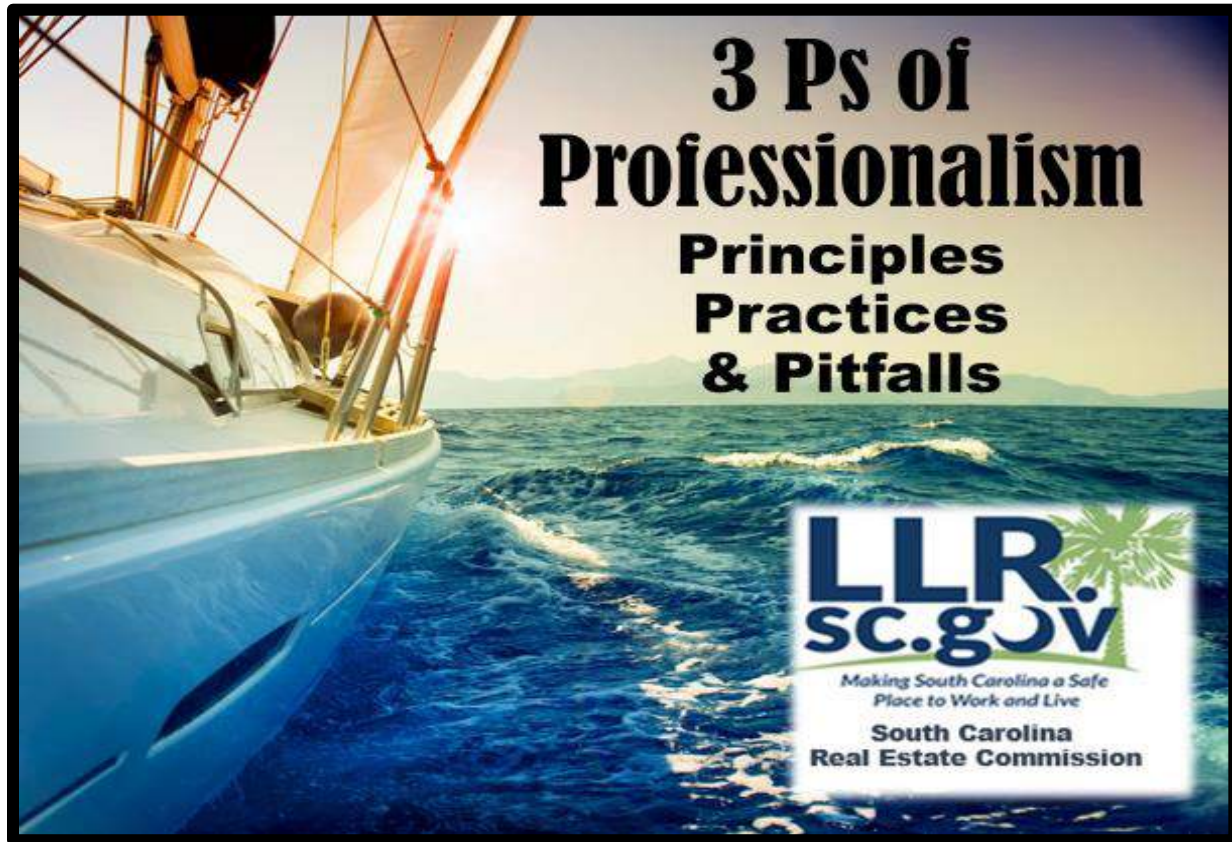




South Carolina Real Estate Commission



Student Manual Mandatory Core Course 2018-2020

South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211
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llr.sc.gov



About This Course

This course meets the mandatory core requirements for continuing education in the 2019-2020 license renewal period. The content selection and subject matter outline for this course was created by the South Carolina Real Estate Commission's Education Committee. The topics chosen were selected because they are areas of license law and practice which pose particular issues for real estate licensees in the state of South Carolina.

The South Carolina Real Estate Commission believes that this course should improve a licensee's ability to sail smoothly through the Principles, Practices and Pitfalls of serving clients and protecting and promoting the interests of the public. The Three Ps of Professionalism: Principles, Practices and Pitfalls will help licensees better understand pressing issues, changes in law and identify tools to deal effectively with these issues.

About the Author



This course was created and developed by Len Elder, JD, DREI, CDEI. Len has been heavily involved in the real estate profession for nearly 3 decades. Len believes that educational classes and events should leave students excited, energized, inspired and knowledgeable. Len has a B.A. degree in Speech Communications and a Juris Doctorate in Law. He was a nationally recognized intercollegiate debate award winner and was the Speech Forensics Debate Coach for Capital University. He is the youngest recipient ever of the John J. Getgey Memorial Award for Academic Excellence and Achievement in the practice of law. As an attorney, Len was undefeated in court of appeals proceedings and in arbitration hearings. The National Real Estate Educators Association (REEA) has recognized Len as a Distinguished Real Estate Instructor (DREI). He has been published as the author of law journal articles, cover stories for the National Real Estate Educators Association Journal and his books titled, "**Ovation – How to Present Like a Pro**" "**UnRandom Thoughts**" and "**A Treasonous Season**" are published on Amazon.com.

Today Len serves as the Senior Instructor and the Curriculum Developer for Superior School of Real Estate in North Carolina. He is involved in the teaching of prelicensing education in 28 states and delivers CE courses in 50 states with McKissock serving over 850,000 students per year. He has been a Broker-in-Charge in both Arizona and North Carolina. He has been a past board member and officer of the National Real Estate Educators Association. He is currently President of the North Carolina Real Estate Educators Association and has served as an elected member of the national Distinguished Real Estate Instructors Leadership Council. A regular presenter and keynote speaker across the country Len teaches and presents courses nearly 2,000 hours per year and has taught over 30,000 hours of live class room instruction.



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3 Ps of Professionalism

Principles, Practices & Pitfalls

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South Carolina Biennial Real Estate Education Requirements

SC Code of Laws §40-57-340 states that as a condition of active license renewal a broker or salesperson shall provide proof biennially:

- **Completion of 10 hours of continuing education approved by the commission**
 - 4 hours in mandated topics (CORE Course)
 - 6 hours in elective courses
- **For Brokers-in-Charge**
 - 4 hours must be in advanced real estate topics designed for BIC's
- **Courses and renewal must be completed by the biennial deadline**
 - ½ of licensees renew in even numbered years
 - ½ of licensees renew in odd numbered years
- **Failure to renew consequences**
 - Immediately placed in a lapsed status
 - Reactivation upon education completion and payment of fees



What is Expected of You on this Journey

It has always been true that you get out of things what you put into them. Licensees are expected to participate in class, be present for the entire class and remain focused on course material so as to improve their skills and abilities as a real estate professional. The use of electronic devices in the classroom should be limited to dealing with course issues and should be used only at the direction or approval of the instructor.

We have worked hard to make this course a fun, interactive and informative class and we trust that you will enjoy the journey. There are some useful tools such as the list of things to implement which is contained on the last page of these materials and periodic "BIC Alerts" that provide practice tips to help you build your "To Do" list.

Student Notes



Section 1

Licensing Law Review

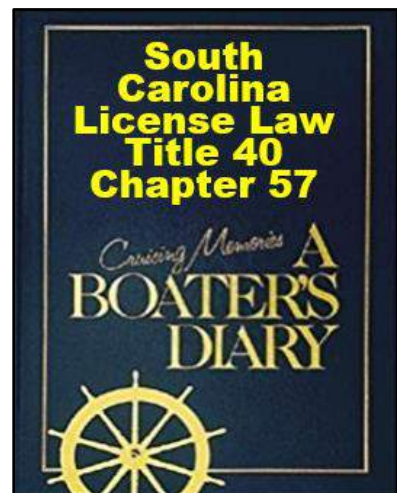
Learning Objectives for Section 1

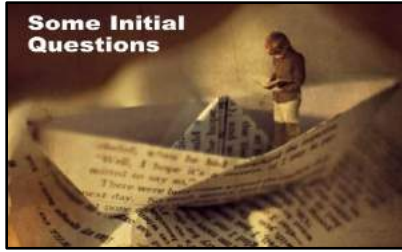
- Familiarize licensees with South Carolina License Law
- Identify appropriate locations and citations for references to South Carolina license law
- Create awareness of particular aspects that are contained in South Carolina license law
- Engage licensees in interactive dialogue concerning license law
- Build comradery between the licensees to increase dialogue and participation in the course
- Prepare licensees to be able to research their own answers to their own questions when practicing the profession of real estate

Student Notes

Group Engagement Interaction

- Gather in teams of 4-5 people
- Select a captain to guide the discussion and write down your answers
- Using your book, the internet, your cell phone and discussions with each other answer the following questions
- Include in your answer the appropriate reference to S.C. License Law





Interactive Group Questions

1. How does the South Carolina Real Estate Commission define “Substantive Contact?”

Student Notes

2. Is there a section in South Carolina licensing law that defines a team or sets forth rules for the proper operation of a team?

Student Notes

3. What violations are addressed in the licensing law for misconduct and redress?

Student Notes

4. Where can a licensee find the rules regarding the operation of trust accounts?

Student Notes

5. What is a “Personal Trust Account” and what is it used for?

Student Notes

6. Must a BIC maintain a specific office location?

Student Notes

7. Can a brokerage use a trade or franchise name?

Student Notes

8. Can a real estate brokerage use unlicensed assistants? What are the restrictions and where can they be found?

Student Notes

9. What is the new requirement for a property manager to become a PMIC?

Student Notes

10. What are the exemptions from the biennial CE requirement for both salespersons and Brokers-in-Charge?

Student Notes



Section 2

Offers & Counteroffers

Learning Objectives for Section 2

At the conclusion of this unit licensees will be able to:

- Explain what must be done when an offer has been received
- Identify the information that should be in the offer received
- Describe what must be done after receiving a written acceptance of an offer
- Explain how changes or modifications (i.e. counteroffers) are required to be handled
- Describe the responsibility of the broker-in-charge regarding these learning objectives
- Identify what must be done by a licensee if a seller rejects an offer without making a counteroffer
- Describe the information that must be presented to a seller if a licensee plans to make an offer on an in-house listing
- Explain what must be done before a fee can be legally collected if a licensee buys an in-house listing

Student Notes

Basic Principles of Offers

Real estate licensees should fully and completely understand the offer and acceptance process and be able to explain it to clients and customers in a clear and logical fashion. As we will discuss later, the process to create a binding contract requires a meeting of the minds and mutual assent of the parties. The party making the offer or counteroffer is referred to as the offeror and the party receiving the offer or counteroffer is referred to as the offeree.

Fundamental principles of dealing with offers:

- An offer once made remains open until it is accepted, countered, rejected or the offer expires;
- An offeror has a right to withdraw or terminate the offer or counteroffer at any time prior to acceptance;
- Any change or modification to an offer or counter-offer, however slight, terminates the offer and creates a counter-offer;



South Carolina license law imposes certain responsibilities on licensees dealing with offers. 40-57-135(H) prescribes all of the following by stating that with regard to offers to purchase real estate, a licensee shall:

1. Upon receipt prepare all offers in _____ and _____ present them to the seller;
2. Upon written acceptance of an offer, promptly deliver _____ to _____;
3. Ensure that all of the _____ of the transaction are included in the _____ and;
4. Ensure that changes or modifications made are in _____ and _____ by _____
Before proceeding with the transaction.

Student Notes



Pitfalls of Handling Offers

The Case Studies

The Plight of Sailor Jack

Jack, a buyer representative, wrote an offer for a buyer and immediately delivered it to the listing agent. Upon presentation of the offer to Sally, the seller, she indicated that she wanted to accept the offer and made just a minor change to the amount of earnest money. The change requested by the seller was sent to Jack and his buyer who made no further response. Three days later when the listing agent called Jack to inquire about the depositing of the earnest money, Jack informed the listing agent that his buyer was now under contract on a different home. Sally is

upset with the buyer's actions. What are the implications of this situation and how could the agents have better handled this potential pitfall?

Student Notes

Commercial Carl's Conundrum

Carl is a licensee who practices primarily commercial real estate. On one of his commercial listings he received an offer from Betty, a potential buyer. After reviewing Betty's offer, Carl's seller decided to reject the offer and not make a counteroffer. Carl determined that there was no need to respond to the buyer and took no further action. Thirty days later Betty contacted Carl and informed him that she was filing a complaint with the Commission because Carl did not respond. Was Carl required to respond to Betty in a commercial transaction? In what manner and method should he have responded?

Student Notes

Student Notes

Practices Regarding Offers and Counteroffers

BIC's have a responsibility under 40-57-135(I)(4) to make certain that associated licensees handle the offer and counteroffer process correctly. That means ensuring that all offers and counteroffers should be:

- In writing

- Dated and signed
- Promptly presented
- Contain all changes and modifications in writing and are initialed
- Delivered promptly to parties upon acceptance

Rejection of an Offer Without a Counteroffer

In order to assure and verify that offers have been presented to sellers, South Carolina law requires that the Real Estate Offer Rejection Form be completed when an offer is rejected without a counter. Refer to LLR website for the Real Estate Offer Rejection Form: www.llronline.com/po/rec.

The form which should contain no alterations or additions is required in both residential and commercial sales transactions and must be:

- Completed by the licensee

- Signed by the licensee
- Dated

The method and manner of communication of an offer or counteroffer is governed by 40-57-135(1)(6). The law states that offers and counteroffers may be communicated by use of fax or other secure electronic means including, but not limited to, the internet, and the signatures, initials, and handwritten or typewritten modifications to the foregoing documents are considered valid and binding upon the parties as if the original signatures initials and handwritten, or typewritten modifications were present on the documents in the handwriting of each party.

Licensee's Purchase of an In-House Listing

When a licensee wishes to purchase real estate listed with their associated brokerage, it creates a conflict of interest for the firm. SC Code of Laws §40-57-135 (1)(7.). This includes situations such as:

- **Purchases made directly or indirectly by the licensee;**
- **Purchases made for the licensee's own account or for a corporation or another business in which the licensee holds an interest or purchases made for a close relative; and**

- **Real estate for which the licensee has been approached by the seller or prospective buyer to act as an agent**

In order to minimize the impact of such conflicts state law demands that the Broker-in-Charge ensure that the licensee has made their true position known in writing to all parties involved. The provisions of SC Code of Laws §40-57-135(l)(8) require that a separate written agreement be signed by the seller client that:

- **Acknowledges the purchaser as a licensee affiliated with the real estate brokerage firm AND**
- **Recognizes the right of the seller to not pay the brokerage fee**

Be aware that this provision extends beyond listed properties and includes “real estate for which the licensee has been approached by the seller or prospective buyer to act as an agent.” SC Code of Laws §40-57-135(l)(7). So if for example an agent did a listing presentation, but did not obtain the listing and the agent later on decides to purchase the property directly from the seller the written disclosure of true position and affiliation to brokerage and the right not to pay will still be required.

Student Notes



Section 3

From Offers to Binding Contract

Learning Objectives for Section 3

At the conclusion of this unit licensees will be able to:

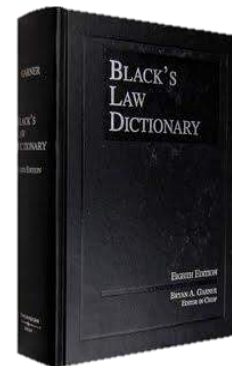
- Explain when an offer becomes a binding contract;
- List and explain the elements of a valid contract;
- List the information in an offer required to form a valid enforceable contract;
- Explain the pitfalls of communicating an oral acceptance or oral counteroffer.

Principles for Determining the Essential Elements of a Contract

The legal definition of a contract is simply:

“A promise or set of promises which the law will enforce.”

What is most interesting is not what is in the definition, but what is not in the definition. The basic definition of a contract does not require that there be a written document, that anyone sign a paper or that the creation of a contract requires an elaborate legal procedure. We all make promises every day, most of them don't turn into contracts. Over the years courts have developed ways of determining whether or not the promises exchanged rise to the level of an agreement which the law will enforce. Courts determine this by examining four fundamental elements:



1. The existence of **mutual assent** (meeting of the minds)
2. The presence of **competent parties**
3. The providing of proper and **valid consideration**
4. The **legality of the promises** that were made

Mutual Assent – Was there a mutual agreement that was freely negotiated and agreed to by the parties free from duress or undue influence?

Competent Parties – Were the parties competent? Did they fully and completely understand the nature of their acts? Were they impaired in judgment?

Consideration – Did each party offer to provide or give up something in order to support the promise made by the other. Was there a mutual exchange of promises?

Legal Act – Was the nature of the agreement between the parties for a legal and legitimate purpose?

Application of the Statute of Frauds

None of these essential elements of a contract make any requirement that a contract must be in writing. Lots of oral contracts, even proven, can be enforced in a court of law. However, certain types of contracts must be in writing in order to be enforceable. This requirement comes from the South Carolina Statute of Frauds, SC Code §32-3-10(4) which sets forth the types of agreements which must be in writing and provides that:



Any contract or sale of lands, or any interest in or concerning them must be in writing in order to be enforceable.

Student Notes

In addition to the SC Statute of Frauds, South Carolina license law also requires a written document in order for offers, counteroffers and contracts for the sale or transfer of real estate to be enforceable. 40-57-135(H).



The Contract Case Studies

Pitfalls in Contract Principles

Student Notes

Penelope's Power of Attorney

On Friday, March 18th Penelope and her husband Ben showed up at the closing office to sell their existing home. During the closing process it became obvious that Ben was experiencing a very progressed case of Alzheimer's. He could not indicate to the attorney the nature of the paperwork that he was signing. He had difficulty following instructions at one point and was uncertain of how to spell his name when he was asked to sign. The attorney informed Penelope that they could not continue with the closing because the attorney feared that Ben was incompetent to sign.

On Monday morning, March 21st, Penelope returned to the office with a Power of Attorney form that was dated for the previous Friday afternoon.

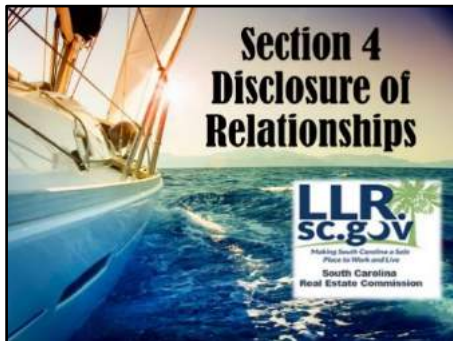
Do you think the attorney will now allow her to sign on behalf of Ben? What should occur in this scenario?

Student Notes

Earl's Earnest Money Debate

Earl tendered an offer to purchase but did not tender the earnest money with the offer. The offer was accepted signed and returned to Earl properly executed. Two days later Earl wanted to cancel the agreement and claimed there was no contract because since the earnest money was not tendered there was no consideration to form a contract. Is there a contract? How should this be resolved?

Student Notes



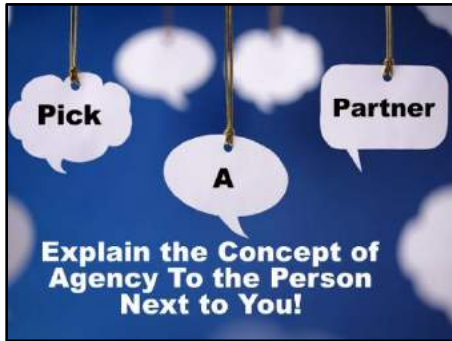
Section 4

Disclosure of Real Estate Brokerage Relationships

Learning Objectives for Section 4

At the conclusion of this unit licensees will be able to:

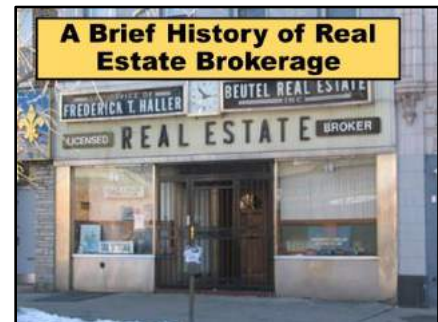
- Explain each part of the Disclosure Form
- Explain and give examples of customers in Transaction Brokerage;
- Explain and give some benefits offered by Seller Agency;
- Explain and list some benefits offered by Buyer Agency
- Define single and dual agency
- Explain South Carolina's Disclosed Dual Agency
- Explain South Carolina's Designated Agency
- Explain Transition from casual introductory talk to a meaningful conversation



Student Notes

Principles for Agency Relationships

Agency is best understood when it is put in the historical context of the evolution of the real estate profession. The real estate business actually began on Wall Street in New York City in the early 1800's. Wall Street was already a financial trading center that involved all types of commodities. Because houses were just another type of commodity, individuals began maintaining lists of properties that were available to buy. Sellers would establish an ask price and the first brokers would locate buyers who would establish a bid. The difference between the ask and the bid was retained by the brokers as their commission.



All representation was focused on sellers. There was little professionalism, no structured licensing system and consumers were often victims of real estate scams and schemes. As real estate offices began to be formed in the mid 1850's, there still was a lack of professionalism and standards for the real estate industry. Licensing boards and commissions would not get created for another 100 years.

In the early 1900's the National Association of Real Estate Exchanges (the parent organization of what would later become the National Association of REALTORS®) was formed to set standards of professionalism for the real estate industry. The centerpiece of that effort would be the drafting of the first REALTOR® Code of Ethics which professed fiduciary duties that would be owed to clients represented by real estate professionals. Nonetheless all such obligations and duties were owed only to sellers. Buyers were left in a caveat emptor world of non-representation.



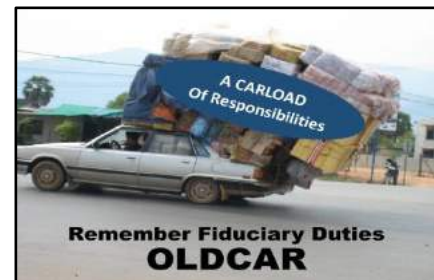
It was the seismic event in 1995 created by a class action lawsuit against Edina Realty that resulted in the payout of nearly \$20 million dollars to buyers who had worked with the firm and yet lacked any real disclosure about the nature of representation or the rights to which they were entitled that changed representation in real estate transactions. Today, we operate in a world that requires full disclosure of agency relationships to consumers and with it offer a wide variety and array of various types of legal representation that real estate professionals must understand and apply every day.

Defining Agency

Agency relationships are not unique to the real estate profession. Agency is the formal recognition of a legal relationship where someone is hired to act on behalf of another and has the legal responsibility to protect and promote their interests above all others. Attorneys, doctors and other professionals also have agency relationships. At the heart of agency is the imposition of fiduciary duties. They form the core of professionalism in the real estate industry today.

There is a specified set of fiduciary duties that are owed to clients in real estate relationships. Those duties include:

- **Obedience**
- **Loyalty**
- **Disclosure**
- **Confidentiality**
- **Accounting**
- **Reasonable Skill and Care**



It is critical for real estate professionals to maintain the distinction between clients and customers. Fiduciary duties are only imposed in relationships with clients. It is often said that real estate professionals work for clients and work with customers. These are the obligations that are set forth in SC Code of Laws §40-57-350.

The fiduciary duties only apply to clients, those people that real estate professionals represent. Those unrepresented individuals in a real estate transaction as well as those represented by another brokerage are considered customers. The duties afforded customers are much less than the fiduciary duties owed to clients. Duties to customers include the following:

- Present all offers in a timely manner

- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Provide limited confidentiality to customers
- Disclose material facts about the property or the transaction.



Student Notes

Student Notes



the Successful Disclosure of Brokerage Relationships

Use of the South Carolina Disclosure of Real Estate Brokerage Relationships Form is mandatory under S.C. Code of Laws §40-57-370. The primary purpose of providing Disclosure of Brokerage Relationships at the first practical opportunity when there is substantive contact is to educate consumers and make them aware of the benefits of being a represented client. Proper use of the form also helps the public understand what to expect if they choose to remain an unrepresented customer.

People have the right to know if their interests will be represented, what that means and the nature and scope of the representation. Explanations of the form should be clear and meaningful.

Licensees who do not make the disclosure are usually afraid to try because they aren't prepared. Being prepared can help increase your confidence and your chance of success in the real estate profession. Those who become successful in any career field are the ones who are

willing to do the work to be prepared. Success is not automatic. Success takes preparation and work.

Student Notes

SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
<http://llr.sc.gov/POL/REC/>

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

You Are a Customer of the Brokerage Firm

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following basic duties when dealing with any real estate buyer or seller as customers: *present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, provide limited confidentiality, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.*

Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer" of the brokerage firm, and the brokerage firm will not act as your agent. As a customer, you should not expect the brokerage firm or its licensees to promote your best interest.

Customer service does not require a written agreement; therefore, you are not committed to the brokerage firm in any way unless a transaction broker agreement or compensation agreement obligates you otherwise.

Transaction Brokerage

A real estate brokerage firm may offer transaction brokerage in accordance with S.C. Code of Laws Section 40-57-330. Transaction broker means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party. The duties of a brokerage firm offering transaction brokerage relationship to a customer can be found in S.C. Code of Laws Section 40-57-330(L)(2).

You Can Become a Client of the Brokerage Firm

Clients receive more services than customers. If client status is offered by the real estate brokerage firm, you can become a client by entering into a written agency agreement requiring the brokerage firm and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this agency relationships disclosure document in a timely manner.

A seller becomes a client of a real estate brokerage firm by signing a formal listing agreement with the brokerage firm. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the brokerage firm which becomes the agent for the seller.

A buyer becomes a client of a real estate brokerage firm by signing a formal buyer agency agreement with the brokerage firm. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the brokerage firm which becomes the agent for the buyer.

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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



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If you enter into a written agency agreement, as a client, the real estate brokerage has the following client-level duties: *obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care.* Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the brokerage firm represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual agency exists when the real estate brokerage firm has two clients in one transaction – a seller client and a buyer client. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the brokerage firm's representation duties are limited because the buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the brokerage firm. As a disclosed dual agent, the brokerage firm and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the brokerage firm's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself, with or without a transaction broker agreement.
- You can choose to hire the brokerage firm for representation through a written agency agreement.
- If represented by the brokerage firm, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

If you plan to become a client of a brokerage firm, the licensee will explain the agreement to you fully and answer questions you may have about the agreement. Remember, however that until you enter into a representation agreement with the brokerage firm, you are considered a customer and the brokerage firm cannot be your advocate, cannot advise you on price or terms, and only provides limited confidentiality unless a transaction broker agreement obligates the brokerage firm otherwise.

The choice of services belongs to you – the South Carolina real estate consumer.

Acknowledgement of Receipt by Consumer:

Signature _____ Date _____

Signature _____ Date _____

THIS DOCUMENT IS NOT A CONTRACT.
This brochure has been approved by South Carolina Real Estate Commission for use in explaining representation issues in real estate transactions and consumer rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

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A Formative Assessment of Your Working Knowledge

1. The document is not a _____ establishing a relationship it is a mandatory _____ document.
2. Use of the form is required at the _____ when a consumer and a licensee have _____
3. The business relationship is legally with the _____ and not the _____ .
4. The first page of the form is intended to help consumers understand the basic differences between being a _____ or a _____.
5. The only way for a customer to become a client and be entitled to a full set of fiduciary duties in South Carolina is for the client to sign a _____.
6. There are three types of agency relationships discussed in the Disclosure Form. They are:

7. There are 3 fundamental choices for a consumer in South Carolina offered on the form. They are:

8. The form makes it very clear that a customer owes _____ obligations to the firm and no compensation unless as a customer they sign a _____
_____.

9. Only the _____ signature is on the form.

10. A brokerage must retain copies of the form as part of the transaction file for how long? _____.

Student Notes



Student Notes

Timing & Use of the Disclosure Form

Pursuant to the provisions of SC Code of Laws §40-57-370(A) a real estate licensee shall provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

- (1) A meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate firm, including an explanation of customer and client services
- (2) Disclosure of Brokerage Relationships form prescribed by the commission.



First substantive contact is defined in SC Code of Laws §40-57-30(29) as follows:

“Substantive Contact” means contact in which a discussion or dialogue between the consumer and the associated licensee moves from casual introductory talk to a meaningful conversation regarding the selling or buying motive or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer’s bargaining positioning.

An acknowledgment of receipt of the Disclosure of Brokerage Relationships form must be included in an agency agreement and in a sales contract. In addition, each sales contract must require the buyer and seller to acknowledge whether they received customer or client service in that real estate transaction. SC Code of Laws §40-57-370(B).



If first substantive contact occurs over the telephone or other electronic means, including the internet and electronic mail, an “Acknowledgement of receipt of the Disclosure of Brokerage Relationships form may be sent by electronic means, including the internet and electronic mail. SC Code of Laws §40-57-370(D).

Exceptions to the Use of the Disclosure of Brokerage Relationships Form

There are two notable exceptions to the use of the Disclosure of Brokerage Relationships form. They are contained in SC Code of Laws §40-57-370(G). The form does not need to be provided and the requirements do not apply if the:

- Transaction is regarding the rental or lease of property; or the
- Communication from the licensee is a solicitation of business

Student Notes

There Are Agency Choices In South Carolina



- For the consumer
- For the Firm
- For the licensee

The Types of Agency Choices

Single Agency – When the real estate brokerage firm represents only one client in the same transaction (the seller or the buyer).

Dual Agency – When the real estate brokerage firm represents two clients in one transaction (the seller and the buyer). Dual agency is illegal without disclosure and consent before a contract is formed between the parties. This is just included as a definition. The only type of dual agency recognized by SC law is disclosed dual agency.

Disclosed Dual Agency – In disclosed dual agency the firm's representation is limited due to a recognized conflict of interest. Each Dual Agency Agreement contains the names of both the seller and the buyer and identifies the property. The consent must be signed by the buyer before they write the offer and by the seller before they sign the sales contract.

The limitations of dual agency prevent the firm and its associated licensees from disclosing specific information that is set forth in SC Code of Laws §40-57-350(I)(1)(b) including:

- The willingness or ability of a seller to accept less than the asking price;
- The willingness or ability of a buyer to pay more than the offered price;
- Any confidential negotiating strategy not disclosed in an offer as terms of sale; or

- The motivation of a seller for selling property or the motivation of a buyer for buying property.

Designated Agency – In designated agency, a broker may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the firm’s representation of the other client, but instead have a duty to promote the best interests of their clients, including negotiating the price. Just like dual agency the client must give informed consent. The consent must be signed by the buyer before they write the offer and by the seller before they sign the sales contract.

Designated agents are appointed by the BIC or the designated representative and the Broker-in-Charge may create designated agency by the adoption of written office policies. SC Code of Laws 40-57-350(J).



Specific Practices Related to Designated Agency

No firm has to offer designated agency. Whether or not the brokerage firm chooses to practice designated agency is always a company decision. South Carolina license law prescribes some specific requirements when brokerage firms opt to offer designated agency. They include all of the following practices and policies.

1. The firm must create policies and procedures reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter. SC Code of Laws 40-57-350(J)(1).
2. There may be no imputation of knowledge or information between and among the broker-in-charge, agents and the clients. Designated agents may not disclose, except to the designated agent’s broker-in-charge or appointed representative, information made confidential. SC Code of Laws 40-57-350(J)(9).
3. A Broker-in-Charge (BIC) cannot act as a designated agent in transactions where the BIC is either the representative of the seller or buyer and both clients are represented by the firm. The BIC must act as a dual agent. SC Code of Laws 40-57-350(J)(5).
4. All other associated agents in the firm as well as the BIC remain as dual agents even when designated agents have been appointed. SC Code of Laws 40-57-350(J)(8).



Brokerage Relationships Case Studies

Student Notes

The Case of Divided David

David is an associated licensee with Good Deals Realty. A seller has signed an Exclusive Right to Sell listing agreement hiring his brokerage firm and David is the associated licensee working directly with the seller on behalf of the firm. The property is listed for \$500,000. At the open house on the listing, David has met buyers who wish to purchase the listing. David reviews the South Carolina Brokerage Disclosure of Real Estate Relationships form with the buyers. The buyers indicate that they are unrepresented and they would like David's firm to represent them in the purchase of the listing. David's firm does not practice designated agency. In regard to this transaction:

1. Can David's firm represent the buyer?
2. What kind of agency will David have to practice?
3. What is required of David and his firm in this relationship?

Student Notes

The Case of Uptown and Downtown Girls

Jennifer is an associated licensee with Metro Realty working at their uptown office and Rebecca is an associated licensee with Metro Realty at their downtown office. Although Jennifer and Rebecca work for the same firm they have different BIC's in different locations. Rebecca has met a buyer who is interested in purchasing a property that is listed by Jennifer. Jennifer has the listing and Rebecca has obtained a signed Buyer Broker Agreement. In regard to this transaction:

1. Is this a permissible agency relationship?
2. What are the agency options for Rebecca and Jennifer's clients?
3. If the brokerage firm has the appropriate policies can Rebecca and Jennifer practice designated agency?

Student Notes

The Antics of Billy the BIC

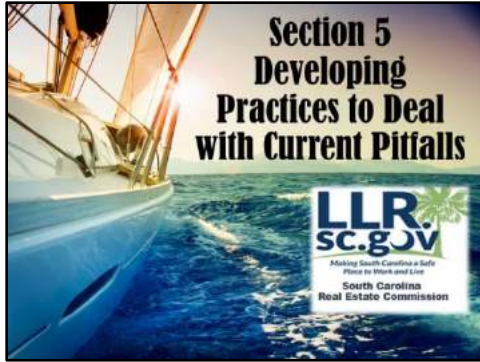
Billy is the Broker-in-Charge of Superstar Realty. Billy is the listing agent for the seller of a property. Beth is an associated licensee of Superstar Realty, the firm which represents a buyer who is interested in purchasing Billy's listing. Billy is planning on designating himself as the representative for the seller and Beth as the designated representative of the buyer. Is designated agency permitted in this situation. What are the options?

Student Notes

The Incident of Loud Mouth Larry

Larry is the BIC for Pierpont Properties and has designated two agents, George and Samantha as the designated agents in a real estate transaction. The seller questions the counter-offer recommendation made to them by George, their designated agent and calls Larry to get additional advice and counsel on the amount of the counteroffer. Larry provides insight to the seller and backs up George's recommendation and advice on the counter-offer. Is this permissible?

Student Notes



Section 5

Developing Practices to Deal with Current Pitfalls

Learning Objectives for Section 5

At the conclusion of this unit licensees will be able to:

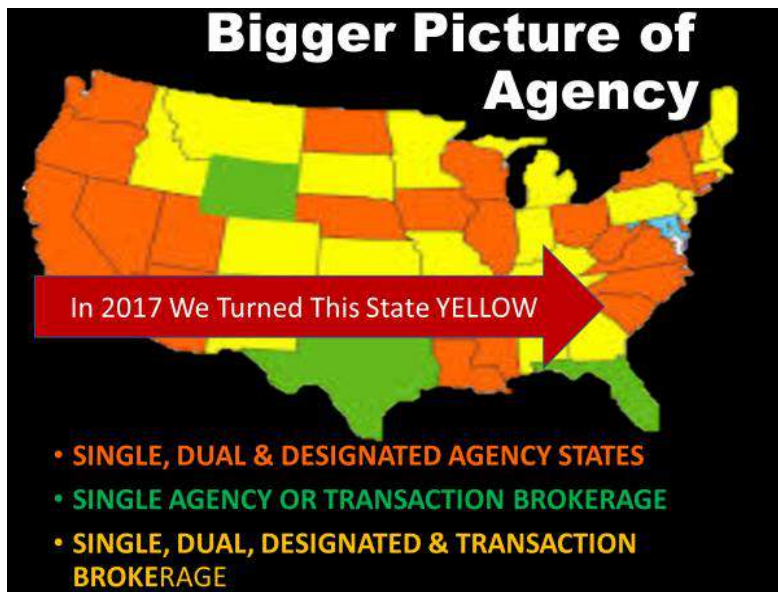
- Explain the practice of transaction brokerage in South Carolina
- Identify the situations in which transaction brokerage occurs
- Explain the proper rules for operation of teams in South Carolina
- Identify problematic issues that are related to the operation of real estate teams

Student Notes

The Principles of Transaction Brokerage

Agency relationships are imposed when real estate professionals are working for clients. There are instances where real estate licensees interact and assist customers without the full imposition of agency and fiduciary obligations. The South Carolina Disclosure of Real Estate Brokerage Relationships form recognizes the practice of transaction brokerage in these instances as a non-agency type of relationship.

The practice of transaction brokerage does not exist in every state. Today there are approximately 25 states that permit transaction brokerage. It was introduced in South Carolina in 2017. Licensees should be cautious about referencing generalized national material when it comes to agency relationships. Agency laws vary greatly from state to state and have many state specific nuances and requirements. The implementation of transaction brokerage operates a bit differently in different states.



Student Notes

In most states, transaction brokerage is a type of neutral third-party real estate service where the licensee has no agency or fiduciary relationship with the consumers in the transaction. In South Carolina, there are three scenarios in which Transaction Brokerage become a factor. Details on these will be discussed later. Only one of these scenarios in South Carolina involves the brokerage becoming a neutral third-party. When there are no clients in the transaction, the role of the transaction broker is to craft the transaction by bringing a willing buyer and willing seller together. The role of the transaction broker is to craft the transaction by bringing a willing buyer and a willing seller together. The broker assists the consumer in closing the transaction by completing ministerial act such as providing forms and information. While a transaction broker with two customers does not have the traditional fiduciary responsibility of an agent, the licensee must still follow the professional and ethical standards required of the profession.

In South Carolina, when the brokerage has no clients to represent, brokers are usually considered to be facilitators of a transaction and are often said to represent the transaction, not the parties. Parties act on their own accord and are not bound by the acts of the agent. The parties make their own decisions absent any advice or input from the agent.

In South Carolina, the interactions between a customer and a real estate licensee are very narrowly circumscribed. We are accustomed to saying that interactions with customers are limited to purely ministerial act. A ministerial act is the carrying out of specific instructions or procedures without individual judgement or discretion.

Ministerial acts prohibit a licensee from exercising:

- **Independent judgment**
- **Discretion**
- **Advice and counsel**

Ministerial duties are referenced in the South Carolina license law in SC Code of Laws §40-57-350(K):

A licensee who represents one party to a real estate transaction may provide assistance to other parties to the transaction by performing ministerial acts such as writing and conveying offers, and providing information and aid concerning other professional services not related to the real estate brokerage services being performed for a client. Performing ministerial acts does not create an agency relationship.



Student Notes

The reasons for adopting transaction brokerage in South Carolina were to:

- Make facilitating transactions easier for commercial brokers
- Eliminate the restriction under previous rules which required the existence of an agency agreement in order for the licensee to be paid
- Many firms were struggling with co-operative subagency
- Subagency involved issues of vicarious liability

Student Notes



Practices of Transaction Brokerage in South Carolina

In order to truly understand the practice of transaction brokerage, licensees first must clearly grasp the distinction between customers and clients. Remember, in South Carolina:

- **A seller becomes a client by signing a formal listing agreement**
- **A buyer becomes a client by signing a formal buyer agency agreement**

Therefore, those who have not signed a formal agency employment agreement are customers. Transaction brokerage is a tool to allow real estate professionals to work with customers in a clearly defined manner that does not create a formal agency relationship and does not impose the obligations of fiduciary duties upon the real estate licensee.

The creation of transaction brokerage in South Carolina was developed to create a more informed and formalized role for the real estate professional when it comes to interactions with people that the licensee does not represent and to whom the licensee does not owe fiduciary duties.

On the Disclosure of Real Estate Brokerage Relationships form transaction brokerage is explained as follows:

A real estate brokerage firm may offer transaction brokerage in accordance with SC Code of Laws §40-57-350. Transaction brokerage means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party.

Student Notes

3 Scenarios That Can Give Rise to Transaction Brokerage

FACILITATOR SCENARIO

The Licensee establishes the following

No agency agreement with either party

Chooses to facilitate the transaction for **both parties as a Transaction Broker**

REPRESENTED SELLER SCENARIO

The Licensee establishes the following

A Written Listing with the Seller making the **Seller their client**

Works with the Unrepresented Buyer as a **Transaction Broker**

REPRESENTED BUYER SCENARIO

The Licensee establishes the following

A Written Buyer Agreement making the **Buyer their client**

Works with the Unrepresented Seller as a **Transaction Broker**

Licensees operating as transaction brokers are required to disclose to buyers and sellers their role and duties in offering customer services to the consumer that include all of the following: S.C. Code of Laws §40-57-350 (L)(2):

- Honesty and fair dealing
- Accounting for all funds
- Using skill, care and diligence in the transaction
- Disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;
- Promptly presenting all written offers and counteroffers;
- Limited confidentiality, unless waived in writing by a party.

Student Notes

The Concept of Limited Confidentiality

Under traditional agency rules confidentiality is only owed to clients. So long as real estate professionals have made necessary agency disclosures to consumers, no confidentiality is afforded to non-clients because the real estate professional owes the primary duty to their clients to protect and promote their interests.



Bill's Open House and the Babbling Buyers

Bill is a licensee and the seller Donna has executed an Exclusive Right to Sell listing agreement with Bill's firm. Bill and the seller agreed to establish a list price of \$200,000 for the home. During an open house, Janice and Mark, two unrepresented buyers begin a

discussion with Bill about purchasing the home. Bill asks them if they are currently represented by a real estate professional to which Janice and Mark responded that they are not and that they do not want real estate professional representation. Bill informs them that he is a licensee and that the seller Donna is his client. He reviews with them the Disclosure of Brokerage Relationships form and Janice and Mark understand that they are customers not clients. They then tell Bill that they are going to offer \$175,000 but would be willing to go as high as \$190,000 if the seller insists.

Can Bill divulge this information to his seller?

Student Notes

The provisions of SC Code of Laws §40-57-350(L)(2)(f) states that a licensee owes an obligation in offering customer services to the consumer that include limited confidentiality unless waived in writing by a party. This limited confidentiality prohibits disclosing:

- Information concerning a buyer’s motivation to buy or the buyer’s willingness to make a higher offer than the price submitted in a written, offer;
- Factors motivating a seller to sell or the seller’s willingness to accept an offer less than the list price;
- That a seller or buyer will agree to financing terms other than those offered; and
- Information requested by a party to remain confidential, except information required by law to be disclosed;
- Additional duties that are entered into by separate agreement

Distinguishing Client & Customer Services

Licensees should be able to distinguish for consumers the differences between client level services and customer level services. Because clients can be provided both client and customer level services, just mark with a “C” (Customer) those services which only a customer would be entitled to under the new rules.

Student Notes

- Advice and recommendations as to the amount of price and offers**
- Identifying and showing property for sale, lease or exchange**
- Providing real estate statistics and information on property**
- Engaging in the negotiation of prices and offers**
- Providing real estate forms, contracts and leases**
- Making specific recommendations on repair requests**

- Advocating for the particular term or condition of the sale
- Providing a list of surveyors, inspectors, lenders, attorneys or insurance agents
- Advising a client regarding a particular negotiation strategy
- Identifying schools, shopping facilities or places of worship
- Filling out a particular form as the buyer or seller instructs
- Presenting an offer or counteroffer
- Providing meaningful explanation of brokerage relationships
- Being fair and honest
- Disclosing material facts in the transaction



Other Pitfalls of Transaction Brokerage

The New Relationship with the For Sale by Owner

Charlie is the agent for a buyer under a written buyer broker agreement. Charlie's buyer wants to purchase a home from a For Sale by Owner. Charlie approaches the owner of the home and provides them with the Disclosure of Brokerage Relationships form and an explanation of agency.



What is Charlie's relationship with the For Sale by Owner?
What obligations does Charlie owe the For Sale by Owner?
What forms or documents should Charlie have the For Sale by Owner sign?

Student Notes



The Seasoned Investors

Cindy is working with two very sophisticated clients in a commercial transaction. Both the seller and the buyer are represented by attorneys and they have sought out the assistance of Cindy to help them with the real estate transaction. Neither the seller nor the buyer want to establish an agency relationship.

How should Cindy proceed?

What will be her relationship with the seller and the buyer?

Student Notes

The Written Transaction Brokerage Agreement

Licensees should remember that it is not necessary to have a written agreement to practice transaction brokerage. The written agreement is necessary only when the transaction brokerage customer is paying the fees or commissions. A compensation agreement may also be used in this instance. There are multiple versions of transaction brokerage agreements. Licensees should use the form that is prescribed by their Broker-in-Charge.



The Team Epidemic A National Phenomenon

Many states are struggling with the concept of teams and their involvement in real estate transactions. Most of the difficulty arises because state laws vary widely for teams and their implications. The introduction of teams in real estate affects the structure of regulatory schemes aimed at supervision and delegation. Many aspects of agency are impacted and in states where the creation of entities and teams requires licensure and approval a third level of complexity is involved. Agents should be cautious is creating teams to make certain that they are following the licensing laws in their individual states.

Student Notes

Pitfalls of Teams – Vincent’s Violations

In the following case study make a list of the potential South Carolina license law violations created in the following scenario:

Vincent got permission from his Broker-in-Charge at South Carolina Real Estate Brokerage to start a real estate team and involve other associated members of the firm. Vincent named the team the Go-Getters Team. Vincent subsequently created the Go Getters Team, LLC. The Broker-in-Charge told Vincent that Vincent was responsible for all of the team’s activity and for proper supervision of the team members.

Because Vincent lived on the opposite side of town from the real estate brokerage’s established office he rented a small office space near his home and placed a sign in the window that said “The Go-Getters Team, LLC.” He had business cards printed up for the team members and For Sale signs, both of which contained only the name of the Go-Getter’s team.

A buyer of one of the team members wanted to buy one of Vincent’s listings. Both team members disclosed to the seller and the buyer that their brokerage practiced designated agency. Vincent appointed himself as the designated agent for the seller and the other team member as the designated agent for the buyer.

How many violations of South Carolina real estate license law have Vincent and his team committed?

Student Notes

1. _____

2. _____

3. _____

4. _____



Principles of Teams

The South Carolina license law governing the formation and operation of teams is all located in SC Code of Laws §40-57-360. This section of license law requires that:

- A. The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker in charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage.
- B. The team may act as disclosed dual agents only and with the prior informed consent of all parties and addressed in the broker-in-charge's written office policy.
- C. Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of the broker-in-charge.
- D. Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.
- E. No team may imply that the team is a separate entity from the brokerage firm of its employment. Team names may not include the terms "realty", "real estate" "realtors" or similar names suggesting a brokerage.
- F. The team, and any and all team members, must display and promote that they are directly connected to the brokerage firm under which the team works. The brokerage firm name under which the team works is to be displayed prominently and visibly in a meaningful and conspicuous way on all methods of advertising.

The Best & The Brightest Things I Might Actually Do This Time

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____