

S.C. Real Estate Commission News

Volume IV • No. 2 • A NEWSLETTER OF THE SOUTH CAROLINA REAL ESTATE COMMISSION • SEPTEMBER 1998

Commission Information

New Commission Member

Jeffery M. Wyman of Columbia has been appointed as a member of the South Carolina Real Estate Commission from the Second Congressional District. Wyman is owner of Jeff Wyman & Associates, Inc.

A graduate of The Citadel, Wyman earned both a master's degree in real estate and a law degree from the University of South Carolina. He is a NAR Certified Professional Standards Instructor and has instructed courses in real estate at Midlands Technical College, the College of General Studies at USC, and the South Carolina REALTORS Institute.

Wyman has been active in local, state and national REALTORS associations, and is currently serving as the South Carolina Association of REALTORS (SCAR) president, Appraisal Section chair, and vice chair of the Faculty Subcommittee.

Commission Elections

Manning E. Biggers, Commission member who represents the Fifth Congressional District, has been elected chairman. Biggers has served on the Commission since 1984.

Elected as vice chairman was Betty V. Carter, who represents the First Congressional District, and Evelyn K. Young, Fourth Congressional District, was elected as secretary.

Check out the S.C. Real Estate Commission on LLR's "home page" on the world wide web, or Internet.

Our address on the Internet is:
<http://www.llr.sc.edu/rec.htm>

May We Have Your Attention?

Periodically, the Commission makes an effort to communicate to licensees through its newsletter certain facts and information which are considered to have mutually beneficial value. For licensees, the message is generally one of how to better understand and comply with the license law. For the Commission, it's an opportunity to highlight some of its customer services.

Please read the entire newsletter including the following:

More on Agency

When a licensee's buyer/client expresses interest in property of a former seller/client who is now listed with another company, it is not necessary to become a dual agent in order to proceed with the transaction. Dual agency occurs when a company represents two clients (a buyer/client and a seller/client) in the same transaction after having first gained permission from both. In this particular transaction, the licensee does not represent two clients since the former seller/client now has his or her own agent (another licensee). Although not uncommon, this transaction is unique because the law requires a company and associated licensees to treat confidentially any information gained from a former seller/client, the disclosure of which might be detrimental to that former seller/client's interest. The licensee must advise his or her buyer/client of this fact; therefore, if at anytime during the transaction it becomes advisable to disclose to his or her buyer/client confidential information gained while acting as agent for the former seller/client, written permission must first be obtained from the former seller/client. Procedures should be established by the company's broker-in-charge and outlined in the office policy on agency.

Brokerage companies with one or more branch offices, when evaluating certain business risk, may not be able to avoid dual agency while working with a buyer/client engaged by one branch office who becomes interested in a listing of another branch office of the same company. This would be true unless it can, by policy or otherwise, demonstrate the fact that its branches are each independently owned and operated. As a practical matter for most companies that operate branches, it could be difficult, if not impossible, to convince a seller/client that he/she had not hired the entire company to market his or her property. When establishing its office policy on agency, a key question for the broker-in-charge to answer is, "What level of risk is reasonable for our office to take?" The Real Estate Commission cannot answer this question.

Preaching...But not to the choir!

One of the basic realities relative to an administrative law agency like the Real Estate Commission is that application of the law is designed deliberately to be impersonal and non-discriminating. This provides assurance that no preferential treatment is given to some and denied to others. Put another way, "the playing field is level." Likewise, there is no provision in the law for exceptions to be made for extenuating personal circumstances. Licensees have a right to expect and are guaranteed by law to be shielded from arbitrary treatment and decisions affecting their license.

You're wondering "what is this all about?" Well, it's just a reminder that in the Commission's role of enforcing the license law, it must insist on accountability and compliance - such is the responsibility of all licensees. Far too many licensees tend to ignore published and well-defined deadlines - deadlines for renewals; deadlines for





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 MEMBERS

Manning E. Biggers Chairman
Betty V. Carter Vice Chairman
Evelyn K. Young Secretary
Buccie Harley Charles L. Johnson
Robert R. Heos Joseph J. Keenan
Jeffery M. Wyman

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The SCREC News is published as an informational and educational service to all licensees of the Real Estate Commission.

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Views expressed in articles by guest authors are not necessarily those of the Commission nor LLR nor should they be mistaken for official policy.

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.

Courses Available for Prospective Brokers

As of January 1, 1998, all sales licensees who had taken Unit I and II and planned to take another 30 hours "some day" had to change their plans. Now if they wish to become brokers, they will need to take 60 additional hours. This breaks down into Unit IIIA and Unit IIIB. Unit IIIA is a brokerage management course and should be taken prior to the Unit IIIB (our Old Unit III) which includes advanced real estate principles and practices and prepares students for the broker's examination.

For more than six months, the Real Estate Commission has worked with educators and industry members to develop a complete and timely curriculum for the 30 hours of brokerage management. The outline includes extensive coverage of office management, insurance concerns, liability for torts, trust accounting, contracts and ethics. During July, the curriculum was finalized, and a "train the trainer" session held for the instructors of the new topics. Schools are gearing up to teach the new course material in September.

If you have been thinking about opening your own office, you now have a vehicle to better prepare yourself to do so. As you know, with the new law in January came added responsibilities for brokers-in-charge, including supervision of licensees and written office policies addressing agency and other topics. These two subjects are stressed in the office management portion of Unit IIIA. Even those of you who have been operating a brokerage for years are strongly urged by the Commission to take this course.

If you are interested in scheduling either the Unit IIIA or IIIB, contact the school nearest you for dates and times. In addition to taking these courses in order to sit for the broker's examination, you can exempt your MCE requirement during any year you take either Unit IIIA or Unit IIIB. Unfortunately, the schools offer these classes less frequently than other courses because of a lack of demand, but you should let them know your desire and get on a waiting list if one is not immediately upcoming. For a list of schools, call our Fax-on-Demand line at (803)-SERVICE (737-8423) and request document #140.

Commission Directory

The following directory is offered for your ready reference when you need to get in touch with the Commission.

Mailing Address: P.O. Box 11847, Columbia, SC 29211-1847

Physical Address: Koger Office Park, Kingtree Building, 110 Centerview Drive, Columbia, SC 29210

Phone: (803) 896-4400 **Fax:** (803) 896-4404

Administration

Ann Parris (803) 896-4643 *Administrative Assistant*
Leigh Padgett (803) 896-4459 *Business Manager*

Education

Jenny Meade (803) 896-4457 *MCE and Prelicensing Courses*

Licensing

Jackie Chattman (803) 896-4447 *Broker Exam, License Transfer, Inactive Status*
Diane Floyd (803) 896-4450 *Sales Exam/License, Property Manager Exam*
Jessie Solomon (803) 896-4463 *Broker/Reciprocal/ Timeshare License*

Regulatory Compliance

Duty Investigator (803) 896-4465 *Responds to Complaints and License Law Calls*

Short Term Rental Agents Need To Take Note

Two problems discussed below and unique to short term rental companies, continue to be a source of concern to the Real Estate Commission. Brokers-in-Charge and Property Managers-in-Charge involved in short-term rentals, please take note of these problems, and if they exist in your company, work toward a resolution.

The first and most serious concern for the public and problem for the licensee is the underfunded rental trust account caused by not placing all advanced deposits into the trust account and ensuring that they remain there until the consummation or earlier termination of the transaction. Recent inspections of several companies have revealed trust account shortages created by advanced deposits being used to operate the business. The Commission has determined that stiff fines and reprimands are appropriate sanctions for this violation. Any similar subsequent offense by the licensee could result in license revocation.

Advanced deposits, unless specifically and prominently listed on the rental agreement as nonrefundable, remain the property of the tenant unless forfeited for failure to act within the cancellation period. Even after the cancellation period has expired, the advanced deposit may be contractually divided between

the owner and the management company, therefore, requiring a portion of it to remain in the trust account.

The second practice that results in far too many complaints to the Commission is the charging of a fee that is refundable to the tenant if the rental unit is clean and undamaged after being vacated. This fee takes on many names and forms, but is generally touted as refundable at the end of the rental period. The Commission receives many complaints from vacationers who see the fee as just another way of ripping off visitors to South Carolina. The vacationers claim they left the unit in as good or better condition than when they arrived, yet the company has retained the fee.

Without even investigating, three facts are certain. Some vacationers leave the unit dirty, some leave the unit clean and are still charged the deposit. Most importantly, "clean" is an extremely subjective term. Because determining the condition of a rental unit at a specific time is usually impossible and because the matter of a refund is more contractual in nature, the Commission generally writes the complainant telling them we cannot do much to help them. Our answer then often spawns letters to the Better Business Bureau, the Chamber of Commerce, and the Governor's Office, among other places, and finally back to the Commis-

sion for a response. In the meantime, we have a needlessly unhappy consumer.

Those licensees who collect a refundable deposit should weigh the benefits and rethink the risks of the practice. The amount of the deposit is generally not enough to encourage cleaning by those who do not know the meaning of clean or are not motivated otherwise to clean a unit at the end of their vacation. On the other hand, those who take the time to dutifully clean the unit only to find out that their deposit is still retained once they have left the state, can cost the management company and the state loss of goodwill in addition to lost future revenue. There are surely ways, other than refundable deposits, to recover the costs of cleaning units left dirty. Many companies have devised ways to accomplish the cleaning without risking the customers goodwill. Talk it over in association meetings, write the Commission, but in your best interest, make every effort to stop a practice that is not necessary if it has the potential to breed complaints. Although not directly a Commission matter, you could be the subject of and required to answer a complaint and demonstrate that your company does not have a propensity to unreasonably retain deposits. Flagrant violations could fall under the misrepresentation provisions of the statute.

Brouthers Named Educator Of The Year

Veteran educator Dianna Brouthers has been named the 1998 recipient of the Educator of the Year award presented annually by the Real Estate Educators Association. REEA is an international organization of more than 1,500 professional real estate trainers, speakers, regulators, school owners, and university professors. Criteria for the award are outstanding contributions in the areas of educational timeliness, credentials, recognition and leadership, impact on consumers, and impact on the industry.

Brouthers has been a licensee in South Carolina since 1987 and became an instructor in 1989. She is the founder of the Real Estate Training Institute of Rock Hill and has taught continuing education courses to many licensees in South Carolina. In addition, she has taught nationally for the National Association of REALTORS as well as state and local REALTOR associations. She has appeared in numerous videos, conducted televised workshops on agency, and authored books on agency relationships. She has been described as a "street practical" teacher, and states that "students have to be able to take the information out of the classroom and put it to work on the street."

Over the years, Brouthers has earned credentials that include CRB, GRI, ABR, CAI, BS, MS, M.Ed., and is a Ph.D. candidate in Adult Education. She is one of only about 100 national Distinguished Real Estate Instructors (DREI), a designation of REEA. The Commission congratulates Dianna Brouthers on this, her latest achievement.



Dianna Brouthers

DISCIPLINARY ACTIONS

Hearings

W. M. "Mack" Chamblee, Salesman Anderson Area Properties Anderson, South Carolina

For engaging in conduct in a real estate transaction that demonstrated incompetency in a manner as to endanger the interests of the public. Respondent was privy to and failed to communicate to the buyers that the property survey did not conform to the requirements of the contract for sale, which was written by the Respondent.

By Order of the Commission: Public reprimand and a fine of \$1,000.

William L. Prickett, BIC Piedmont Realty Corporation Clinton, South Carolina

For engaging in conduct which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in a real estate transaction and for failing to account for or remit monies coming into his possession belonging to others. Also, for failing to secure a written management agreement for property that he managed, failing to maintain a trust account record keeping system as required by law, for failing to maintain records for the required five years and for issuing checks that were not honored by the bank.

By Order of the Commission: License revocation and a fine of \$4,500.

James R. Rochester, BIC James Rochester Real Estate Company Greenville, South Carolina

For making a substantial misrepresentation, for making false promises of a character likely to influence, persuade, or induce others, for engaging in conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in such a manner so as to endanger the interests of the public, for failing in a reasonable time to account for monies coming into his possession which belonged to others and for failing to properly deposit money received in a real estate transaction in a separate escrow account.

By Order of the Commission: Twelve (12) month license suspension followed by twelve (12) months probation and a fine of \$3,500. Appeal pending.

Joyce Ross, PMIC Ross Management Company Hilton Head Island South Carolina

For resolution of a claim that she participated in the management of certain properties prior to securing a written management agreement.

By Order of the Commission: Public reprimand, a fine of \$1,500 and two (2) years probation.

Consent Orders

Jill A. Allen, BIC J.B. Allen Real Estate Myrtle Beach, South Carolina

For soliciting real estate property management business under a name other than that in which she was licensed. Respondent resigned as broker-in-charge and began managing several of her owners properties under the name of her new company before officially transferring her license.

By Consent: Public reprimand and complete a continuing education course on real estate ethics.

Mickey D. Durham, Broker Agent Owned Premier Group, Inc. Goose Creek, South Carolina

For failing to secure earnest money at the time of the writing of the offer. The offer written by the Respondent recited earnest money that was not secured until after HUD accepted the offer.

By Consent: A public reprimand and a fine of \$200.

Thomas J. Gibbons, Jr., Inactive Summerville, South Carolina

For being convicted in federal court of a crime involving moral turpitude..

By Consent: License revocation.

Joe E. Oliver, Broker-in-Charge United Country Hardeeville Realty Hardeeville, South Carolina

For failing to properly maintain his escrow account as he kept no journal, no ledgers and was not maintaining a current checkbook balance. Respondent had also never prepared an agency disclosure form as required in all transactions. No intentional wrongdoing was indicated and there was no escrow shortage.

By Consent: License suspension stayed for ninety days (90) with the requirement that he complete a Unit III brokers course and pass the course examination.

Joe B. Owens, Broker-in-Charge Owens Realty Blackville, South Carolina

For failing to account for rental proceeds and for not maintaining his escrow account since March 1997. Since March 1997 the Respondent was rarely in his real estate office and was only nominally involved in his real estate business. Investigation found that the real estate escrow account was short at least \$2,195.

By Consent: License revocation.

Oystercatcher Island Villas Litchfield Beach, South Carolina

For entering into a contract with a member of the public to sell a timeshare interest in a villa that was not first registered with the Commission. Respondent had registered prior offerings and there is no evidence of willful disregard of the statutes.

By Consent: Fine of \$1,000.

Sarah J. Perkins, BIC Perkins and Associates North Myrtle Beach, South Carolina

For failing to maintain a copy of an agency disclosure agreement.

By Consent: Public reprimand and a fine of \$300.

Judy L. Peters, PMIC J. Peters Property Management Co. Hilton Head Island, South Carolina

For engaging in property management activities under a name other than that in which she was licensed. Respondent managed two properties for some period of time under her own name while she was property manager-in-charge of a company that she did not own.

By Consent: Public Reprimand.

Sheila G. Streetman, Inactive Formerly of Agent Owned Premier Group Goose Creek, South Carolina

For engaging in property management activities under a name other than that in which she was licensed. Respondent managed a property under her own name while she was licensed as a property manager under a broker. Respondent failed to deposit the tenant's security deposit in an escrow account but did promptly refund the deposit when the tenant moved.

By Consent: Ninety (90) day license

suspension stayed to a public reprimand and two (2) years probation with the condition that she pay a fine of \$250.

**Roger K. Tandon, Broker
Formerly with Century 21, Bob Capes
Columbia, South Carolina**

For failing to deliver to his broker monies he received in a real estate transaction. The real estate transaction involved a loan assumption with the buyers taking possession and paying monthly payments to the sellers until they had paid enough to buy out the equity and assume the loan. Respondent had permission from his broker-in-charge to maintain the deposit and payments in his personal business account because his employing broker was not set up to handle the payments. The Respondent maintained all payments and turned them over to the sellers attorney.

By Consent: Ninety (90) day license suspension stayed to a public reprimand and two (2) years probation with the condition that she pay a fine of \$500.

**Swain N. Thompson, III, Salesman
Coldwell Banker Durham Meehan Co.
Anderson, South Carolina**

For issuing a check to the Commission for license which, when presented to the financial institution, was returned for insufficient funds.

By Consent: License revocation stayed to a public reprimand and twelve (12) months probation with special condition that he, pay a fine of \$250 within fifteen (15) days and effect settlement of the bad check and returned check fees.

**Willie J. Williams, BIC
Century 21 Chuck Ruff Realty
Columbia, South Carolina**

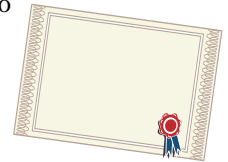
For entering into an agreement to manage property without a written agreement and for failing to maintain records of the collection of rents, payments made to the owners or the security deposit paid by the tenant. Further the Respondent did not maintain the funds from the transaction in a company escrow account.

By Consent: Two (2) year license suspension stayed to a public reprimand and two (2) years probation with the condition that he pay a fine of \$2,500.

MCE; deadlines for post-licensing courses, etc., etc. There are no provisions for extension of these deadlines - no matter the excuse. There are provisions, however, for consequences to those not meeting these deadlines. In some cases, these provisions are neither pleasant nor readily acceptable - but they are consistent and not arbitrary! Doing your part will help eliminate a great deal of anxiety and frustration and thus, the need to impose some involuntary sanction against your license.

MCE And Reinstating Your Inactive License

A licensee on inactive status must renew biennially and pay the renewal fee but is not required to complete the eight hours of mandatory continuing education (MCE) as a condition of inactive renewal. A licensee may remain on inactive status indefinitely, and his/her license may be activated at any time by application, payment of the \$10 fee (no new license fee is required), and by providing proof of eight hours of MCE which was taken within the two years immediately preceding the activation date. This eight hours used to activate the license satisfies the requirement for MCE for the period (however indefinite) in which licensee was exempt. The licensee should not confuse the eight hours used to activate his/her license with the eight hours required on a biennial basis to renew an active license - the renewal date is always on June 30, and an activation date could be any date the licensee wishes to activate an inactive license.

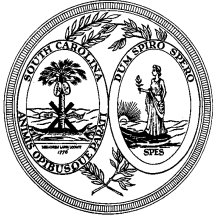


Example: A licensee activates his/her license in November and provides proof of eight hours of MCE in order to do so. This same licensee's renewal date is the following June 30. In order to renew his/her newly activated license at the next June 30 renewal date, the licensee must provide proof of an additional eight hours of MCE if licensee was inactive at his/her last renewal date and had not completed eight hours.

About Dinosaurs And Real Estate Agents

Would you hire a real estate agent to help you buy or sell your house? You might, but that possibly isn't true of many consumers - for more reasons than one. Consumers are more than ever knowledgeable and in control, and they have choices. Their perception of real estate licensees is too often created by some unpleasant experience they or a friend has had with a licensee who doesn't know the law and/or doesn't comply; doesn't make proper and adequate disclosures; doesn't practice solid business ethics; and generally, doesn't exhibit characteristics of a professional. Although licensees who fit this description may be relatively small in number, they "spoil the barrel." Do your part to project a positive image. Ensure that you are professional in all dealings and be intolerant of those who aren't. Technology with consumer attitudes has and will continue to impact the way business is conducted. Personal interaction may be significantly reduced to computer interaction. Is it possible that buying or selling real estate could be as simple as the double click of a mouse? Change is certain, and the successful future of the real estate practitioner depends in large measure on the demands the industry places on itself - its courage to meet the opportunity and challenges of change. Consumers will place their own demands on the industry and such will require the fostering of more expertise, more diligence, and more true professionalism! A real estate licensee who is unprepared and unprofessional could become as extinct as a dinosaur.





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