

BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION

IN RE: THE MATTER OF KENNETH AUSTIN, BROKER CASE NO. 102-2106

**NOTICE OF ALLEGED VIOLATIONS AND OPPORTUNITY FOR
INFORMAL RESOLUTION; WAIVER OF FORMAL COMPLAINT**

June 8, 2021

Ken Austin, Broker
130 Davis Avenue
Pass Christian, MS 39571

Dear Mr. Austin:

PLEASE TAKE NOTICE that the Investigative Staff of the Mississippi Real Estate Commission (“Commission”) identified alleged violations of the Real Estate Brokers License Law of 1954 (Miss. Code Ann. §§73-35-1, *et seq.*) and/or the Administrative Rules and Regulations of the Commission regarding certain licensable real estate activity/activities, all as set forth below.

Informal Resolution:

The Investigative Staff and legal counsel have recommended that this matter be resolved informally, in lieu of proceeding to the issuance of a formal Commission Complaint and subsequent administrative hearing before the Commission.

Upon your express agreement with the recommended terms for resolution of this matter and waiver of your right to the issuance of a formal Complaint and administrative hearing, the Commission Administrator will recommend a resolution and disposition of this matter, pending final approval by the Commission. **NOTE: If you agree to the informal resolution of this matter as recommended below, please sign/date where indicated and return this document to the Commission within ten (10) days.**

Right to Proceed to Formal Complaint/Administrative Hearing:

You are not required to agree to an informal resolution of this matter as recommended. You have the right to have the Commission prepare a formal Complaint with notice of the allegations against you, as well as the opportunity to respond to the specific allegations at a formal disciplinary hearing before the Commission. At a hearing, you may be represented by counsel and may present witnesses and other evidence on your behalf.

I.

ALLEGED VIOLATION(S):

The above and foregoing described acts and omissions constitute violations of the Mississippi Real Estate Brokers License Act of 1954, as amended, Miss. Code Ann. §§73-35-1, *et seq.*, and the Rules and Regulations of the Commission, and, more specifically, Miss. Code Ann. §73-35-21(1) and Rules 3.1 F, and 3.3 which provide, in relevant parts, duties of a real estate licensee, and proscribed actions and omissions in the conduct of real estate activities for which the Commission has the power to sanction a licensee as the Commission deems appropriate:

RULE 3.1: General Duties

F. Any licensee ...who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, *prima facie*, to be guilty of improper dealing.

Rule 3.3 Advertising

A. "Advertising" means the use of any oral, written, visual, printed or electronically generated advertisement by a real estate licensee or other person on behalf of a real estate licensee.

"Advertisement" means any oral, written, visual, printed or electronic media advertisement and encompasses any correspondence, mailing, newsletter, brochure, business card, for sale or for lease signage or sign rider, promotional items, automobile signage, telephone directory listing, radio and television broadcasts, telephone solicitation and electronic media to include e-mails, text messaging, public blogs, social media networking websites, and/or internet displays.

B. A broker shall advertise in the name in which the license is issued. A broker may use a descriptive term after the broker's name to indicate the occupation in which engaged, for example, "realty", "real estate" or "property management". If advertising in any other form, a partnership, trade name, association, company or corporation license must be obtained prior to advertising in that manner.

All advertising must be under the direct supervision and in the name of the Principal Broker or in the name of the real estate Brokerage Firm and must prominently display the name of the Principal Broker or the name of the Brokerage Firm in such a manner that it is conspicuous, discernible and easily identifiable by a member of the public.

Principal Brokers are required to verify and determine that their name or the name of the Brokerage Firm is prominently displayed on all advertising and that the name of any real estate licensee or any approved real estate Team or Group is situated near the name of the Brokerage Firm. The Broker or the Brokerage Firm must be identified by using the same size or larger print as that of a Licensee or a Team in all advertising. All advertising must include the telephone number of the Principal Broker or the Brokerage Firm.

The attached pictures of newspaper ads are not compliant as there is no office number included.

II.

RECOMMENDATION AND OFFER FOR INFORMAL RESOLUTION

Upon review and consideration of the Commission Investigative Staff and legal counsel, it is recommended and offered by the Commission that this matter be resolved as follows:

- 1) **FORMAL LETTER OF REPRIMAND**

III.

ACKNOWLEDGEMENT AND WAIVER

As evidenced by my signature below, and expressed acceptance of the recommendation for resolution of this disciplinary matter as proposed, I, Kenneth Austin, acknowledge and agree as follows:

1. I understand and acknowledge that my real estate license is subject to sanction by the Mississippi Real Estate Commission for any alleged violations of the Mississippi Real Estate Brokers License Act of 1954 (Miss. Code Ann. §§73-35-1, *et seq.*) and/or of the Rules and Regulations of the Commission, as set forth herein.

2. I am aware of my rights, both substantive and procedural, regarding the nature of the allegations brought against me.
3. I acknowledge that I have the right to refuse to accept the proposed informal resolution of this matter as presented and that I may elect to have a formal Complaint issued by the Commission regarding the allegations brought against me and the choice to proceed to an administrative hearing with full due process.
4. After due consideration of my procedural and substantive rights, the possible adverse effect on my license that could result after an administrative hearing, and the likelihood of the Commission prevailing in the presentation of proof of the violations as alleged, I hereby expressly WAIVE my right to have a formal Complaint issued by the Commission in this matter and for an administrative hearing, and consent to proceed in this matter by informal adjudication and resolution as offered and recommended herein.
5. I acknowledge that the resolution of this disciplinary matter shall be public record and spread upon the Minutes of the Commission as its official act and deed.
6. I expressly WAIVE any and all objections or legal challenges I may have regarding or arising out of this matter, the entry of the final record of disposition as set forth herein, or any of its terms. Further, I WAIVE any objections or legal challenges to the Commission in taking this matter up preliminarily for the purpose of considering and voting on whether to approve the informal disposition of this matter as recommended.
7. I acknowledge and agree that should the Commission deny approval of the informal resolution of this matter, I remain entitled to a fair and impartial administrative hearing, with full due process, regarding the allegations set forth herein.

I, KENNETH AUSTIN, acknowledge and agree to the informal disposition of this matter as set forth herein.

KENNETH AUSTIN, Broker

Date:_____

APPROVED:

MISSISSIPPI REAL ESTATE COMMISSION

BY:_____
ROBERT E. PRAYTOR, Administrator

Date:_____