

# S.C. Real Estate Commission News



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## COMMISSION MEETINGS

The regularly scheduled meetings of the South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission, are held at 10 a.m. on the third Wednesday of each month at the Commission offices. These meetings are open to the public. Dates are subject to change.



South Carolina Department of Labor,  
Licensing and Regulation

*Note: This article was printed in the May 2001 issue of the S.C. Real Estate Newsletter. The Commission is reprinting due to continued interest and requests for copies.*

## Dual Contracts – A Road Often Traveled But Not Worth Considering



The Real Estate Commission and the Real Estate Appraisers Board have recently worked several cases involving dual contracts. **The License Law defines a dual contract as an instrument, “written or otherwise, by stating a sales price higher than the actual sales price in an effort to obtain a larger loan from a lender or lending institution or for the purpose of misinforming a governmental agency or any other reason.”** This wording is fairly clear and open to little

interpretation, but licensees are getting involved in dual contract situations all too frequently. The penalties for becoming involved in a dual contract can be very severe, up to and including loss of your license.

If your attention has not yet been gained, let’s try this... Dual contracts most always equate to loan fraud, and loan fraud has the propensity to arouse the interest of federal law enforcement agencies and prosecutors. The Federal Bureau of Investigation has recently asked for our help and offered their assistance in cases involving loan fraud. Title 18 of the United States Code, Section 1014 makes loan fraud punishable by fines

—continued on page 5

## Interpleader Please?

Most brokers know by now that Act No 184, which became law in 2002, amended §22-3-10(13) by adding §22-3-25 that vested the Magistrate Court System with the jurisdiction to entertain interpleader actions for the recovery of earnest money if the sum is less than \$7,500 arising from failed real estate contracts. The letter from the South Carolina Court Administration to all magistrates states, in part, “Act No 184 is narrowly drawn so that the only interpleader actions available in your court arise when a real estate broker is unable to determine whether a buyer or seller is entitled to return of the earnest money...”

It appears that the intent of the Act is that most earnest money matters can be decided by a broker’s **reasonable interpretation of the contract**. Merely sending the buyer and seller a form to sign that contains language generally releasing all parties from all liability including any actions or causes of action, arising out of or connected with the contract would not appear to fulfill the broker’s duty to make a reasonable interpretation. The Commission receives numerous calls from parties to a contract that are asked to sign such a form, and whereas they may not object to releasing claims on the earnest money, they refuse to sign the form because of its all encompassing waiver of their rights regarding other contract matters.

While the Commission staff is not offering advice on how to avoid disputes, we are concerned that the new interpleader law has formalized the process to the point where only the broker holding the money may initiate the action in magistrate’s court. When a member of the public calls the Commission asking how to make a claim for earnest money, our advice will be to call the broker holding the funds and request that the broker take appropriate action to initiate the process.

# Chairman's Comments

The Commission thanks you for all of your hard work, dedication, integrity and professional attitudes, in the performance of your work as real estate salespersons, brokers and brokers-in-charge. 2003 will again be a challenging year and a time of much concern. Our national economy and stock market have experienced loss of growth and value and loss of consumer confidence; both South Carolina and the United States face budget deficits. There are serious global conflicts. A shocking number of corporate leaders have proven to be corrupt and dishonest, resulting in the loss of many retirement plans. It has been a difficult year statewide and nationally.

NOW FOR THE GOOD NEWS! Real estate is alive and well. Our construction industry is busy, and the real estate industry has had a record year of success. It has contributed greatly to the confidence of our communities and the hope of our citizens for the future as they buy and build new homes.

Recently, I attended the annual ARELLO (Association of Real Estate License Law Officials) conference, which brought delegates from across the United States, Canada, Africa, Asia, Australia, Caribbean and Pacific Islands. It was evident that we have many common issues. The purpose of the conference is to develop solutions for challenges, which

we currently face or will face within the regulation of real estate practice.

The chief topics on the agenda included real estate practice on the Internet, agency law terminology (still and forever!), ethical issues, fair housing, international regulations and technical applications. We in South Carolina can be very proud of our participation and for the recognition of our work as leaders in protecting the public in their real estate transactions. To quote one of the speakers at the conference, who quoted General Norman Schwarzkopf:

**“JUST DO WHAT IS RIGHT.”**

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## Important License Renewal Information

Where did you receive this copy of the *S. C. Real Estate Commission News*? Does the address label show your name and correct mailing address? Do you know when you are due to renew your license? These are important questions. Please think about their importance and your answers.

If your real estate license is due to be renewed June 30, 2003, the Commission will be mailing renewal notices very soon. All newsletters and renewal notices go to the home address we have on file for the licensee. Therefore, if you did not receive the newsletter at your home address, then you probably will not receive your renewal notice to pay your fee in June. If you need to change your address, use our Fax-on-Demand system by calling (803) SERVICE (737-8423). Follow the voice prompts for real estate forms and enter document number 190. Mail it to us at Post Office Box 11847, Columbia, South Carolina 29211-1847 so we can make changes to ensure you receive your renewal notice. If you do not

receive a renewal notice by June 6, 2003, and your license is due to expire, contact our office.

The Real Estate Commission uses two addresses for an active licensee. We have on file the home or permanent address and the company address. The home address is used when we mail individual licensees newsletters and renewal notices, and the company address is used to mail the individual license to the broker-in-charge or property manager-in-charge so he/she knows the licensee is current. A number of licensees use the company address as their mailing address. You should remember when your broker-in-charge changes the company address, you must also notify the Commission of the new mailing address. Staff has no way of knowing when your broker-in-charge changes a company address that your mailing address also changes. Remember, it is the responsibility of the licensee to notify the Commission of any change in his/her mailing address (Section 40-57-180(D) of the Real Estate License Law).



A number of licensees took advantage of the online renewal process last year. By renewing online, we can update your record and mail the license more quickly to your company. You need your renewal notice to use the online renewal process. The notice contains your user ID and password. There is a fee of \$1.25 for using your credit card (either Master Card or Visa) to renew online. The Web site address to renew is <http://renewals.llronline.com/> If you experience any problems with the process please contact Sheila Gibson at (803) 896-4454 or [gibsons@mail.llr.state.sc.us](mailto:gibsons@mail.llr.state.sc.us)

# Continuing Education Update



As June 30 rapidly approaches, one-half of the real estate licensees in South Carolina will have to acknowledge on their

renewal form that they have completed eight hours of continuing education to allow them to renew their license. Around the end of May, the Commission is inundated with calls from anxious licensees inquiring when and where they can take the required MCE courses.

The easiest way to procure an up-to-date schedule of MCE courses or other pertinent forms and applications 24 hours a day is through the Commission's Fax-on-Demand System. The number for the Fax-On-Demand is 803-SERVICE (737-8423). You may select up to three documents per call, and the system will direct you through voice prompts in procuring the forms which you request.

We have included in this newsletter a copy of the directory of available information, applications and documents.

The Real Estate Continuing Education Course Calendar is Document #151. The Calendar is updated every Monday and contains available courses typically available over a three-month period. Remember, licensees are required to take eight hours of continuing education courses every two years. Of the eight hours, two hours of instruction must include a core course (federal and state laws affecting brokers and salesmen).

How can I "tell the difference" between a core course and an elective course on the Continuing Education Course Calendar? The continuing education courses have either a CEC (Continuing Education Core) or a CEE (Continuing Education Elective) prefix before the designated number of each course. Core courses contain instruction on federal and state laws affecting licensees. Elective courses are ones that

enable licensees to better serve real estate consumers but must be directly related to real estate practice.

Word to the wise...take your continuing education courses early while the course selection is plentiful as opposed to waiting to the last minute and scrambling for available courses which may be full.

"Big Brother" does keep an eye on licensees' MCE requirements. What does that mean? Licensees do not have to send course certificates to the Commission at renewal; they only sign a statement acknowledging that they have completed eight hours of continuing education. However, the Commission randomly audits a portion of the licensees after renewal and has them send in their certificates to ensure compliance with the eight-hour continuing education requirement. You can avoid appearing in the disciplinary section of the newsletter by satisfying your continuing education requirements in a timely manner.

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## Youmans Returns to LLR as Agency Director

Adrienne R. Youmans, a Columbia attorney, is the new director of the South Carolina Department of Labor, Licensing and Regulation. Governor Mark Sanford appointed her to the post in January, and the South Carolina State Senate confirmed her appointment on February 20, 2003.

Youmans served as the LLR's deputy director for the Division of Professional and Occupational Licensing from 1994-2000, following restructuring of state government and the creation of LLR by the state legislature in 1993.

She earned a bachelor of arts degree from Virginia State University and a

master's in human resource management from Pepperdine University. She attended the University of South Carolina where she received a Juris Doctorate degree.

During her military service, Youmans served as an executive officer and human resource manager for the United States Army at Fort Jackson. Her responsibilities included on-the-job safety and health.

From 1984 to 1994, she was the assistant division director for the Division of General Services in the South Carolina Budget and Control Board.

From 2000 until her appointment to head the Department of LLR, she was the senior assistant general counsel for the

South Carolina Department of Public Safety.

Her public service activities have included membership on the Richland School District Two Strategic Planning Committee and Superintendent Selection Committee. She has been an active volunteer in the schools attended by her daughter and son.



# S.C. Real Estate Commission Fax On Demand Directory

To request information and applications 24 hours a day, please call 1-803-SERVICE (737-8423) and enter the corresponding document number as directed by the voice prompts. You may select up to three documents per call, and the network will send your request by fax to you.

Document # 110—2 Pages Salesman and Broker Requirements <i>Synopsis of education, experience, and examination requisites for becoming a real estate salesman or broker.</i>	Document # 120—2 Pages Property Manager License Requirements <i>Requisites for obtaining a property management license.</i>
Document # 130—1 Page Time Share License Requirements <i>Requisites for obtaining a Providers time share license.</i>	Document #140—2 Pages Directory of Pre-Licensing Course <i>A geographical listing of Commission- approved pre-licensing courses and providers.</i>
Document # 150—2 Pages Pre-Licensing Course Calendar <i>A calendar of pre-licensing courses by Date and location.</i>	Document # 151—6 Pages Directory of MCE Courses <i>Monthly schedule of mandatory continuing Education courses.</i>
Document # 160—2 Pages Complaint Form	Document # 170—2 Pages Agency Disclosure Form
Document # 180—1 Page Company Change of Address/Name	Document # 190—1 Page Personal Change of Address/Name
Document # 200—1 Page Transfer Form	Document # 210—1 Page Request for License Reinstatement
Document # 220—1 Page Certification of CE Exemption	Document # 231—2 Pages Application for Salesman Examination
Document #240—1 Page Upgrade Provisional Sales License	Document # 250—2 Pages Broker's Exam Application
Document # 260—2 Pages Property Manager Exam Application	Document # 270—2 Pages Time Share Salesman Exam Application
Document # 280—2 Pages Broker In Charge License Application	Document # 290—2 Pages Property Manager or PMIC License Application
Document # 300—2 Pages Reciprocal Sales License Application	Document # 310—2 Pages Reciprocal Broker or BIC License Application
Document # 320—1 Page Consent to Jurisdiction-Service of Process	Document # 325—1 Page Order Form for Printouts/Labels/Disks
Document # 350—1 Page REC Employee Directory	Document # 360—1 Page SC Residential Property Disclosure Statement
Document # 370—1 Page SC Residential Property Disclosure Exemptions	



## Dual Contracts – A Road Often Traveled But Not Worth Considering

up to \$1,000,000 and/or up to 30 years in prison. Offenders are also often charged with wire fraud, mail fraud and conspiracy. **Now are you listening?**

Among others, the participants in loan fraud can include the real estate agent, the real estate appraiser, the loan officer or loan broker, the closing attorney, the buyer and the seller. Any of these persons, however, can break the chain and cause the fraud to unravel. Based upon the risks listed above, there are certainly more reasons to break the chain than to be a link in it. The real estate licensee representing the buyer or the seller should easily be aware of dual contracting and in most cases is in the best position with their in-depth knowledge which could serve to avert loan fraud attempts.

Some key points to remember about dual contracts are: (1) dual contracts do not have to be simultaneous, (2) the lender is often not the person who processes the loan application, (3) just because a lender or loan broker says it is legal does not make it so, (4) just because an appraisal supports the contract figure does not make it less of a fraud, (5) just because an attorney is willing to close the

loan does not make it legal, and finally, (6) there is no legitimate reason for two different contracts to exist between the same buyer and seller for the same transaction.

While not all loan fraud involves dual contracts, dual contracts are often used to disguise the existence of one or more elements of loan fraud. These may include playing with the loan to value ratio, the secret second mortgage, the silent second, the bump and run or a property flip. Loan fraud is becoming big business as indicated by recent FBI statistics that indicate of the \$1.7 trillion in residential mortgage loans or refinance packages issued in 1998, an estimated \$60 billion was fraudulent. It has been reported that almost 1/3 of all mortgages are approved because of false information, and up to 20% of the loans would not have been made if the lender had known all the correct facts.

In a fairly recent case involving dual contracts, two real estate appraisers lost their licenses, and two real estate agents were reprimanded, placed on probation and required to pay \$9,000 in restitution to the buyers in order to keep their

licenses from being suspended indefinitely. Needless to say, where money is involved, people will often succumb to greed. Please do yourself a favor and do not get involved, even unwittingly, in dual contracts. The costs could far outweigh any commissions received. Do not be fooled either by the notion that you are helping a buyer by manipulating the contract. Consider, instead, the impact on the buyer who may be faced sometime in the future with payments they cannot afford and a home they cannot sell because it is not worth the amount owed on the mortgage.

Bottom line...do not participate in, or otherwise indulge the participants of, a dual contract. You could lose your license, face federal prosecution and be subject to civil suits. Handle all changes to a contract by way of an addendum that is clearly made part of the contract. If you are told by anyone that the lender will not accept a contract addendum and that you need a new contract, you should believe immediately that loan fraud is in the making. Please call the Commission if you become aware of any suspicious transactions.

## Have You Met Your Continuing Education Requirements?

Licensees who must renew during this renewal period must have completed eight hours of continuing education between July 1, 2001, and June 30, 2003. You cannot renew your license to an active status until you complete the eight hours (two hours must be in a core course). If you have not completed the continuing education, you may still renew and place your license on inactive status. Your license cannot be reinstated until you send proof of your continuing education courses, along with the reinstatement fee. Also, if a broker-in-charge has not met the

continuing education requirement and pays to place his/her license inactive, then all the licensees under that broker-in-charge will also be placed on inactive status because no broker-in-charge is sponsoring the licensees.



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# DISCIPLINARY ACTIONS

## CEASE AND DESIST ORDERS

**Sharon K. Browne, Salesman  
Prudential Carolinas Realty  
Charlotte, N.C.**

For participating in a real estate transaction in South Carolina without a valid South Carolina license and for advertising via her business card that she was associated with Prudential Carolinas Realty in Rock Hill.

## HEARINGS

**Timothy J. Barlow, Broker  
Inactive Status  
Columbia**

For making substantial misrepresentations in a real estate transaction; for making false promises of a character likely to influence, persuade and induce and for demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. In one complaint, the Respondent reached an agreement on the payoff for a property that he owned and had sold to the complainant's son-in-law and daughter. Once the agreed upon payoff was given to the Respondent, he failed to transfer the property or to refund the payoff amount.

In a second complaint, the Respondent sold a property to the complainant, and it was discovered that the Respondent never had legal title to the property.

By Order of the Commission: License revocation, a fine of \$3,000 and payment of \$1,147.75 in costs incurred by the Commission. Respondent has appealed the Commission's decision to the Administrative Law Judge Division.

**Victor Rivera, Jr., Broker  
Prime Realty  
Myrtle Beach**

For managing property without a properly executed written management agreement and for failing to remit, within a reasonable time, monies coming into his

possession that belonged to others. The Respondent managed a property without a written agreement, and in the process improperly withheld \$100 from rental proceeds claiming that it was a "new tenant fee." The Commission also noticed that the Respondent had been recently disciplined on another property management matter.

By Order of the Commission: License revocation and \$1,000 fine. Respondent has appealed the Commission's decision to the Administrative Law Judge Division.

**Michael Taylor, BIC  
MTP of Columbia  
Columbia**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. Respondent entered into a Contract of Sale and Lease/Purchase with the complainants, and after the complainants had made a down payment and lived in the home for some time, it was discovered that the property had been sold at a tax sale. The Commission's decision was based upon the Respondent's failure to protect his ownership interest in property under contract, for failing to notify the purchasers of the tax sale and for failing to promptly return the purchasers' down payment.

By Order of the Commission: One (1) year license suspension and a fine of \$1,000. Respondent has appealed the Commission's decision to the Administrative Law Judge Division.

**Roy L. West, Salesman  
Inactive Status  
Anderson**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public and for failing to remit within a reasonable time, monies coming into his possession that belonged to others. Respondent managed two

properties owned by the complainant and did not inform his broker-in-charge of his arrangements to manage the property. During the period that he managed the properties, he failed to remit or account for all of the rental proceeds collected from the tenant.

By Order of the Commission: Indefinite license suspension with the stipulation that the license may be reinstated upon proof that the Respondent has completed the real estate sales pre-licensing course.

## CONSENT ORDERS

**Timothy M. Benson, Salesman  
Re/Max Foothills Realty  
Anderson**

For failing to maintain real estate records for five years as required and for failing to reduce an offer to writing. Respondent could not produce an agency disclosure form and a buyer's agency agreement because he had inadvertently discarded the file on a transaction that did not materialize. Also, the Respondent communicated an offer from a buyer that was countered by the seller and not accepted by the buyer. Neither the offer nor the counter was reduced to writing .

By Consent: Public reprimand, \$300 fine and completion of 16 hours of continuing education within six months.

**William D. Britton, Formerly BIC  
University Club Real Estate Company  
Blythewood**

While admitting no wrongdoing, and with no finding by the Commission, the Respondent agreed to pay a fine of \$500. This Agreement was to settle complaints from purchasers who contended that they were not aware the University Club was receiving fees from builders that were based upon the purchase price of their homes. The Commission believes that those undisclosed fees constitute a violation of the Real Estate License Law.

continued next page



Respondent contends that the Commission is misinterpreting the statutes but wished to settle the matter to avoid the time and expense of contesting the matter.

**Ross L. Callaway, Salesman  
Re/Max Island Realty  
Hilton Head Island**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. Respondent listed the complainants' home, which later sold with a long-term closing date. Respondent then arranged with the sellers to occupy and rent the home until the closing date based upon a Residential Lease Purchase Agreement prepared by the Respondent, which effectively placed the sellers in a position where they had signed two contracts to sell their property. Finally, the Respondent failed to make the rental payments as agreed.

By Consent: Public reprimand, payment of two month's rent to the complainants within 30 days and probation for one year.

**Ronald D. Floyd, BIC  
Ronny Floyd Realty  
Irmo**

For disclosing his agency relationship using an obsolete Agency Disclosure Form, for failing to complete a written Buyer Agency Agreement and for failing to demand that a counteroffer be reduced to writing.

By Consent: Public reprimand and a \$1,500 fine. Further provided that the fine be reduced to \$400 upon proof that the Respondent has attended a class on agency relationships within 30 days.

**Edward Leahey, Broker  
Coldwell Banker Hilton Head Properties  
Hilton Head Island**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. Respondent admitted to an unintentional violation of the statutes for failing to verify advertising

information that was given to him by a third-party builder/owner. Respondent sold the complainant a home based upon advertised specifications that included a wood-burning fireplace. When the home was completed, the wood-burning fireplace was not included, and the Respondent claimed no responsibility, even though he admitted that the advertisement he provided clearly indicated the inclusion of the fireplace.

By Consent: Public reprimand, an administrative penalty of \$300 and within 30 days provide the Commission with evidence that he has come to an agreement to compensate the complainant for the cost of a wood-burning fireplace.

**Karl A. McMillan, Broker  
Agent Owned Charleston Group  
Charleston**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. Respondent admitted to an unintentional violation of the statutes in that he provided the buyer with printed specifications that incorrectly stated that the new home would have solid core interior doors and wide plank heart pine floors. After the contract was set, the Respondent and the contractor agreed upon changes to the specifications, but those changes were never communicated and agreed to by the buyer, in writing.

By Consent: Public reprimand, an administrative penalty of \$300 and within 120 days provide the Commission with evidence that he has come to an agreement with the complainants for a sum of money in settlement of their civil complaint.

**Sherrie M. McQuiller, Salesman  
Inactive Status  
North Charleston**

For demonstrating bad faith, dishonesty, untrustworthiness and incompetency in a real estate transaction in a manner as to endanger the public. Respondent presented a contract containing the signature of a buyer knowing full well that the

buyer's name was forged upon the document and presented for the expressed purpose of receiving a real estate commission.

By Consent: One-year license suspension that may be stayed following a 90-day suspension and payment of a \$3,000 fine. Additionally, Respondent must serve a two-year probationary period immediately following the end of her suspension.

**Cheryl J. Mercedes, Property Manager  
Mercedes Properties  
North Myrtle Beach**

For failure to maintain proper accounting of trust records which, when audited, reflected a shortage in excess of \$10,000.

By Consent: Voluntary surrender of her license and associated qualifications.

**Marion W. Middleton, BIC  
Middleton Real Estate  
Williamston**

For being convicted in Anderson County General Sessions Court of a crime of moral turpitude

By Consent: Public Reprimand.

**Claudia A. Webb, PMIC  
Bay Rentals  
Beaufort**

For managing a client's property without a written property management agreement and for transferring certain security deposits from her trust account to the owner. The problems arose out of the Respondent's purchase of Bay Rentals that had previously been managing the property in question.

By Consent: Public reprimand and a \$2,000 fine stayed upon payment of \$500 and 24-month's probation.

**CORRECTION...**

The November 2002 newsletter incorrectly reported that Jessie Kinard was associated with Coldwell Banker, Middleton Associates, Orangeburg, S.C. Kinard was actually licensed with Cheatham and Roe during the time of the infractions.



SOUTH CAROLINA REAL ESTATE COMMISSION  
**S.C. REAL ESTATE COMMISSION NEWS**

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