



South Carolina
Department of Labor, Licensing and Regulation



Real Estate Commission

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Payment of Commission After Death of Licensee

The Commission is aware of issues involving licensees that have passed away while still working real estate transactions and that questions arise in such situations regarding the payment of commission or compensation for work performed prior to the licensee's death. In order to provide clarity regarding such an occurrence, the Commission is issuing this guidance document.

It is important to distinguish between when a commission is earned and when it is paid. Under South Carolina law, the brokerage, not the individual licensee, earns the real estate commission. Whether the brokerage has earned a commission is determined by the terms of the applicable brokerage agreement, although payment is often deferred until closing. The affiliated licensee's right to receive compensation from that commission is governed by the terms of the independent contractor or employment agreement between the brokerage and the licensee.

In the most common arrangement, a licensee is compensated only after the brokerage receives the commission at closing. Under that type of agreement, if the licensee dies before the transaction closes and before the brokerage receives the commission, the licensee (or the licensee's estate) generally would not be entitled to compensation because the contractual conditions for payment have not yet been satisfied. However, the result may differ if the compensation agreement provides that the licensee earns compensation upon procuring a ready, willing, and able buyer, upon execution of a contract, or upon the occurrence of some other event before closing. Accordingly, determining whether a deceased licensee or the licensee's estate is entitled to compensation requires an analysis of both the brokerage's entitlement to the commission under the brokerage agreement and the compensation agreement between the brokerage and the licensee.

Additionally, S.C. Code §40-57-710(A)(12), prohibits the payment of "*a commission or compensation to an unlicensed individual for activities requiring a license under this chapter.*" This section is relevant because brokerages cannot make commission or compensation payments to unlicensed persons for real estate activities requiring a license. Thus, in the case of a deceased licensee that is owed commission or compensation for items earned while the licensee was still living, such payments must be made to the licensee (their personal representative would be able to deposit the payment into an estate-controlled bank account) or to the estate of the licensee.

Brokerages, Brokers-in-Charge, and Property Managers-in-Charge may wish to consult with a South Carolina attorney for assistance in determining if a commission or other compensation has been earned by a licensee prior to their death.

Disclaimer: This guidance document is not intended as legal advice. The Commission is providing this guidance document to educate licensees on this area of the law with practical, everyday examples. This guidance document is only a high-level overview and may not take into consideration all the intricacies that may be present in a real-life event.