



## Compliance Corner: Release of Trust Funds

Under the Real Estate Commission's licensing law, at the termination of a transaction, trust funds are to be disbursed in accordance with the contract except when a dispute arises as to the entitlement of the funds. If a dispute arises, the brokerage must hold the funds and may only release by one of the prescribed methods in the licensing law. When there is a dispute between the parties as to entitlement to the funds, a licensee should not seek to interpret the contract or act as the decision maker as to who is entitled to the trust funds. The law specifically addresses the conditions under which a brokerage holding disputed trust funds may disburse those funds at the termination of the transaction.

The relevant portions of licensing law are below.

### **Disperse In Accordance with the Contract - SC Code of Laws Section 40-57-136(D).**

(D)

(1) (b) Trust funds received by a broker-in-charge in connection with a real estate sales or exchange transaction and deposited in the real estate trust account shall remain in the trust account until consummation or termination of the transaction, at which time the undisputed trust funds must be disbursed in accordance with the contract which directs the broker-in-charge to hold the trust funds, and a full accounting must be made to the parties.

(2) A broker-in-charge or property manager-in-charge who disburses trust funds from a designated trust account under the following circumstances is considered to have properly fulfilled the duty to the account:

- (a) upon rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;
- (b) upon the withdrawal of an offer not yet accepted by the offeree; or
- (c) at the closing of the transaction.

### **Disputed Funds - SC Code of Laws Section 40-57-136(E).**

(E) If a dispute concerning the entitlement to, and disposition of, trust funds arises between a buyer and a seller, and the dispute is not resolved by reasonable interpretation of the contract by the parties to the contract, the deposit must be held in the trust account until the dispute is resolved by:

(1) a written agreement which:

- (a) directs the disposition of monies signed by all parties claiming an interest in the trust monies, and
- (b) must be separate from the contract which directs the broker-in-charge or property manager-in-charge to hold the monies;

- (2) filing an interpleader action in a court of competent jurisdiction;
- (3) an order of a court of competent jurisdiction; or
- (4) voluntary mediation.

### **Is a Release Required?**

License law does not require that the parties sign a release before the funds can be disbursed if there is no indication of a dispute. It would, however, likely be good practice to have a record of a release agreement to document that the funds were not disputed at the time of release should a dispute arise after the closing of the transaction. A release agreement between the parties, however, could resolve a dispute and allow a Broker in Charge to disburse funds in accordance with S.C. Code of Laws Section 40-57-136(E)(1).

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### Unclaimed and Undisputed Funds

If the funds are not disputed, and you still are unable to locate the party entitled to these funds under the contract, the unclaimed funds may be submitted as unclaimed property to the SC Treasurers Office.

Please review the following reporting [guidelines](#) and information on submission.

From a license law/Commission standpoint, the Broker in Charge should just maintain records for five years of the release of these funds, documentation of attempts to contact the individual, and records of submitting it to the State as unclaimed property.

## Administrator's Message - Maintaining Current Contact Information is the Law

Keeping your contact information up to date with the South Carolina Real Estate Commission isn't just a matter of convenience for you to receive renewal reminders; it is the law. Under the SC Real Estate Practice Act, a licensee is required to update the Commission with any changes of contact information within 30 days. Personal contact information needs to be linked to your licensure file.

We frequently have instances where individuals link their company emails to their LLR User account. They cannot recover login information and miss important notices and communications from the Commission because they are no longer with the company.

Something the Commission also sees is individuals submitting only their company/office information rather than keeping their personal contact information linked to their individual license. There have been instances where renewal notices have been mailed to a licensee, and their only contact information, phone, email, and address were for a company with which they are no longer affiliated.

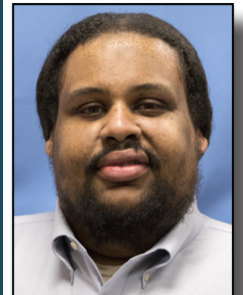
We strongly encourage all to make sure your personal contact information (mailing address, email address, and phone numbers) are current with the Commission and linked to your LLR USER account.

If you do not maintain contact information with the Commission, it could be grounds for disciplinary action against your license.

*Section 40-57-310. To be eligible for licensure as a real estate broker, broker-in-charge, or salesperson, an applicant must:*

*(3) provide a physical address at which the licensee can be contacted in the course of an investigation. A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;*

*Section 40-57-510. (A) To be eligible for licensure as a property manager or property manager-in-charge, an applicant must:*



**Rod Atkinson**

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(3) provide a physical address at which the licensee can be contacted in the course of an investigation. A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;

Section 40-57-710. (A) In addition to Section 40-1-110, the commission may deny issuance of a license to an applicant or may take disciplinary action against a licensee who:

(27) fails to provide current contact information to the commission;

Please visit the Commission's website at <https://llr.sc.gov/re/>. There is a **Quick Links** section on the right side of the page which includes a "Change Address" [link](#). There also is an "Account Login Help" [document](#) with instructions on recovering your USER ID and Password or updating your linked email address if necessary. If you are unable to make these updates online, a personal address change form ([document #190](#)) may be completed and submitted to the Commission by mail or email.



## Wayne M. Poplin, GRI, DREI, CCDS, CPSPI, ITI, ABR, SFR, SRES, GREEN Real Estate Commission

### Profession:

I became a licensed real estate agent in 1981 and opened my own company, Realty World Southeastern in Summerville. We later merged with Merrill Lynch, and then became Prudential where I was the Director of Training for 36 offices and 1,500 agents in North and South Carolina, and we were the 13th largest real estate company in the country. We then merged again and became Carolina One Real Estate in Charleston, where I also served as Director of Training and Education for many years.

### Term of Service:

I have served on the Commission since August 2012.

### Honors/Training:

I have served on the NAR Board of Directors as a Large Firm Representative, Past President of the Charleston Trident Association of Realtors, served on several NAR committees, Past President of the SC Realtors Education Foundation (REF), Realtor of the Year for Charleston Trident Association of Realtors, Realtor of the Year for SC Association of Realtors, Educator of the Year for SC Association of Realtors, Past President of the National Instructors Training Institute, and I have been awarded the NAR Omega Tau Rho medallion. I have chaired numerous committees, including most recently to re-write the SC Regulations to implement the new license law in 2017.



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### Personal Life:

I have been married to my wonderful wife, Debbie for 27 years. We have 3 sons Doug (his wife Cecelia), Michael (his wife Kristin) and Kevin. We also have 2 grandsons Rex and Felix. We are so blessed that they all live in Charleston.

## Compliance Corner: "Coming Soon" Advertising

"Coming soon" type signage and listings was interpreted by the Commission to be an advertising/marketing of property.

Advertising a property as "Coming Soon" or other terms suggesting a property may be coming to market soon isn't inherently a violation of licensing law, as long as the brokerage making this advertisement already has a specific listing agreement with the owner to market the property.

The issue has been that brokerages were putting up "Coming Soon" advertisements prior to having a property specific listing agreement.

Here is a [link](#) to the Commission minutes from its April 7, 2013 meeting where "Coming Soon" marketing was addressed.

## Commission Members

Candace W. Pratt (Chair)  
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Wesley Brown Bethune  
7th Congressional District (Myrtle Beach)

Wayne Poplin  
At Large Member (Charleston)

Johnathan Stackhouse  
Public Member (Columbia)

## SCREC Licensing Update

Type	Count
Active Broker in Charge	7,774
Active Broker	5,235
Active Salesperson	29,496
Active Property Manager in Charge	1,325
Active Property Manager	1,724
Inactive Broker	1,725
Inactive Salesperson	8,025
<b>Total</b>	<b>56,158</b>

## Frequently Asked Questions By Licensees

### How do I transfer, inactivate and reactivate my license?

There are forms which allow you to perform most of these functions on the Commission's [website](#).



### Licensing Questions?

Do you have a question regarding licensing or renewals?

Before you contact the Board office, check out the links listed below to see if your question is answered in the licensing and renewal FAQ documents.

If not, contact the [Commission](#).

[REC Licensing FAQ](#)

[REC Renewal FAQ](#)

### Visit the Commission's [Website](#)

#### Website Features

[SC Real Estate Laws and Regulations](#)

[Licensee Lookup](#)

[Board Orders/Disciplinary Actions](#)

[Applications and Forms](#)