

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

VICKI V. BUSBY,)
individually and on behalf of all others)
similarly situated,)
)
)
Plaintiffs,)
)
)
)
vs.)
)
)
)
JRHBW REALTY, INC. d/b/a REALTY)
SOUTH, et al.)
)
Defendants.)
)
)
)

Civil Action No.

CLASS ACTION

CLASS ACTION COMPLAINT AND JURY DEMAND

Comes now, the above named Class Representative, Vicki V. Busby, both on her own and on behalf of all others similarly situated, by and through her attorneys of record, and for her complaint, alleges as follows:

NATURE OF THE CASE

1. This is a federal class action on behalf of a class consisting of all persons whom qualify under applicable Real Estate Settlement Procedures Act (“RESPA”) regulations and who have paid an “ABC Fee” to JRHBW Realty, Inc. (hereinafter, “RealtySouth”) during the period when RealtySouth has collected and/or accepted such fee in connection with a real estate settlement involving a federally related mortgage loan within the applicable limitations period.
2. Defendant, RealtySouth has unlawfully collected and accepted an ABC Fee from the Class Members.
3. Defendant’s collection of the aforementioned ABC Fee is in violation of 12 U.S.C. § 2607, titled, “Prohibition against Kickbacks and Unearned Fees.”
4. The Class Plaintiff hereby seeks money damages, injunctive relief, and all other relief as may be awarded under the law.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as the conduct complained of herein is violative of the law of the United States of America, 12 U.S.C. § 2607.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) as: (1) the corporate Defendant is a legal resident of this Judicial District; (2) many of the acts, events, or omissions giving rise to the claim presented herein arose in this Judicial District; and (3) the Defendant can be found in this Judicial District.

THE PARTIES

Plaintiff

7. Named Plaintiff, Vicki V. Busby, a widow, is more than 19 years of age and is an adult resident of Jefferson County, Alabama. Plaintiff Busby was required to pay RealtySouth an Administrative Brokerage Commission (“ABC Fee”) at the closing and settlement where she purchased certain real estate in connection with a federally related loan for which she was a borrower.

Defendant

8. Defendant, JRHBW Realty, Inc., d/b/a RealtySouth, an Alabama corporation, provides real estate related services to consumers in the Birmingham area and other parts of Alabama.

CLASS ALLEGATIONS

9. This class action is brought by the named representative plaintiff pursuant to 12 U.S.C. § 2607 (d)(5). A class action is appropriate and necessary in this instance because RealtySouth has engaged in conduct violative of the Federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2607 on a widespread and systematic basis.
10. Pursuant to the United States Code Title 12 sections 2607(d)(5), 2614 and Federal Rule of Civil Procedure 23(b)(2) and (b)(3), plaintiff, Vicki V. Busby, brings this action on behalf of herself and all others similarly situated.
11. The class that plaintiff represents (the “Plaintiff Class”) is composed of all persons who have paid an ABC Fee to RealtySouth during the applicable limitations period and whose transactions qualify under applicable RESPA

regulations. The class expressly excludes any federal judge for the Northern District of Alabama, as well as the judges' immediate family members.

12. The Class Definition is as follows:

All individuals (expressly excluding the federal judiciary and the judiciary's immediate family members for the Northern District of Alabama), whether or not having any relationship with Defendant, who have paid an "ABC Fee" to Defendant pursuant to real estate closing and/or settlement in connection with a federally related mortgage loan during the applicable limitations period whose transactions are covered and protected by RESPA regulations.

13. Plaintiff Busby is informed and on that basis alleges that the Plaintiff Class numbers in excess of thousands of persons and is so numerous that joinder of all members would be impracticable.

14. The exact size of the Plaintiff Class and the identity of all its members are ascertainable from the business records of Defendant.

15. Questions of law and fact common to the Plaintiff Class exist and predominate over questions affecting only individual members, including, *inter alia*, the following:

- a. Whether Defendant's practice of collecting and accepting an ABC Fee is violative of the Federal Real Estate Settlement Procedures Act, codified at 12 U.S.C. § 2607.
- b. Whether Defendant provided any new or additional service to class members in exchange for the \$149 ABC fee it has collected from each class member.
- c. Whether Defendant's charge of \$149 for an ABC Fee is an unearned fee under RESPA?

- d. Whether Defendant's charge of \$149 for an ABC fee is a duplicative fee under RESPA?
16. The claim asserted by Plaintiff Busby in this action is typical of the claims of the members of the Plaintiff Class.
17. Plaintiff Busby has obtained competent and experienced class counsel and will fairly and adequately represent and protect the interests of the members of the Plaintiff Class.
18. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. In addition, because the economic damages suffered by the individual class members may be relatively modest compared to the expense and burden of individual litigation, it would be impracticable for members of the Plaintiff Class to seek individual redress for the wrongful conduct alleged herein.
19. There will be no undue difficulty in the management of this litigation as a class action.

GENERAL ALLEGATIONS

20. Plaintiff, Vicki V. Busby, purchased certain real estate in Jefferson County, Alabama on May 26, 2004. That real estate is described as 6617 Amy Lane, Trussville, Jefferson County, Alabama; Lot 9, Rosewood Sector three, Book 175, Page 41 Jefferson County Alabama.
21. In connection with the purchase and settlement, Plaintiff Busby entered into a federally related loan as that term is defined in the Act.

22. Plaintiff Busby employed an agent of RealtySouth in connection with said purchase.
23. Deed and title were formally transferred to Plaintiff Busby on May 26, 2004.
24. At closing, RealtySouth added a settlement charge, called an "ABC FEE," to Plaintiff Busby's settlement statement (i.e., "HUD-1 Settlement Statement") in the amount of \$149.00.
25. This \$149 ABC Fee was a separate and distinct charge and a separate and distinct line item on the HUD 1 Settlement Statement. The ABC Fee was charged in addition to the "Total Sales/Brokers Commission" of \$9350 represented on Plaintiff's HUD 1 Settlement Statement attached as Exhibit 1.
26. The Real Estate Settlement Procedures Act, 12 U.S.C. § 2607 and the implementing regulation, 24 CFR § 3500.14(c): prohibits certain conduct in connection with federally related mortgage settlement services.
27. Said Act was enacted by the Congress in order that consumers be protected from unnecessarily high settlement costs and for the express purpose of reducing settlement fees for real estate transactions.
28. Said Act provides at 12 U.S.C. § 2607, in pertinent part, that: "No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." The regulation adds the following language at 24 C.F.R. § 3500.14 (c) "A charge by a person for which no or

nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section.”

29. At all times relevant to this Complaint, Defendant has unlawfully and on a systematic basis charged and accepted purported settlement related charges, in the form of “ABC FEE[S],” from consumers (the class plaintiffs) without rendering any service in exchange for said fee.
30. In fact, in prior litigation Defendant’s Senior Vice President and Chief Operating Officer submitted a sworn affidavit stating that the ABC Fee does not cover any specific service and that the ABC Fee was simply an increase in the price of RealtySouth’s commission. *See Exhibit 2 attached hereto.*
31. Thus, no new or additional service is provided for this additional settlement fee with its own separate and distinct line item and charge on the settlement statement. Therefore, RealtySouth’s charging and acceptance of the ABC Fee violates RESPA because (1) it is a fee for which no service is rendered and/or (2) it is a duplicate fee for services already rendered as part of the “total sales/broker’s commission.”
32. Upon information and belief, for at least the past three years, RealtySouth has been charging and accepting settlement charges in the form of ABC fees from thousands of class members.
33. The total time period during which Defendant has collected such fee is unknown but is determinable from the business records of the Defendant and is believed to be ongoing to this date.

34. The charges for unlawful ABC Fees are reflected on the settlement statements of RealtySouth customers. The documents reflecting the identity of the individuals to whom RealtySouth has charged and accepted this illegal fee are contained within the settlement statements in the possession, custody and control of RealtySouth or its agents.

FIRST CAUSE OF ACTION
Violation of the Real Estate Settlement Procedures Act
12 U.S.C. § 2607; 24 C.F.R. § 3500.14

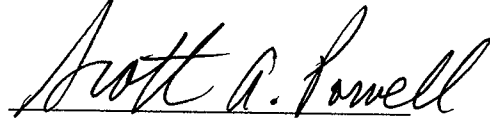
35. Plaintiff Busby, on behalf of herself and all others similarly situated realleges and incorporates herein, as though set forth in full, the allegations of paragraphs 1 through 34 above.
36. Defendant has unlawfully accepted settlement charges from consumers (reflected on HUD-1 Settlement Statements) in the form of ABC Fees, in connection with federally related mortgage loans, without rendering any service in connection with said charge and/or Defendant has unlawfully charged and accepted ABC Fees as a duplicative fees for services already rendered as part of the total sales / broker's commission.
37. Defendant's aforementioned conduct is violative of 12 U.S.C. § 2607 and 24 C.F.R. § 3500.14.

REMEDIES SOUGHT

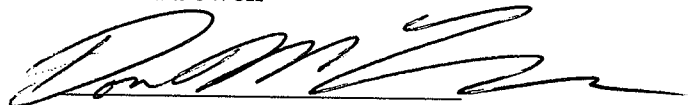
38. WHEREFORE, the Named Class Plaintiff, on behalf of herself and all others similarly situated, prays for judgment against the Defendant as follows:

- a. That this Court declare Defendant's practice of collecting an ABC Fee at closing as part of the settlement process violative of the Real Estate Settlement Procedures Act;
- b. That this Court permanently enjoin Defendant from further collecting ABC Fees in connection with federally related real estate settlement services;
- c. That Plaintiff Class be awarded treble the amount of damages sustained;
- d. That the Plaintiff Class be awarded costs and attorney's fees as provided for by the Act and Federal Rule of Civil Procedure 23(h).
- e. That Plaintiffs be awarded such other and further relief as the Court may deem appropriate, just and proper.

Respectfully submitted,



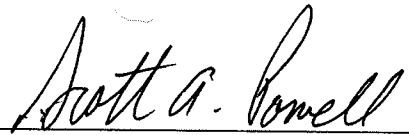
Scott A. Powell



Don McKenna

Of Counsel:
HARE, WYNN, NEWELL & NEWTON
2025 Third Avenue North; Suite 800
Birmingham, Alabama 35203
(205) 328-5330

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY



Scott Powell

Defendant's Address
JRHBW Realty, Inc.
c/o Registered Agent: Thomas H. Brigham, Jr.
2510 20th Place S.
Suite 400
Birmingham, Alabama 35223

**A. U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT**

Preferred Title Agency, Inc.
300 Office Park Drive, Suite 230
Birmingham, Alabama 35223
(205) 421-1010 fax: (205) 421-1050

B. TYPE OF LOAN

1. FHA 2. FMHA 3. CONV. UNINS.
4. VA 5. CONV. INS.
6. File Number: 1902 7. Loan Number: 1190263
8. Mortgage Ins. Case No.:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked (p.o.c.) were paid outside the closing. They are shown here for informational purposes and are not included in the totals.

D. Borrower: Vicki V. Busby an unmarried woman
237 Six Food Road
Ohatchee, Alabama 36271
E. Seller: Joe D. West and Carol S. West husband and wife
F. Lender: First Lenders Mortgage Corporation
909 Highland Avenue
Albertville, Alabama 35951
G. Property: 6117 Amy Lane
Trussville, Jefferson County, Alabama 35173-3752
Lot 9, Rosewood Sector Three, Book 175, Page 41 Jefferson County, Alabama
H. Settlement Agent: Preferred Title Agency, Inc.
Place of Settlement: 300 Office Park Drive, Suite 230, Birmingham, Alabama 35223 Jefferson County
I. Settlement Date: May 26, 2004

Handwritten notes: 756-897-0700, 975-3066, P Home Co. 661-1905, 205, CHURS

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower:		400. Gross Amount Due To Seller:	
101. Contract Sales Price	187,000.00	401. Contract Sales Price	187,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (line 1400)	1,716.58	403.	
104. Payoff - 1st Mtg. -		404.	
105. Payoff - 2nd Mtg. -		405.	
Adjustments for Items Paid by Seller in Advance:		Adjustments for Items Paid by Seller in Advance:	
106. City / Town Taxes		406. City / Town Taxes	
107. County / Parish Taxes		407. County / Parish Taxes	
108. Assessments		408. Assessments	
109. Proration of Fire Dues May 26, 2004 thru Dec 31, 2004	111.80	409. Proration of Fire Dues May 26, 2004 thru Dec 31, 2004	111.80
120. Gross Amount Due from Borrower:	188,828.38	420. Gross Amount Due to Seller:	187,111.80
200. Amounts Paid by or in Behalf of Borrower:		500. Reductions in Amount Due to Seller:	
201. Deposit / Earnest Money	1,000.00	501. Excess Deposit (see instructions)	
202. Principal Amount of New Loan	117,000.00	502. Settlement Charges to Seller (Line 1400)	11,965.50
203. Existing Loan(s)		503. Existing Loan(s)	
204.		504. Payoff of First Mortgage acct# 0621039182 to ABN AMRO Mortgage Group, Inc. for Joe D. West Carol S. West	106,655.79
205.		505. Payoff of Second Mortgage to	
206.		506. Purchase Money Mortgage to	
Adjustments for Items Unpaid by Seller:		Adjustments for Items Unpaid by Seller:	
210. City / Town Taxes		510. City / Town Taxes	
211. County / Parish Taxes Oct 1, 2003 thru May 26, 2004	536.10	511. County / Parish Taxes Oct 1, 2003 thru May 26, 2004	536.10
212. Assessments		512. Assessments	
220. Total Paid by / for Borrower:	118,536.10	520. Total Reductions in Amount Due Seller:	119,157.39
300. Cash at Settlement from / to Borrower:		600. Cash at Settlement to / from Seller:	
301. Gross Amount due from Borrower (line 120)	188,828.38	601. Gross Amount due to Seller (line 420)	187,111.80
302. Less Amount Paid by/for Borrower (line 220)	118,536.10	602. Less Reductions Amount due Seller (line 520)	119,157.39
303. Cash From Borrower:	\$70,292.28	603. Cash To Seller:	\$67,954.41

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.

Borrower: Vicki V. Busby

Seller: Joe D. West

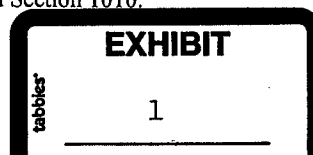
Seller: Carol S. West

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: Joseph Somma

Date: May 26, 2004
File No.: 1902

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.



L. Settlement Charges	Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Sales / Broker's Commission: Based on Price \$187,000.00 @ 5.00% = \$9,350.00 Division of Commission as follows		
701. 4,675.00 to Remax Realty Brokers		
702. 4,675.00 to Realty South		
703. Commission Paid at Settlement		9,350.00
704. ABC Fee to Realty South	149.00	
800. Items Payable in Connection with Loan:		
801. Loan Origination Fee 1.000 % to First Lenders Mortgage Corporation	1,170.00	
802. Loan Discount 0.250 % to First Lenders Mortgage Corporation	242.00	50.50
803. Appraisal Fee to First Lenders Mortgage Corporation		350.00
804. Credit Report to First Lenders Mortgage Corporation		36.00
805. Tax Service Fee to First Lenders Mortgage Corporation		69.00
806. Underwriting Fee to First Lenders Mortgage Corporation		375.00
807. Document Preparation to First Lenders Mortgage Corporation		250.00
808. Flood Hazard Determination Fee to First Lenders Mortgage Corporation		20.00
809. Express Mail to First Lenders Mortgage Corporation		15.00
900. Items Required by Lender to be Paid in Advance:		
901. Interest from May 26, 2004 to Jun 1, 2004 @ 18.4300 / day	110.58	
902. Mortgage Insurance Premium		
903. Hazard Insurance Premium		
904. Flood Insurance Premium		
1000. Reserves Deposited with Lender:		
1001. Hazard Insurance		
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes		
1005. Annual Assessments		
1100. Title Charges:		
1101. Settlement or Closing Fee to Preferred Title Agency, Inc.		500.00
1102. Abstract or Title Search to Preferred Title Agency, Inc.		125.00
1103. Title Examination		
1104. Title Insurance Binder		
1105. Document Preparation		
1106. Notary Fees		
1107. Attorney Fees (includes above item numbers:		
1108. Title Insurance to Preferred Title Agency, Inc. (includes above item numbers:		381.00
1109. Lender's Coverage 117,000.00 Risk Premium 0.00		
1110. Owner's Coverage 187,000.00 Risk Premium 0.00		
1111. Mortgagee's Policy to Preferred Title Agency, Inc.		75.00
1112. Courier Fee to Preferred Title Agency, Inc.	35.00	
1113. Fire Dues Letter to Center Point Fire District	10.00	
1200. Government Recording and Transfer Charges:		
1201. Recording Fees: Deed 4.50 Mortgage 39.50 Releases 0.00		44.00
1202. City/County tax/stamps: Deed 70.00 Mortgage 175.50		245.50
1203. State tax/stamps: Deed 0.00 Mortgage 0.00		
1204. Record Assignment to Jefferson County Probate Judge		4.50
1205.		
1300. Additional Settlement Charges:		
1301. Survey		
1302. Pest Inspection to Bobo Pest Control, Inc. by Seller (poc 150.00)		
1303. HVAC Inspection to Kent Jones		75.00
1400. Total Settlement Charges (Enter on line 103, Section J and line 502, Section K)	\$1,716.58	\$11,965.50

Borrower Initials: _____ Vicki V. Busby

Seller Initials: _____ Joe D. West _____ Carol S. West

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EARL J. STANDIFER, II,

Plaintiff,

v.

JRHBW REALTY, INC. d/b/a
REALTYSOUTH, et al.

Defendants.

Civil Action No.: 04-HS-1130-S

AFFIDAVIT OF C. TYLER DODGE

STATE OF ALABAMA)
COUNTY OF Jefferson)

Before me the undersigned Notary Public, in and for said State and in said County, personally appeared C. Tyler Dodge, who after being duly sworn deposes and says under oath as follows:

1. I am C. Tyler Dodge, and I am employed as Senior Vice President and Chief Operating Officer at JRHBW Realty, Inc. d/b/a RealtySouth.
2. I make this Affidavit based on personal knowledge.
3. RealtySouth's commission structure, until about March, 2003, had been essentially the same for many years. However, while its commission structure may have been static, its costs and level of service was changing. Consumers are and had been demanding a higher level of service and new services. And, while the cost of providing such services was steadily increasing, RealtySouth was paying out an ever increasing percentage of its revenues to

its sales agents in the form of higher commission splits such that the sales agents were receiving a higher percentage of the commission dollars generated.

4. In order to continue to be able to provide consumers with the services they were demanding and to remain the superior provider of real estate brokerage services in the market, RealtySouth needed to ensure that its income was sufficient to meet its needs.

5. Accordingly, in or around the beginning of 2003, RealtySouth determined to increase its commission by a flat fee of \$149.00. This charge was to go entirely to RealtySouth and not be split with the sales agents. The charge was called an "administrative brokerage commission" ("A B Commission"), to contrast it with the normal percentage commission charged and split with sales agents. Accordingly since its introduction, the A B Commission generally is charged to both buyers and sellers along with a percentage commission based on the purchase price of the home. This is generally the case even when a buyer who uses a RealtySouth agent purchases a home that the seller had listed through RealtySouth and for which a percentage commission is charged.

6. The administrative brokerage commission was not intended to cover any specific service. On the contrary, it simply was an increase in the price or fee that RealtySouth charged for all its brokerage services rendered to both buyers and sellers.

7. Attached hereto as Exhibit A is:

A. A series of questions and answers on the administrative brokerage commission that was prepared and distributed in connection with the charge of the administrative brokerage commission.

C. Tyler Dodge
C. Tyler Dodge

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that C. Tyler Dodge, whose name is signed to the foregoing document and who is known to me, comes before me on this day and, being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

Under my hand and seal this 18th day of August, 2004.

Rebecca Jane Bellamy
NOTARY PUBLIC

NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Feb 27, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

My Commission Expires: _____

RealtySouth™
ADMINISTRATIVE BROKERAGE COMMISSION (ABC)
QUESTIONS & ANSWERS

Q1 What is an Administrative Brokerage Commission (ABC), and why are we implementing it?

A1 The ABC is a per-transaction commission the company collects from the consumer on each transaction side in which RealtySouth participates. This commission is necessary to help defray the growing cost of meeting regulatory requirements and providing consumers with ever-increasing services, paperwork, and disclosures, among other things.

Q2 Is the ABC associated with a specific list of expenses borne by the company?

A2 No. The ABC is a fee that covers not only the many *new* expenses incurred during the past few years, but also helps to bridge the gap between increasing levels of expense and decreasing revenues. The ABC will allow us to remain competitive and continue provide consumers with the superior marketing and services they have come to expect of RealtySouth. The RealtySouth Play Book will give you an idea of what some of these consumer benefits are.

Q3 Who pays the ABC, and what is the amount? Will it be charged to the agent?

A3 An ABC of \$149.00 will be paid by the consumer on each transaction side in which RealtySouth participates. This amount represents a portion of the additional cost of doing business. The commission is paid at closing to RealtySouth and will be reflected on the HUD-1 settlement statement.

Q4 Isn't \$149 per transaction side an awful lot to charge?

A4 When you consider the increases in our cost of doing business and the ever-increasing consumer benefits that are covered, it is really a fair and nominal fee. In fact, if you thought of it as a percentage of the sale price, on a \$175,000 sale it would be only .17% (that is, 17 one-hundredths of one percent!) of the price. Other companies charge as much as \$499—and some impose a non-refundable, up-front, listing fee.

Q5 Does the ABC apply to all property transactions?

A5 Yes, with certain exceptions.
The exceptions are:

- On VA sales, the buyer may not pay the ABC.
- On FHA sales where MortgageSouth is the lender, the buyer may not pay the ABC.
- Qualified employee/associate-transactions when the employee/associate is a principal to the transaction.
- No consumer will pay more than 5 ABCs per year.

Q6 Can the associate pay the ABC?

A6 While it is permissible for the associate to pay the ABC, we strongly discourage it because the ABC is a consumer-related charge. Such payment might, however, be considered by an associate in the same light as paying for home repairs or other items on behalf of a buyer or seller.

Q7 Do I have to disclose the ABC?

A7 Yes. Disclosure is always the legal and proper thing to do. Just like any other fee or commission, advance written permission is required. Our forms have been modified to provide such disclosures to the consumer.

Q8 Does the ABC apply to current listings and pending sales?

A8 No. The ABC applies to all transactions signed on or after the ABC is put in place (most likely March 3, 2003).

Q9 If I re-list or extend the listing agreement of a property listed *before* the ABC is put in place, will the ABC apply?

A9 The ABC will not apply if the property is re-listed within 30 days of the expiration date. After 30 days we will consider it to be a new listing and the ABC will apply.

Q10 What is the benefit to our associates?

A10 By passing this nominal but necessary charge on to the consumer, the ABC helps defray the company's increased operating costs without impacting our associates' commissions (as, for example, many franchises do).

Q11 Will the associate receive a portion of the ABC?

A11 No. The ABC is not part of the sales commission income which is split between the associate and the company.

Q12 What has been the consumers' reaction to administrative brokerage commissions in other markets?

A12 Consumers elsewhere have accepted such commissions when explained in a straightforward manner. In fact, other companies have told us that, while there was some initial resistance to the commission on the part of their agents, consumers accepted it as a normal cost of doing business.

Q13 What if someone says they'll find a company that doesn't charge an administrative brokerage commission?

A13 The question is really, "What are they leaving out, and which services will not be offered?" There will always be companies willing to discount their commissions, services, and level of client care. The RealtySouth Play Book covers many items that benefit the consumer and which, among other costs, are generally covered by the ABC. And remember, on an average RealtySouth sale, the commission adjustment is only 17 one-hundredths of one percent.

Q14 Will competitors use the ABC against us?

A14 Possibly. However, other real estate companies across the nation have been charging an administrative brokerage commission since the mid-1990s, with many of those commissions ranging as high as \$499 per transaction side. We believe that most companies, if not charging such a commission now, will charge one in the future in order to survive and to continue to provide to consumers the services they expect.

Such charges are not new, and they are not unique to real estate. Consumers have encountered them in many other industries for quite some time. Banks charge ATM fees, mortgage lenders charge a variety of processing fees, travel agencies pass on various surcharges, retailers charge restocking fees, dry cleaners convey environmental impact fees, and service stations charge an oil disposal fee when your car is serviced. The list goes on and on. Each of us pays similar fees every day.

Q15 Does RealtySouth's ABC relate to similar fees currently charged by other local companies?

A15 Yes, in fact, it does. Many franchises (e.g. C-21, Re/Max, etc.) charge fees as high as 6% off the top of the commission to cover similar administrative costs. The only differences between their fees and RealtySouth's ABC are: 1) theirs may be significantly higher

[e.g. 6% off the top of the commission on a \$175,000 sale is \$735], and 2) because their fee comes off the top of the commission, the agent pays a significant portion of the fee while the consumer pays none of it.

Q16 How will the closing attorney know to collect the ABC?

A16 We will give our closing attorneys advance notice of the ABC so they will know how it is to be handled. It will also be the RealtySouth associate's responsibility to be sure the closing attorney is aware of the charge. In addition, a "closing checklist" form will be provided.

Q17 How much profit does the company need to make? Aren't we being greedy by imposing such a fee?

A17 Over the years commission rates have gone down while commission splits and other operating costs have increased. The ABC is a way to recoup some of the profit that has evaporated over time. Profit is what drives our ability to create new programs and provide more services to the consumer and to our associates. Wouldn't you agree that providing superior real estate service is in the best interest of our associates, our company, and the consumers we serve? Recovering a portion of our lost profits helps us insure a solid future for all involved, including the consumer. For the consumer's sake and for ours, it is not enough to be a survivor, our company must remain strong.

Q18 When will the ABC be increased?

A18 There are no plans to increase the ABC at this time, but none of us can predict the future. It can be said that RealtySouth will always be proactive in protecting our mutual interests as well as those of the consumer.

Q19 Why do you keep putting these roadblocks in the way of my doing business?

A19 First, we will never do anything we do not believe to be in your best interest and in the best interest of the consumer. Second, experience in other markets has shown that such a fee doesn't impede an associate's ability to be successful. Agents have been more concerned than the consumer, who has taken it in stride.

Q20 Why don't you charge our Family of Services partners more instead of charging our consumers?

A20 Our Family of Services partners support all of us in so many ways, and this commission is a consumer-related expense that should be paid by the consumer, not by our Family of Services or by you.

Q21 Why not add more Family of Services partners so we won't have to charge our clients?

A21 We will always be searching for quality affiliated partners that can bring added value to your transactions. But we do not believe that either you or our Family of Services partners should pay for client-related expenses.

Q22 When this gets out, I'm going to lose business!

A22 In other markets where administrative brokerage commissions have already been rolled out, agents have reported that business has not been lost. When properly presented to consumers as a fair and nominal charge to ensure that they continue to receive the protection and services they expect, it has been a non-issue.

Q23 When other companies hear about this, I'm going to get covered up with recruiting calls!

A23 Of course you will. The competition will always look for opportunities to take advantage of such situations. Our suggested response to such calls would be, "When are *you* going to start charging an administrative brokerage commission?" If they say they're not going to, you might ask why. Looking to the experience of companies in other markets, it seems that the competition has often followed suit—that is, they have followed the leader—in a few months.