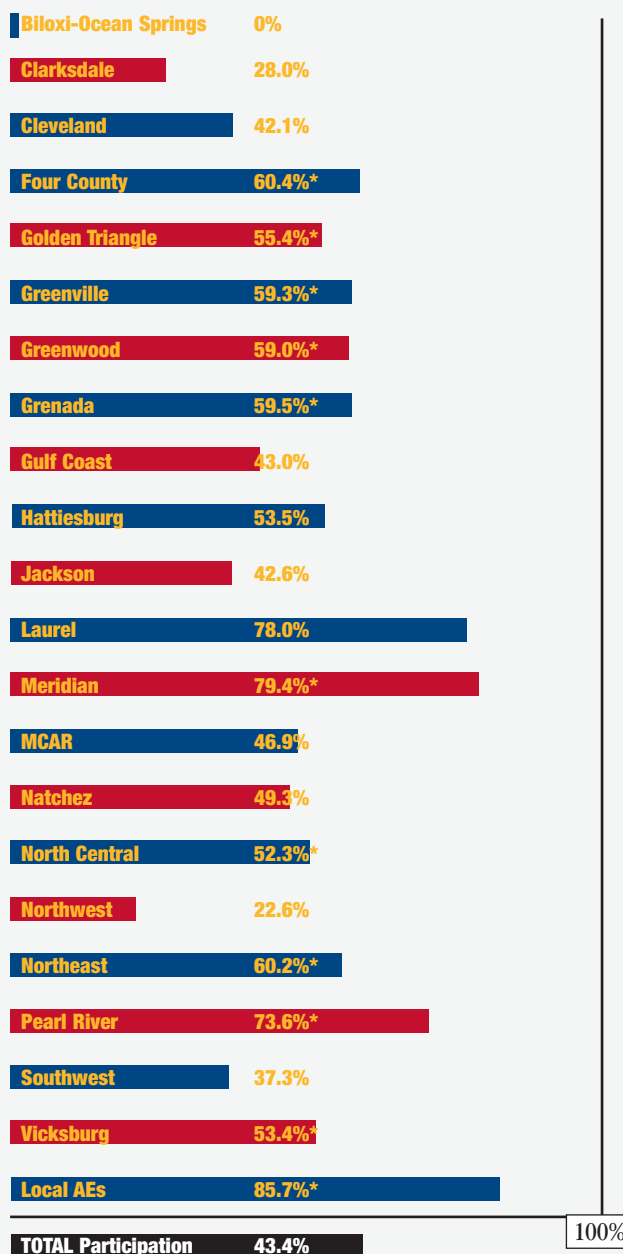


Local Board MARPAc participation levels

As of May 6, 2005

MARPAc has reached 76 percent of its fundraising goal with \$133,029. Have you invested your fair share?

Look for additional opportunities to help your political action committee at MAR's 2005 Convention & EXPO in Natchez Sept. 14-17. MARPAc will host a "Champagne & Diamonds" reception where the purchase of a \$25 glass of champagne gives you a chance to win a one carat diamond! Local boards will also send representatives to the "Beautiful Legs" contest where attendees can support their favorite candidate with a MARPAc donation.



100%

* denotes local boards that have exceeded 50% participation

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


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


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Upon leaving home...at the age of 41

In *North Toward Home*, Mississippian Willie Morris' magnificent memoir – and not coincidentally, the very first book I read after moving to Mississippi nearly eleven years ago – Morris writes of his realization, having left the warmth and security of Yazoo City for the University of Texas and, later, New York City, that life's experiences "could never be of a piece," but rather "were like scattered fragments of old glass."

I love that line, the image of one's life as an unfinished mosaic of glittering moments and memories.

Lately, I've been admiring the Mississippi pieces of my own life – taking them in hand, reassessing, remembering. And it's funny: In almost every piece, I'm finding some reflection of you, of the Mississippi REALTORS® who brought me – and kept me – here.

When I came to work as your executive vice president in 1994, I was thirty years old, cocksure and full of answers. Never mind that I didn't yet know the questions. (A former MAR officer insinuated once that I was actually your second or third choice for EVP; if that's true – and I don't doubt that it is – I'm delighted that the two folks ahead of me on that list apparently didn't have the stomach for the task at hand.)

Starting in an office on the third floor of the Jackson Association of REALTORS® building downtown before shortly relocating to our own facility on Lakeland Drive, you put me to work reinventing the association.

I suggested new strategies, new directions, new ways of doing things at MAR, and you gave me plenty of rope...er, resources.

I mouthed-off and you took it for what it was: a hyperactive, creative type talking his way toward a good idea.

I pushed and prodded and cajoled, and when it was right, you went along (although I still think the Board of Directors is too large!).

My children were born here, and you celebrated with me.

By some unimaginable good fortune, I managed to get two books of my essays published, and you were my biggest fans.

And even when I messed up (and I did mess up), you took it all in stride, understanding that clarity of purpose sometimes can be more important than getting it right every single time.

You adopted me, overlooked my foibles, made me feel at home. And my Alabama roots notwithstanding, it wasn't long before Mississippi became home (and in many ways, it always will be).

On August 1, Karen, the kids and I will start a new chapter in our lives. I have accepted an invitation to work with the 30,000-member Virginia Association of REALTORS® as their chief executive officer, and we'll be relocating to Richmond shortly.

I leave you well tempered by the fire of my experiences here – both the failures and successes – and having been mentored by some the finest leader-partners I've ever known – among them Ellen Short, Bruce Kammer, Charlotte Sadler, John Dinkins, Larry Edwards, Cynthia Joachim, John Phillips, Nancy Lane, Judy Glenn, John M. Dean, Jr., David Stevens, Bob Ridgway, Jerry

Brewer, Lynette Magee, Chris Wilson, Al Brock, Laura Miller, Pam Beard, Cathy Feltenstein, Gary Murphree, Carlene Alfonso, Brenda Berg, Gwen James, Phil Hardwick, Jo Usry, William Fulton, Angela Cain and Beth Hansen.

I've learned enough that I now head to Virginia with many more questions than pat answers; with a sense of enormous pride in what we've accomplished together; and certainly with a bittersweet sense of loss and opportunity.

These Mississippi pieces of my life – these shards, these friendships, these sparkling memories – will remain forever among the loveliest and dearest in my collection.

You have enriched my life, and I thank you. n

R. Scott Brunner, CAE has been MAR's chief executive officer since August 1994, during which time the association has seen extraordinary growth in resources, political influence and member services. He leaves MAR at the end of July.



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