

# HB397 INTRODUCED



1 HB397  
2 TZAE599-1  
3 By Representative Sellers  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 05-Mar-25



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SYNOPSIS:

Under existing law the Alabama Real Estate Commission may investigate formal complaints made against a licensee, revoke or suspend his or her license, impose a fine, or reprimand the licensee if he or she is found guilty of a disciplinary infraction.

This bill would authorize the commission to take disciplinary action against a licensee for selling, offering to sell, assigning, or offering to assign an equitable interest in a contract to purchase residential real estate and not disclosing to a potential buyer that the seller is not the deed holder.

This bill would further provide for disciplinary actions against a licensee for failure to disclose in writing to a seller, the buyer's intent to assign an equitable interest in the seller's property prior to the assignment, to provide prior notice of at least three business days of the effective date of the assignment, and to set a closing date with no automatic extension.

This bill would further provide for additional definitions.



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29 A BILL  
30 TO BE ENTITLED  
31 AN ACT

32  
33 Relating to the Real Estate Commission; to amend  
34 Sections 34-27-2 and 34-27-36, Code of Alabama 1975; to  
35 provide for definitions; and to provide for additional  
36 disciplinary causes of actions for the non disclosure of  
37 information regarding an equitable interest in a contract or  
38 agreement to purchase certain property.

39 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

40 Section 1. Section 34-27-2 and 34-27-36 Code of Alabama  
41 1975, are amended to read as follows:

42 "§34-27-2

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

46 (1) ASSOCIATE BROKER. Any broker other than a  
47 qualifying broker.

48 (2) BROKER. Any ~~person~~individual licensed as a real  
49 estate broker under Articles 1 and 2 of this chapter. The term  
50 also includes associate broker and qualifying broker.

51 (3) COMMISSION. The Alabama Real Estate Commission,  
52 except where the context requires that it means the fee paid  
53 to a broker or salesperson.

54 (4) COMMISSIONER. A member of the commission.

55 (5) COMPANY. Any sole proprietorship, corporation,  
56 partnership, branch office, or lawfully constituted business



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57 organization as the Legislature may provide for from time to  
58 time, which is licensed as a company under Articles 1 and 2 of  
59 this chapter.

60 (6) ENGAGE. Contractual relationships between a  
61 qualifying broker and an associate broker or salesperson  
62 licensed under him or her whether the relationship is  
63 employer-employee, independent contractor, or otherwise.

64 (7) EQUITABLE INTEREST. Any interest or right that a  
65 buyer acquires under a contract or agreement for the purchase  
66 of residential real estate, even though legal title has not  
67 been transferred.

68 ~~(7)~~ (8) INACTIVE LICENSE. A license which is being held  
69 by the commission office by law, order of the commission, at  
70 the request of the licensee, or which is renewable but is not  
71 currently valid because of failure to renew.

72 ~~(8)~~ (9) LICENSEE. Any broker, salesperson, or company.

73 ~~(9)~~ (10) LICENSE PERIOD. That period of time beginning  
74 on October 1 of a year designated by the commission to be the  
75 first year of a license period and ending on midnight  
76 September 30 of the year designated by the commission as the  
77 final year of that license period.

78 (11) LISTING AGREEMENT. An agreement between a company  
79 and an owner wherein the company agrees to assist the owner in  
80 the sale of the owner's real property in exchange for a fee.  
81 The definition includes agreements authorizing the company to  
82 list or market the owner's real property upon the owner's  
83 future decision to sell the property.

84 (12) OWNER. A person or entity to whom a grantor has



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85 conveyed real property through a valid deed.

86 ~~(10)~~ (13) PERSON. A natural person.

87 ~~(11)~~ (14) PLACE OF BUSINESS.

88 a. A licensed broker living in a rural area of this  
89 state who operates from his or her home, provided that he or  
90 she sets up and maintains an office for the conduct of the  
91 real estate business, which shall not be used for living  
92 purposes or occupancy other than the conduct of the real  
93 estate business. The office shall be used by the broker only  
94 and not as a place of business from which any additional  
95 licensee operates under his or her license. The office shall  
96 have a separate business telephone, separate entrance, and be  
97 properly identified as a real estate office.

98 b. All licensees located within the city limits or  
99 police jurisdiction of a municipality shall operate from a  
100 separate office located in the city limits or police  
101 jurisdiction. The office shall have a business telephone, meet  
102 all other regulations of the Real Estate Commission, and be  
103 properly identified as a real estate office. Hardship cases  
104 may be subject to waiver of this regulation upon application  
105 and approval by the commission.

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

109 ~~(12)~~ (15) QUALIFYING BROKER. A broker under whom a sole  
110 proprietorship, corporation, partnership, branch office, or  
111 lawfully constituted business organization as the Legislature  
112 may from time to time provide is licensed, or a broker



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113 licensed as a company to do business as a sole proprietorship  
114 who is responsible for supervising the acts of the company or  
115 proprietorship and all real estate licensees licensed  
116 therewith.

117 ~~(13)~~ (16) RECOVERY FUND. The Alabama Real Estate  
118 Recovery Fund.

119 (17) RESIDENTIAL REAL ESTATE. Real property located in  
120 the state used as a single-family residence.

121 ~~(14)~~ (18) SALESPERSON. Any person licensed as a real  
122 estate salesperson under Articles 1 and 2 of this chapter.

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

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

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

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

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

138 (5) Public officers performing their official duties.

139 (6) Persons performing general clerical or  
140 administrative duties for a broker so long as the person does



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141 not physically show listed property.

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

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

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

151 "§34-27-36

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



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169 a license and require completion of an approved education  
170 course and/or the making of restitution to accounts containing  
171 funds to be held for other parties.

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

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

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

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

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

193 (6) Publishing or causing to be published any  
194 advertisement which deceives or which is likely to deceive the  
195 public, or which in any manner tends to create a misleading  
196 impression or which fails to identify the person causing the





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197 advertisement to be placed as a licensed broker or  
198 salesperson.

199 (7) Acting for more than one party in a transaction  
200 without the knowledge and consent in writing of all parties  
201 for whom he or she acts.

202 (8)a. Failing, within a reasonable time, to properly  
203 account for or remit money coming into his or her possession  
204 which belongs to others, or commingling money belonging to  
205 others with his or her own funds.

206 b. Failing to deposit and account for at all times all  
207 funds belonging to, or being held for others, in a separate  
208 federally insured account or accounts in a financial  
209 institution located in Alabama.

210 c. Failing to keep for at least three years a complete  
211 record of funds belonging to others showing to whom the money  
212 belongs, date deposited, date of withdrawal, and other  
213 pertinent information.

214 (9) Placing a sign on any property offering it for  
215 sale, lease, or rent without the consent of the owner.

216 (10) Failing to voluntarily furnish a copy of each  
217 listing, contract, lease, and other document to each party  
218 executing the document with reasonable promptness.

219 (11) Paying any profit, compensation, commission, or  
220 fee to, or dividing any profit, compensation, commission, or  
221 fee with, anyone other than a licensee or multiple listing  
222 service. This subdivision shall not prevent an associate  
223 broker or salesperson from owning any lawfully constituted  
224 business organization, including, but not limited to, a



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225 corporation or limited liability company or limited liability  
226 corporation, for the purpose of receiving payments  
227 contemplated in this subsection. The business organization  
228 shall not be required to be licensed under this chapter, and  
229 shall not engage in any other activity requiring a real estate  
230 license.

231 (12) Paying or receiving any rebate from any person in  
232 a real estate transaction.

233 (13) Inducing any party to a contract to break the  
234 contract for the purpose of substituting a new contract, where  
235 the substitution is motivated by the personal gain of the  
236 licensee.

237 (14) If the licensee is a salesperson or associate  
238 broker, accepting a commission or other valuable consideration  
239 for performing any act for which a license is required from  
240 any person except his or her qualifying broker.

241 (15) If a qualifying broker or company, allowing a  
242 salesperson or associate broker licensed under him or her to  
243 advertise himself or herself as a real estate agent without  
244 the name or trade name of the qualifying broker or company  
245 appearing prominently on the advertising; or if the licensee  
246 is a salesperson or associate broker, advertising himself or  
247 herself as a real estate agent without the name or trade name  
248 of the qualifying broker or company under whom the salesperson  
249 or associate broker is licensed appearing prominently on the  
250 advertising.

251 (16) Presenting to the commission, as payment for a fee  
252 or fine, a check that is returned unpaid.



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253 (17) Establishing an association, by employment or  
254 otherwise, with an unlicensed person who is expected or  
255 required to act as a licensee, or aiding, abetting, or  
256 conspiring with a person to circumvent the requirements of  
257 this chapter.

258 (18) Failing to disclose to an owner the licensee's  
259 intention to acquire, directly or indirectly, an interest in  
260 property which he or she or his or her associates have been  
261 employed to sell.

262 (19) Violating or disregarding any provision of this  
263 chapter or any rule, regulation, or order of the commission.

264 (20) ~~If a broker, accepting~~Accepting a "net listing"  
265 agreement for sale of real property or any interest therein. A  
266 "net listing" is one that stipulates a net price to be  
267 received by the owner with the excess due to be received by  
268 the broker as his or her commission and the licensee is not a  
269 buyer, seller, or assigned buyer of the subject property.

270 (21) Misrepresenting or failing to disclose to any  
271 lender, guaranteeing agency, or any other interested party,  
272 the true terms of a sale of real estate.

273 (22) Failing to inform the buyer or seller at the time  
274 an offer is presented that he or she will be expected to pay  
275 certain closing costs and the approximate amount of those  
276 costs.

277 (23)a. Having entered a plea of guilty or nolo  
278 contendere to, or having been found guilty of or convicted of  
279 a felony or a crime involving moral turpitude.

280 b. Having a final money judgment rendered against him



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281 or her which results from an act or omission occurring in the  
282 pursuit of his or her real estate business or involves the  
283 goodwill of an existing real estate business.

284 (24) Offering free lots or conducting lotteries for the  
285 purpose of influencing a party to purchase or lease real  
286 estate.

287 (25) Failing to include a fixed date of expiration in a  
288 written listing agreement or failing to leave a copy of the  
289 agreement with the principal.

290 (26) Conduct which constitutes or demonstrates  
291 dishonest dealings, bad faith, or untrustworthiness.

292 (27) Acting negligently or incompetently in performing  
293 an act for which a person is required to hold a real estate  
294 license.

295 (28) Failing or refusing on demand to produce a  
296 document, book, or record in his or her possession concerning  
297 a real estate transaction conducted by him or her for  
298 inspection by the commission or its authorized personnel or  
299 representative.

300 (29) Failing within a reasonable time to provide  
301 information requested by the commission during an  
302 investigation or after a formal complaint has been filed.

303 (30) Failing without cause to surrender to the rightful  
304 owner, on demand, a document or instrument coming into his or  
305 her possession.

306 (31) If a qualifying broker or company, failing to keep  
307 in their files copies of all contracts, leases, listings, and  
308 other records pertinent to real estate transactions for a



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309 period of three years.

310 (32) When selling, offering to sell, assigning, or  
311 offering to assign an equitable interest in a contract to  
312 purchase residential real estate:

313 a. Failing to disclose in writing to a potential buyer  
314 that the holder of an equitable interest is not the deed  
315 holder of the property and is only offering to sell or assign  
316 his or her equitable interest; or

317 b. Failing to disclose in writing to a seller both of  
318 the following:

319 1. The intent to assign an equitable interest in the  
320 seller's real estate prior to offering to assign the interest.

321 2. The effective date of an assignment of the buyer's  
322 equitable interest to a subsequent purchaser of the property  
323 at least three business days prior to the effective date of  
324 the assignment.

325 c. Failing to include a fixed date of closing with no  
326 automatic extension in the contract that establishes the  
327 equitable interest.

328 (b) If it appears that a person, firm, corporation, or  
329 any business entity has engaged, or is about to engage, in an  
330 act or practice constituting a violation of Article 1 or 2 of  
331 this chapter or any rule or order of the commission, the  
332 commission, through the Attorney General, may institute legal  
333 actions to enjoin the act or practice and to enforce  
334 compliance with Articles 1 and 2 of this chapter or any rule  
335 or order of the commission. To prevail in an action, it shall  
336 not be necessary to allege or prove either that an adequate



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337 remedy at law does not exist or that substantial or  
338 irreparable damage would result from the continued violation.

339 (c) (1) Notwithstanding any other provisions of law, the  
340 commission may issue an order requiring any accused person,  
341 firm, corporation, or business entity to cease and desist from  
342 engaging in activities requiring a license under this chapter  
343 when the accused person, firm, corporation, or business entity  
344 is not licensed under this chapter. The order shall be entered  
345 by the executive director after a finding of probable cause by  
346 the commission staff. The order shall become final 15 days  
347 after its service upon the accused, unless the accused  
348 requests a hearing before the commission. Upon hearing the  
349 case and finding violations, the commission may make the cease  
350 and desist order final and the commission may impose a fine  
351 for each violation in an amount consistent with the range of  
352 fines applicable to licensees, and in addition, may impose a  
353 fine in the amount of any gain or economic benefit that was  
354 derived from the violation, and in addition, may impose a fine  
355 in the amount of the commission's costs incurred. Any fines  
356 not paid as ordered shall be enforceable in any court with  
357 competent jurisdiction and proper venue.

358 (2) Notwithstanding any other provisions of law, the  
359 commission may decline to issue an order requiring any accused  
360 person, firm, corporation, or business entity to cease and  
361 desist from engaging in activities requiring a license under  
362 this chapter when the accused person, firm, corporation, or  
363 business entity is not licensed under this chapter. In this  
364 instance, the commission shall proceed to give appropriate



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365 notice of the violations and hold a hearing thereon. Upon  
366 hearing the case and finding violations, the commission may  
367 impose a fine for each violation in an amount consistent with  
368 the range of fines applicable to licensees, and in addition,  
369 may impose a fine in the amount of any gain or economic  
370 benefit that was derived from the violation, and in addition,  
371 may impose a fine in the amount of the commission's costs  
372 incurred. Any fine or fines not paid as ordered shall be  
373 enforceable in any court with competent jurisdiction and  
374 proper venue.

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

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

380 Section 2. This act shall become effective on October  
381 1, 2025.