

# S.C. Real Estate Commission News

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## 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 these... dual contracts almost always equate to loan fraud and loan fraud has the tendency to arouse the interest of federal law enforcement agencies and prosecutors. The Federal Bureau of Investigation has recently asked for our help and offered its assistance in cases involving loan fraud. Title 18 of the United States Code, Section 1014, makes loan fraud punishable by fines 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 can hardly be unaware of a dual contract and in most cases is in the best position to have in-depth knowledge about 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 percent 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

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## When Does Your License Expire? 6/01 or 6/02?

Please check in the lower left-hand corner of your pocket card to find your expiration date. If it says 6/01, the expiration date is June 30, 2001, not June 1. If it says 6/02, the expiration date is June 30, 2002, and not June 2. In this case, you will not renew until June 2002. If you are a salesman (not a provisional salesman) or broker and must renew this year, you must have completed eight hours of continuing education between July 1, 1999, and before June 30, 2001. You cannot renew your license on an active status until you complete the eight hours (two must be in a core course). If you have not completed the continuing education, you may still renew and place your license inactive. 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 agents under that broker-in-charge will also be placed inactive because no broker-in-charge is sponsoring the agents.

It is the licensee’s responsibility to notify the Commission of any change in his/her mailing address (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 the license. If your address has changed, notify us in writing today. There is no charge for a home mailing address

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The South Carolina  
REAL ESTATE  
COMMISSION NEWSLETTER

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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.

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licenses, and two real estate agents were reprimanded, placed on probation and were required to pay \$9,000 in restitution to the buyers in order to keep their licenses from being suspended indefinitely. The Real Estate Appraisers Board is currently investigating a case where a real estate agent, not involved in the dual contract, reported that it went to closing even though it was pointed out to all the participants that it appeared illegal. 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 he/she cannot afford and a home that cannot be sold 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 possibly in the making. Please call the Commission if you become aware of any suspicious transactions.

**Staff Notes**

**Archie Joins Real Estate Staff**



Betty Archie

The Real Estate Commission welcomes Betty Archie to the licensing staff. Archie has been with the Residential Home Builder Commission in its licensing department for the past two years. She worked previously in the Division of Fire and Life Safety in regulatory services for four years. She takes over the duties of Diane Floyd, who moved to the education department.

Archie will be handling salesman examination applications, property management applications, upgrade applications for provisional licensees and cancellation of provisional licenses.

Archie has a son, Brent, 12, and a daughter, Avius, 18. We are glad to have her with us. She can be reached at (803) 896-4450.

**Floyd Moves to Real Estate's Education Department**



Diane Floyd

Diane Floyd has recently joined the staff of the education department. Floyd has been with the Commission as a member of the licensing department for more than 10 years. She was responsible for issuing sales licenses, processing sales and property management applications, upgrading applications for provisional licensees and canceling of provisional licenses.

Floyd's voice is the first one you hear when calling the education department. In addition to handling the phone calls, she routinely oversees the day-to-day administrative details, prepares the weekly fax-on-demand reports, screens and processes course provider and instructor applications, and maintains the library and files.

She is married to local businessman, Coke Floyd, and has one son, Bill, two foster children, Justin and Danny, and three pampered cats.

## Do I Have Enough CE?

License renewal is a hot topic among real estate agents each year at this time. Seems like from the week after the Masters Tournament until June 30, the Commission is barraged with calls from licensees wanting to know how many hours of continuing education they have accrued and when they have to renew their license. The Commission does not know how many hours a licensee has, since this office no longer maintains a licensee's continuing education hours.

It is up to licensees to maintain their own records and certificates of courses they have completed. If you are still lost and confused, look at your pocket card. The date of expiration is on your license, and it will either have 06/01 or 06/02. If you are unsure of what courses you have completed, you will need to search for course certificates you were issued or consult with the provider with whom you completed the course.

If your license expires this year, you will need eight hours total of real estate continuing education. A minimum of two hours must be in a core course completed between July 1, 1999, and June 30, 2001.

If you are short of hours and starting to panic, you can secure a continuing education course calendar through our fax-on-demand system or via the Internet. You may access the fax-on-demand system by calling (803) 737-8423 (SERVICE) and request Document #151. To secure the calendar by Internet the address is [www.llr.state.sc.us](http://www.llr.state.sc.us).

## Trust Account Caravan Receives Rave Reviews

It's always good to be the bearer of good news. According to the interest generated and the evaluations received after the first two offerings, the Trust Account Caravan appears to be highly successful. This program, developed under grant guidelines issued by the Center for Applied Real Estate Education and Research of the University of South Carolina and delivered by the College of Real Estate, Inc. of North Myrtle Beach, has proven to be all that we had hoped in terms of both broker interest and information transfer. The College of Real Estate, Inc. proposed to deliver five programs throughout South Carolina between September, 2000 and September, 2001.

Registration for the six-hour program was open to brokers-in-charge, property managers-in-charge, and trust account managers/bookkeepers. Those holding licenses received continuing education credit while non-licensed trust account managers/bookkeepers received a certificate of completion. Class enrollment was limited to 50 students per location in order to allow for adequate group work. In addition, the South Carolina Real Estate Commission provided a staff member from the investigative division on-site at each presentation to answer direct questions.

The programs were offered at no charge to licensees in South Carolina who were notified of the programs through this newsletter. Within hours, all classes were filled and had extensive waiting lists. Final numbers were:

• Columbia	Waiting list of 165	<b>Total people enrolled ..... 250</b>
• Greenville	Waiting list of 137	<b>Waiting list ..... 495</b>
• Myrtle Beach	Waiting list of 110	
• Charleston	Waiting list of 54	
• Hilton Head	Waiting list of 29	

Many BIC/PMIC brought their trust account managers and worked together as a team, creating a crosscheck program to ensure implementation of guidelines and reduce the risk of the BIC/PMIC. Attendees left with questions answered, checklists in place, and the ability to gain control of their trust accounting process. Many also found new respect for their place as trustees of the funds of others along with a clearer understanding of their role as the responsible party in a transaction involving trust funds.

The success of this program has prompted us to request another grant of this type to be offered for 2002. Further information will be made available to you regarding that opportunity as the process progresses.

## From the Compliance Manager

### Earnest Money Is Earnest Money

Arising out of a recent complaint investigation was the question of how to treat earnest money received on a back-up contract. Regardless of the provisions of the back-up contract, earnest money must be handled just as in any other contract. Recently, a licensee was fined and reprimanded for not depositing earnest money that bound a back-up contract. By the time the back-up contract became the primary contract, the potential buyers had stopped payment on the check essentially leaving no consideration on the contract.

Remember that the license law requires a broker-in-charge to deposit earnest money checks within 48 hours after acceptance of the offer. Cash must be deposited within 48 hours of receipt.

#### **There are no exceptions!!!**

While we are on the subject of earnest money, I would be remiss if I did not mention an earnest money violation we see routinely. How often have you as a licensee taken an earnest money check, clipped it to the offer and carried it around in your briefcase for a week or two while you are waiting for the signed contract from your seller? Let me remind you that this is also a violation of the license law and your company policy should address the issue. If not, however, the license law does address the issue in 40-57-135(B)(8), which states that "all monies received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge or property manager-in-charge **immediately** must be delivered to the broker-in-charge or property manager-in-charge." Immediately is the operative word. The dictionary defines immediately as "without delay, or as soon as." Please do not get caught holding the earnest money.... cash or check.

change. Please remember this if you are changing your home address on your renewal form.

The Real Estate Commission does mail notices to the last known address; however, failure to receive the notice does not relieve licensees of the responsibility of seeing that his/her license renewal fees are paid. Section 40-57-110(H) of the South Carolina Real Estate License Law states, "It is the licensee's responsibility to renew the license whether or not notice is received."

Avoid delays and renew early! Most people tend to wait until the last minute to accomplish a task. Completing your renewal will take less than five minutes. By not procrastinating, you will know that we have processed your renewal, and a new license will be received by your broker-in-charge before the June 30 deadline. We are able to process renewals in less than a week in late May and early June. However, the longer you wait to

renew your license, the longer it will take for us to process it. Also, please follow the instructions carefully to avoid having your information returned to you because some



information may be incorrect or incomplete. Remember, if you fail to renew by the deadline, you have until December 31 to renew with penalties; however, you may be subject to being charged for practicing without a license.

It is costly both financially and in time to you as an individual licensee and to staff to have your check returned for insufficient funds. There is an additional \$25 charge for a returned check and then you must submit certified funds. While I am on the subject of checks, please make sure your check is made payable to the South Carolina Real Estate Commission. This applies any time you are sending a check to the Commission for whatever the reason may be. There are about 40 professional and occupational licensing boards in the Department of Labor, Licensing and Regulation, and when the check does not specify the Board/Commission on it, it is extremely difficult to get it to the right place and often times, it must be returned to the sender.

If you have any questions regarding the renewal process, please contact the licensing department.

## LLR Implements Strategic Plan

When the South Carolina legislature created the Department of Labor, Licensing and Regulation (LLR) in 1994, one driving goal was to improve efficiency and the quality of service delivered by the 40 separate agencies that were merged to form the agency.

The legislature envisioned an agency that would promote efficiency and build accountability. With that in mind, LLR's staff has created a strategic plan for the agency. This plan is a roadmap to help the agency reach the ultimate goal of being the best state government agency in the United States by the year 2010.

Key points of the strategic plan include:

- Core purpose or mission – Making South Carolina a Safer and Better Place to Work and Live.
- Core values – Provide excellent service, act with integrity and treat people with respect.
- Key strategies – "Maximize Customer Satisfaction," "Maximize Employee Satisfaction" and "Use Resources Efficiently."

Several interim goals also were established:

- By 2001, be recognized in the Southeastern United States as a leading state government agency.
- By 2002, be recognized in the United States as a leading state government agency.
- By 2005, have specific performance measures in place to track progress toward being the best state government agency in the United States.

"These interim goals will keep us focused on the larger goal of being the best state government agency in the United States by 2010," LLR Director Rita M. McKinney said. "I like to think of these goals as short-term wins on the road to achieving excellence in public service."

## LLR's Core Values

- Provide Excellent Service
- Act with Integrity
- Treat People with Respect



# DISCIPLINARY ACTIONS

*Does not include cases on appeal*

## HEARINGS

**Mary C. Hofer, Broker-in-Charge**  
**Investors Management Corporation**  
**Rock Hill, SC**

For failing to maintain records pertaining to the collection and disbursement of rents, failing to maintain copies of agency agreements for five years as evidenced by her failure to provide documents as requested by the Commission, failing within a reasonable time to account for monies coming into her possession which belonged to others, and demonstrating bad faith, dishonesty, untrustworthiness or incompetency in such a manner as to endanger the public.

By Order of the Commission: 60-day license suspension, \$5,000 fine and two years probation.

**David M. Strong, Broker-in-Charge**  
**Realty Trust Inc.**  
**Hilton Head Island, SC**

For nine separate charges stemming from his actions wherein he provided real estate services for a client and received compensation that he did not reveal to his broker-in-charge and for which all parties to the transaction were not informed. Respondent, as an agent for Prudential Commercial Services, initially engaged in a real estate transaction representing a group of buyers and received a sales commission pursuant to the purchase of property. Later, the Respondent entered into another contract with a member of the original group of buyers under the name Diversified Properties Group, LTD to provide certain real estate services, and as a result he collected a second commission in excess of \$175,000. Respondent failed to disclose the receipt of the second commission to his then-broker-in-charge or to the other members of the group of investors.

By Order of the Commission: One year license suspension stayed to probation with the condition that the Respondent pay a \$9,000 fine and, within 12 months, complete 60 hours of real estate courses approved by the Commission.

**Adam T. McTeer, Salesman**  
**Porter Realty**  
**Sumter, SC**

For engaging in a real estate transaction after his license was canceled. Respondent failed to complete the required 30 hours post licensing courses required to be issued a permanent sales license but continued to sell real estate for Porter Realty.

By Order of the Commission: License revocation, reprimand and \$1,000 fine with the caveat that the Respondent may apply for a new license after one year if the fine has been paid.

## CONSENT ORDERS

**Debra E. Abraham, Salesman**  
**The Space Company**  
**Charleston, SC**

For failure to complete a buyer's agency agreement and for the improper handling of consent to dual agency disclosure.

By Consent: Public reprimand and \$300 fine. Respondent also ordered to take a continuing education course on agency that will not count toward fulfillment of her mandatory continuing education requirement.

**Kelly H. Ahrens, Broker-in-Charge**  
**Newberry Realty Group**  
**Newberry, South Carolina**

For failure to properly account for escrow money in a real estate transaction.

Respondent prepared a contract that called for the buyers to deposit with the sellers' escrow money in the amount of \$7,200. Sellers alleged they never received the earnest money. The Respondent admits that he failed to verify the receipt of the earnest money while at the same time the Respondent could not explain why his escrow records reflected the receipt of \$1,000 earnest money that was disbursed to the seller at closing.

By Consent: Reprimand and \$4,000 fine with \$2,000 of the fine being suspended in lieu of two years probation.

**Derry Atkinson, Salesman**  
**ERA James Tedder Real Estate**  
**Hartsville, SC**

For making a dual set of contracts and for managing property outside the scope of her broker-in-charge. Respondent was selling commercial property belonging to her broker-in-charge. The second contract was written reflecting a higher sales price and showing a credit for prior lease payments by the buyer in order to establish an equity position by the buyer, knowing that the buyer had not leased the property. Respondent also managed a property through her bookkeeping and tax service and not through her broker-in-charge.

By Consent: One year license suspension stayed to two years probation, public reprimand and \$2,500 fine.

**John W. Davis, Broker-in-Charge**  
**Davis Real Estate Company**  
**Bishopville, SC**

For failing to complete an Agency Disclosure Form. Respondent listed a property and prepared an Agency Disclosure Form, however, the listing expired and was listed by another company. At a

continued next page

later date, the Respondent re-listed the property and failed to provide a second Agency Disclosure Form.

By Consent: Reprimand and \$300 fine.

**Beverly J. Decker, Broker**  
**Century 21, Bob Capes Realtors**  
**Columbia, SC**

For conduct which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in a real estate transaction. Respondent, acting as a buyer's agent, failed to follow-up or insist that her buyers follow-up on information that a property inspection report was prepared for the sellers. The report that contained significant reported defects was in the hands of the seller's agent but was never demanded by the Respondent. Both agents involved in the transaction failed to place any real significance on the inspection report because the contract was written "as is."

By Consent: Public Reprimand.

**Hayward S. Edmunds,**  
**Broker-in-Charge**  
**H.S. Edmunds, Inc.**  
**Spartanburg, SC**

For failure to complete management agreements for about 300 properties that the Respondent's company manages.

By Consent: License suspension stayed for 60 days and permanently thereafter upon proof to the Commission that management agreements are in place for all properties under management. Public reprimand and \$2,000 fine.

**Yasuko N. Fox, Salesman**  
**The Prudential, C. Dan Joyner**  
**Mauldin, SC**

For failure to properly complete Agency Disclosure Forms. Investigation revealed that the Respondent's actions resulted

from inexperience and possible intimidation by the seller.

By Consent: Public reprimand.

**Pamela J. Griffin, Broker-in-Charge**  
**Woodside Development Limited**  
**Partnership**  
**Aiken, SC**

For failure to specifically and prominently disclose, in writing, the existence of a fee to builders. The Respondent's company, pursuant to contracts with certain "master builders," receives commissions equal to 7 percent of the cost of each home that the master builders construct. The fees received from the master builders were not disclosed specifically, orally or in writing, to the purchasers of building lots.

By Consent: Reprimand and 12 months probation. Special conditions of probation included a fine of \$500 that was stayed, following proof to the Commission that all referral fees from builders be disclosed in writing to all future purchasers.

**John J. Hudock, Broker**  
**Formerly BIC of**  
**Wedgfield Plantation Realty**  
**Georgetown, SC**

For conduct which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in a real estate transaction. Respondent, as a builder, sold several homes that, according to the contract, included a golf club membership. At the closing, the golf club membership was not provided by the Respondent and although other concessions were alleged by the Respondent, he had no written proof by way of contract addendum as evidence of alternative concessions.

By Consent: Public reprimand and \$5,000 fine. The fine was suspended, and the Respondent was placed on probation for 24 months with the special condition that he pay a \$500 fine and make application

and pay for full golf club memberships for two home purchasers.

**Wilton B. Harrison, Salesman**  
**Formerly with Coldwell Banker**  
**Tom Jenkins**  
**Columbia, SC**

For failing to turn over immediately, to his broker-in-charge, escrow money received in connection with a real estate contract in one case and in another for failing to turn over either the contract or the earnest money to the broker-in-charge. Also, for working with a buyer client for more than two weeks without a buyer's representation agreement.

By Consent: Indefinite license suspension.

**Birtha H. Kendrick, Broker-in-Charge**  
**The Prudential, C. Dan Joyner**  
**Mauldin, SC**

For failure to adequately supervise an associated licensee so as to prevent or curtail a violation of the license law. The violation relates to the supervision of Yasuko Fox, whose violation is reported above.

By Consent: Public reprimand and \$300 fine.

**Tiffany J. Ragone, Salesman**  
**Formerly with Leatherman Realty**  
**Florence, SC**

For being convicted of Breach of Trust with Fraudulent Intent, a crime of moral turpitude, and for failing to notify the Commission within 10 days as required by law.

By Consent: Voluntary license surrender with the understanding that any future request for a license must be approved by a majority of the Commission after a hearing wherein the Respondent would

have to demonstrate her fitness to hold a license.

**Kathleen G. Jordan-Rawers,  
Broker-in-Charge  
Exit Ocean Isles Real Estate  
Sullivans Island, SC**

For failure to deposit earnest money in a trust account within 48 hours after acceptance of a contract. Respondent took earnest money on an offer that became a back-up contract and did not place the money into the escrow account under the mistaken impression that, until the back-up contract became the primary contract, the money did not have to be placed into the escrow account. At the point where the first buyer was not able to remove a contingency and the back-up offer became the primary offer, the back-up purchasers had stopped payment on the escrow check and backed out of the contract.

By Consent: Public reprimand.

**Susan M. Ruelle, Property Manager  
Inactive**

For issuing a check for a license renewal that when deposited was returned for insufficient funds.

By Consent: License revocation stayed to one year probation with the condition that she redeem the check and pay a \$250 fine.

**Fred A. Schmitz, Broker-in-Charge  
Avalon Rentals and Sales  
Hilton Head Island, SC**

For failing to secure a written property management agreement and for failing to remit rental proceeds on a timely basis.

By Consent: Indefinite license suspension stayed upon a reprimand, payment of \$2,000 fine and probation for 24 months.

**Anita E. Sloane, Broker-in-Charge  
Sloane Realty  
Charleston, SC**

For failing to secure a written management agreement for several properties belonging to one person. Respondent had, for three years, and another company for a number of years before that had managed properties belonging to an elderly gentleman who liked to do business on a handshake. When the gentleman died, his heirs had a problem with the Respondent, and at that time, it was discovered that no management agreement existed. There was no proof of any improprieties except the absence of a written agreement.

By Consent: Public Reprimand.

**Luther R. Tate, Broker-in-Charge  
L & L Realty  
Gaffney, SC**

For failure to place earnest money into his escrow account. Respondent returned the escrow money to the buyers even though the purchasers were disputing the disbursement.

By Consent: Public reprimand and \$1,500 fine. Fine stayed by the Respondent placing \$500 into his escrow account until the courts properly settle the dispute. Respondent also ordered to take a trust account course.

**James S. Tedder,  
Formerly Broker-in-Charge  
ERA James Tedder Realty  
Hartsville, SC**

For making a dual set of contracts. Respondent was the owner and seller of commercial property through his agent, Derry Atkinson. The second contract was written reflecting a higher sales price and showing a credit for prior lease payments by the buyer in order to establish an equity position by the buyer.

By Consent: One year license suspension stayed to two years probation, public reprimand and \$2,500 fine.



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

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