

S.C. Real Estate Commission News

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New Software System Available in Time for Renewals

The Real Estate Commission's licensing department has a new software system. With this system, all licensees will be assigned a new license number. Your current license card and number will be valid until the expiration date on that card. You will maintain your current number until you renew, transfer or change your status with the Commission. When a new license is printed, it will contain your new license number. The change in the numbering system will allow the Commission to maintain licensee records on the computer system for a longer period of time.

The new software is scheduled to be operational in time for 2002 license renewals. In the past, there has been a great deal of interest in the availability of renewing with a credit card. Now this will be possible. If you have access to the Internet, you can pay your renewal fee at <http://renewals.llronline.com>. You will need to have your user ID and password, which can be found on your renewal notice. Just follow the instructions. There is a \$1.25 processing fee. If your license expires in 2002 (check this by looking at the left-hand corner of your pocket card for 6/02), you will be mailed a renewal notice in May. If you do not receive a renewal notice before June 1, contact our



office. If for any reason you do not receive this notice, it does not relieve you of the responsibility of paying your renewal fee.

You must renew by June 30, 2002, to avoid late penalties.

All salesmen and brokers who are due to renew must also have met the eight-hour biennial MCE requirements (unless exempt). You should

have completed your hours between July 1, 2000, and the time you renew your license. Even if you have not completed your MCE, you may renew and be placed on inactive registry until you take your course(s). You may not, however, practice real estate after June 30, 2002, until you have completed the eight hours and submitted proof of the continuing education along with the reinstatement fee and form to the Commission office.

Do not delay. Renew on time. Avoid penalties.

Remember: If your address has changed, it is your responsibility to notify us (Section 40-57-180 (D) of the Real Estate license law). Failure to do so is a violation of law and could result in cancellation of your license. If your address has changed, notify us in writing today.

New PSI Exam Provider



The South Carolina Real Estate Commission has entered into a contract with Psychological Services, Inc. (PSI) to become examination provider. PSI has been providing testing services to business, industry and government for more than 55 years.

The company comprises four divisions: Examination Services, Consulting and Litigation Support, Test Publications and Aptitude Testing for Industry. PSI is nationally recognized for expertise in psychometric and statistical procedures. In 1990, PSI's Examination Services Division was established to specialize in the development and administration of licensure and certification examinations. PSI Examination Services Division delivers computer-administered examinations in test centers across the country and has delivered tests in more than 250 cities throughout the United States and Canada to groups ranging from a single candidate to more than 2,000 in a single session.

PSI will begin computer-administered examinations in South Carolina on April 1, 2002. Examination sites will be in Beaufort, Charleston, Columbia, Greenville and Myrtle Beach.

Don't Miss

To Pay or Not To Pay,

That is the Que\$tion

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The South Carolina
REAL ESTATE
COMMISSION NEWSLETTER

Official Publication of the
South Carolina Real Estate Commission and
the Department of Labor, Licensing and
Regulation

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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.

Comments from the Chairman

Real estate is no longer a business which is limited to our own little domain. We are well aware that today's society is not only mobile but also global; therefore, it is essential that real estate regulators and licensees be aware of major issues facing our industry.

Recently I attended an ARELLO (Association of Real Estate License Law Officials) conference whose membership has become more and more worldwide. Real estate regulators from most of our states were present along with representatives from Canada, Australia and South Africa. As real estate license law varies from state to state, jurisdiction to jurisdiction, province to province, country to country, it becomes essential for a dialogue among all regulators to have an understanding of major issues. How the issues will be dealt with to comply with existing laws governing real estate is extremely important to regulators. Issues that were addressed in forum form during the conference included:

- Economic Forces and Real Estate Regulations
- Current Trends in the Real Estate Industry
- Essentials of Administrative Law and Procedure
- Important Issues in Mandatory Education
- Should Public Records be so Public?
- Regulation of the Paperless Real Estate Transaction
- Mold: (It's Not Just on Cheese Anymore)
- Managing this Housing Issue

Each forum was addressed by an authority in that specific field, and regulators attending participated in the discussion.

While these issues may not be immediate concerns for licensees, regulators including Commission members and Legislators, must keep informed and be prepared to address each issue as necessary. Networking with worldwide license law officials continues to enable our own South Carolina real estate industry to be out front in self-regulating.



Resolving Earnest Money Disputes

Resolving earnest money disputes has become somewhat easier with the passage of House Bill 3107 (Interpleader Bill). Real Estate license law Section 40-57-135 B(5) provides that earnest money which is in dispute must be retained in a broker's trust account until the dispute is resolved by one of several methods. Section 40-57-135 (B) (5) (b) defines one method as "filing of an interpleader action in a court of competent jurisdiction."

The new law, which became effective on March 6, 2002, provides that magistrates take jurisdiction of interpleader actions filed over claims of disputed real estate earnest money where claims do not exceed \$7,500. Actions can be filed in the magistrate's court for a fee. It is our understanding that it may be the end of this year before everything is in place and the magistrates have received the proper training. The Commission will endeavor to provide more detailed information as it becomes available. Until such time as we can provide such information, do not call the Commission as staff will be unable to properly respond to your questions. The Office of Court Administration will design and make available appropriate legal forms for implementation of this procedure.



Commission's Policy Statement on Payments to Unlicensed Persons

Compensation paid to unlicensed persons, which are characterized as referral fees, commission rebates, cash incentives, rent discounts as well as other forms of remuneration, (hereafter referred to as payments), is an issue of continuing concern to the South Carolina Real Estate Commission. Over the years, the Commission has rendered opinions and adopted policies regarding the subject - ranging from absolute prohibition under any circumstances to allowance under certain circumstances. Since the license law addresses generally, but not specifically, the nature of payments as described above, the Commission is making the following statement of policy for purposes of advising and giving guidance to licensees.

Beginning January 1, 1999, all previous opinions and policies are no longer valid and licensees should apply the following guidelines, which are intended to enable a licensee to formulate his/her own informed decision regarding payments to unlicensed persons. The Commission will no longer respond to a request to make an advance ruling or give legal advice relative to the legality of each individually proposed situation.

Making one's own decision, which may necessitate legal consultation, requires applying the statute SC Code Ann. §40-57-145(A)(11) to the situation at hand. Under state law, it is a violation for a licensee to pay "a commission or compensation to an unlicensed individual for conducting activities requiring a license...." The key phrase is "for conducting activities requiring a license." The question to ponder is whether the activity under consideration is one that would require a license. Would you be making a payment to someone for doing something or having done something for which he or she should be licensed?

To determine what activities require a license, it is necessary to review S.C. Code Ann. §40-57-30 for the definitions of broker, counselor, salesman and property manager for an enumeration of those activities. In order to conclude whether or not any payment is appropriate under the law, the Commission would have to investigate and examine, after the fact, the specific type and degree of activity for which the payment was made. It might find, for example, that a payment for merely supplying a name would not be a violation of the practice act, but might also find the frequent supplying of names and/or the making of solicitation calls by an unlicensed person might be a violation of the practice act.

It is incumbent on each licensee to carefully consider and think through each situation before agreeing to make payments to non-licensees. If upon investigation, the Commission finds that the payment is for an activity that requires a license and the recipient is not licensed, a violation of the law has occurred; therefore, the licensee is subject to disciplinary action and may have his or her license restricted and may be required to pay a fine. Additionally before making such payment, you might ask whether the recipient could be found guilty of the misdemeanor crime of acting as a real estate broker, counselor, salesman or property manager without a license. If the recipient is engaged in practice without a license, he or she could be subject under law to imprisonment and a fine. The Commission considers payment to unlicensed persons for what might be the unlawful practice of real estate to be a very serious matter both for the licensee and the unlicensed recipient and encourages each licensee to think through the situation very carefully before considering such payments.

To Pay or Not To Pay, That is the Que\$tion

From the Manager of Compliance

I continue to be concerned at the number and type of questions we receive about "what is legal and not legal" regarding the payments to unlicensed persons. The Commission issued its policy statement on January 20, 1999, but it may not have been widely published. In an effort to give the Commission's position the widest possible exposure to licensees, the complete text is published on this page.

Please read carefully the policy statement and begin to formulate your own decisions about what you may pay to whom and when. Our duty investigator is often very busy fielding complaint calls from the public and may not have the time or receive enough facts to examine and decide whether any one of hundreds of scenarios about the division of commissions is in compliance with the law. Most often our advice to you, as stated in the policy, is study the law and its intent, then decide if you are in compliance.

My further comment about the policy is that no reading of it should suggest that the Commission condones what we all know as "bird dogging." In fact, the most dangerous area for most licensees is probably the activities of unlicensed assistants. In short, please read the law, decide with your broker-in-charge and/or company attorney what is lawful and act accordingly. In most cases, the simple test might be, if you have to ask, then do not do it.

Finally, the Commission has no concern about a broker-in-charge paying a licensee through a corporation set up for tax purposes so long as the licensee does not advertise or conduct business in the name of the corporation. The broker should, however, document the connection between the licensee's corporation and the licensee.



DISCIPLINARY ACTIONS

HEARINGS

John Quesinberry
Myrtle Beach, SC

For being convicted of a felony in South Carolina and failing to report same to the Commission within 10 days as required by law.

By Order of the Commission: Public reprimand.

Nigel K. Russell, Time Share
Southwind Sales and Marketing, Inc.
Surfside Beach, SC

For being convicted of a felony in the state of Florida and failing to report same on his application for a South Carolina time share license.

By Order of the Commission: License revocation and a \$1,000 fine.

Hal J. Warlick, BIC
Easley Area Properties
Easley, SC

For being suspended from the practice of law by the South Carolina Supreme Court and failing to report same on his application for a broker's license.

By Order of the Commission: Suspension for not less than 12 months and a \$1,000 fine.

CONSENT ORDERS

Dwight T. Beagle, Salesman
Realty World Graham & Grubbs
Laurinburg, NC

For failing to present a written offer to the seller. Respondent did not submit the offer because he knew it to be well below other offers previously refused by the seller. The person making the offer made the complaint. Respondent also failed to

make a timely disclosure to the prospective buyer.

By consent: Public reprimand and a \$600 fine.

Fred C. Berg, BIC
Sea Island Resort Realty
Hilton Head Island, SC

For failing to properly maintain his trust account having to do with his duties as a court-appointed receiver.

By consent: Public reprimand, a \$1,500 fine and mandatory attendance at a Commission-sponsored trust account course.

Norma C. Carnes, BIC
Shalimar Management
North Myrtle Beach, SC

For maintaining a trust account that did not meet the minimum requirements of the Real Estate License Law. While no shortages were noted, the account was extremely difficult to reconcile and some rental proceeds were not being paid in a timely manner.

By consent: Public reprimand and a \$1,000 fine with the fine being permanently stayed upon completion of a Commission-approved trust account course.

William J. Davison, BIC
Beach City Realty
Hilton Head Island, SC

For managing a property without a written management agreement. Although the Respondent had sent a management agreement to the owner on several occasions, the owner had never signed and returned the agreement.

By consent: Public reprimand and a \$300 fine.
Robert M. Flanagan, Salesman

All Stars Real Estate
North Augusta, SC

For pleading guilty in Georgia to driving under the influence and habitual violator, a felony crime.

By consent: Public reprimand and a \$500 fine.

Samuel L. Hern, BIC
Senior Realty
Conway, SC

For writing a contract that was unclear about the status of the earnest money. Respondent contended that the earnest money was non-refundable, but the contract for the Respondent's personal property did not clearly address the issue about the potential refundability of the earnest money.

By consent: Voluntary license surrender without admitting to a violation.

Kimberly P. Hudson, Salesman
Mount Pleasant, SC

For being found guilty of Breach of Trust.

By consent: Indefinite license suspension stayed to five years probation with the following conditions: (1) public reprimand, (2) must not violate the terms of her state probation, (3) must supply the Commission with a letter from her broker-in-charge indicating that the broker is aware of her criminal conviction.

Ki O Kwon, Salesman
Russell & Jeffcoat Realtors, Inc.
Columbia, SC

For conducting a real estate transaction without the knowledge of her broker. Respondent prepared a contract for a property she had previously listed, but did so after the listing expired.

continued next page

Disciplinary Actions -
continued from page 4

By consent: Public reprimand and one-year license suspension with the provision that following a thirty 30-day suspension and payment of a \$1,000 fine, the Respondent shall be placed on probation for the remaining 11 months.

Rachel R. Lindsay, BIC
Perdue and Lindsay
Summerville, SC

For placing a tenant's security deposit in an interest-bearing account without informing the tenant of the right to ownership of the interest and securing any acknowledgement from the tenant that they were forfeiting the ownership interest. In a separate complaint, the Respondent was found to have charged a tenant a pet fee that was in addition to that stipulated to in the lease and for which she had no authority to charge.

By consent: Public reprimand, a \$1,500 fine and probation for a period of 36 months.

Anne H. Oswald, BIC
Oswald-White & Associates
Walterboro, SC

For managing a property without a written management agreement.

By consent: Public reprimand and a \$300 fine.

Susan L. Parker, Broker
The Litchfield Company
Pawleys Island, SC

For failing, when acting as an agent for the buyer, to disclose to the buyer all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee. The violation involved a misunderstanding by the buyers about the lot lines for the property they purchased using the Respondent as a buyer's agent. Respondent made no intentional misrepresenta-

tions, but failed to encourage her buyers to get a survey prior to purchasing the property and failed to follow up on rumored problems with the lot lines.

By consent: Public reprimand.

Kristi L. Raley, PMIC
Island Rentals
Hilton Head Island, SC

For failure to make a timely accounting to a property owner and for failing to resolve erroneous charges to the owner's account in a timely manner.

By consent: Public reprimand and a \$350 fine.

Ral Z. Smith, Broker
Prudential Carolinas Real Estate
Charleston, SC

For failing to disclose in a timely manner, in writing, his agency relationship.

By consent: Public reprimand and a \$300 fine.

Christopher L. Stamm, Salesman
Ware Properties
Salem, SC

For writing a contract reflecting that the buyer had tendered \$7,500 earnest money when, in fact, he knew that the earnest money was only \$2,050. Respondent knew that the difference in earnest money reflected in the contract and that actually on hand was so the buyer could obtain a loan with no down payment.

By consent: Ninety-day license suspension and three years probation, public reprimand and a \$500 fine.

Donald R. Weaver, Broker
Re/Max Advantage Group
Columbia, SC

For failing to secure a listing agreement and a signed agency disclosure form in a timely manner.

By consent: Public reprimand and a \$600 fine.

William C. Wooden, II, BIC
Legacy Realty Group
Surfside Beach, SC

For failing to report to the Commission, within 10 days, his change of business addresses.

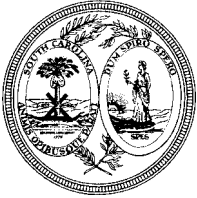
By consent: Public reprimand and a \$300 fine.

Staff News

Rebecca Ricard, former receptionist for the Real Estate Commission, has joined the staff of the Education Department. Before coming to the Commission in 2001, she was employed by Wachovia Bank. She is a graduate of Gilbert High School where she was a cheerleader. Rebecca enjoys fishing on the lake, shopping and spending time with family and friends.

**Visit us on the web at:
www.llr.state.sc.us**





SOUTH CAROLINA REAL ESTATE COMMISSION

S.C. REAL ESTATE COMMISSION NEWS

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