

S.C. Real Estate Commission News

Volume VI • No. 2 • A NEWSLETTER OF THE SOUTH CAROLINA REAL ESTATE COMMISSION • November 2000

Trust Account Caravan 2001

Beginning December 2000, and continuing through September 2001, the South Carolina Real Estate Commission will provide you with the opportunity to reduce your risk in the highest liability area of your real estate practice—trust fund accounting, record maintenance, and disbursements. A six-hour course, designed specifically to meet the requirements of South Carolina law in trust account maintenance and supervision, for brokers-in-charge and their trust account managers/bookkeepers will be offered in five locations at no cost to you. Funded by a grant provided through the University of South Carolina's Center for Applied Real Estate Education and Research (CAREER), this program will teach brokers how to manage their trust accounts, how to implement control procedures to make sure everyone is playing by the rules, and how to do a 20-minute cross check to make sure that all funds are accounted for and everything is in order.

Administered through the College of Real Estate, Inc., and taught by Dianna W. Brouthers, DREI, these programs are being offered at the following five locations in South Carolina:

Columbia	December 13, 2000
Greenville	February 16, 2001
N. Myrtle Beach	April 30, 2001
Charleston	August 3, 2001
Hilton Head	September 17, 2001

Representatives from the South Carolina Real Estate Commission's investigative staff will be on hand to answer recurring questions like:

- Do I need the written permission of both parties to a contract to disburse trust funds?
- Can non-refundable deposits be given directly to the owner of the property?
- What are the terms and conditions under which my company can earn the interest from the funds in the trust account?
- What evidences would an investigator look for that would show him/her that I am doing my best to comply with the regulations and am acting in good faith?

Seating in each location is limited to 50—first come, first served. A reservation form is included with this newsletter for your convenience. Reserve your seat today by sending this form by fax to (1-803-366-8070) or phone (1-803-329-9665).

Don't miss this opportunity to learn the skills you need to control your trust account and slash your risk. Let us hear from you soon! Brokers-in-charge who attend will be awarded four hours of core continuing education (CE) credit. For non-licensed trust account managers/bookkeepers who attend, a certificate of completion will be awarded!

Renewal Follow-up

A big THANKS to everyone who sent in their renewal in a timely manner. Notices were mailed in May, and a second attempt to contact those who have not paid was mailed in early September.

By now you should have received a confirmation letter on your inactive registry, or a new real estate pocket card with a June 2 expiration date (if your card has an expiration date of June 1, you will not renew until June 2001). If you do not have your pocket license, please check with your broker-in-charge to see if he or she is holding it. If you are unable to locate your card, contact us to make sure fees have been paid in order for your license to remain current. If fees are not paid before December 31, 2000, you will have to take the examination and may be required to take classroom hours to regain your real estate license.

You may receive an audit letter requesting proof of your continuing education hours showing where you completed your course work to renew your license. If you receive an audit letter, you must return copies of your completed course work promptly to avoid possible disciplinary action.

Do not get caught looking for courses at the last minute. If your real estate license expires June 1, one requirement to renew your license is to have completed eight hours of continuing education between July 1, 1999, and June 30, 2001. Do not wait until the last minute; start looking for courses now that will fit into your schedule. If you do not complete the course work, you can still renew, but will have to place your license on inactive status until CE requirements have been met.



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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. Dates are subject to change.

Commissions From Builders Must Be Disclosed

The Commission is concerned about the growing number of complaints regarding real estate agents who receive commissions from builders based, most often, upon the price of the building contract. Some buyers have complained that commissions paid by builders to real estate agents serve only to increase their costs without any benefits received. S.C. Code Ann. '40-57-145(A)(14) prohibits licensees from receiving compensation from more than one party **except with the full knowledge and written consent of all parties.**

To fulfill the requirements of the statute, licensees must not only disclose that they are receiving a fee from the builder, but it must be done in writing and constructed so that the buyer is giving consent. One way to handle this is to disclose **prominently** in the contract for

the land. Questions should be referred to the Commission and your company attorney. Following the printing of this newsletter, violations will be investigated, and licensees may be charged for non-disclosure.

Commission Elections

Manning E. Biggers, Commission member who represents the Fifth Congressional District, has been re-elected chairman. Biggers has served on the Commission since 1984. Other officers re-elected were Vice Chairman Betty V. Carter, First Congressional District, and Evelyn K. Young, Fourth Congressional District, secretary.

Public Member Appointed

Mackie Hayes has been appointed by Governor Jim Hodges to a four-year term as a public member. Hayes is affiliated with the Blenheim Ginger Ale Co. and is a designer of billboards for South of the Border. He resides in Dillon.

Have you moved? Do you need forms, applications, etc? Let us hear from you.

Please make sure we have your current mailing address on file at all times. Important information is sent to all licensees at their home mailing address (newsletter, renewal notices, etc.) The license is mailed to the broker-in-charge at the real estate office so he/she will know that the Real Estate Commission's records indicate where the licensee is associated. You may contact us in a number of ways to notify us of a change in your

home
address:
mail, fax
(803)
896-4404,
or by e-mail to
bolandr@mail.llr.state.sc.us



Save time by taking advantage of our Fax on Demand service (1-888-269-7646) for long distance calls or at our local number in Columbia (737-8423) to obtain forms to apply for a real estate license,

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Agency Disclosure and Buyers Agency Agreements Required by Law

The Real Estate License Law that was revised in January 1998 included a section dealing with agency relationships. Among the requirements of that law were those relating to agency disclosure forms and buyers agreements. Actually, the requirement for written agency disclosure has been around since the mid-1980s. The Commission is constantly finding licensees who are not properly disclosing agency relationships, do not understand agency relationships and are not having buyer clients sign agency agreements. Every newsletter, including this one, reports several disciplinary actions that involve improper agency disclosure and failure to secure buyers agreements. **Please note that effective January 2001, violations settled by Consent Agreement will include a fine of at least \$1,000.**

When staff members speak to real estate professional groups, they are amazed by some of the blank stares from the audience when the subject of buyer's agreement is discussed. Folks, this one is not difficult!! Just as you must secure a listing agreement when you represent a seller, you must secure a buyer agency agreement when you represent a buyer. The minimum requirements for a buyer's agency agreement can be found on page 22 of the black book (If you are still operating out of the old red book, throw it away) or

more specifically at SC Code Ann. '40-57-135(D)(4). Regarding agency disclosure, here are some common violations noted:

- Disclosing too late. Disclosure should be accomplished **before you start acting like an agent**; taking the buyer straight to dual agency. **Before you can be a dual agent, you must be an agent for both parties.** That means an acknowledgment of agency and both a listing agreement and a buyer's agreement must be in place;
- Failure to get the buyers and/or sellers to sign and initial the form properly;
- Signing the buyers or sellers names;

More often than not, improper agency disclosure and failure to secure a buyer agency agreement is the result of a licensee attempting to control both sides of the transaction by making everyone a client. While this may help "lock up" the entire commission, it fails to recognize the benefits to the licensee of having one client and one customer. A point worth considering is that a client and a customer produce the same commission as two clients with only half the headaches.

Moved? - continued from page 2

transfer, reinstate, change a company name and/or address, change a license status to broker-in-charge or property manager-in-charge, or many other options. You may also print a copy of the

above forms by the Internet at the Real Estate web site www.llr.state.sc.us/rec.htm and click on the Fax on Demand option. These are quick ways to access a form without having to wait on mail service.

Staff Notes

Staff Changes in Education Department

William "Beau" Tiller has assumed the duties of Education Manager. Tiller replaces Eleanor Lightsey who retired and relocated to Hilton Head to become executive director of the Hilton Head Area Association of Realtors. Tiller, a graduate of Wofford College,



has been a special investigator for the Commission for a number of years and served as director of the Appraisers Board from 1991 until 1995.

The Education Department also has a new administrative assistant, Terry Johns. Johns was a member of the



Terry Johns

of the United States Air Force for 25 years. While in the Air Force, he served as launch officer, executive

officer, unit section commander and operations officer. He currently is pastor of Shaw Christian Life Center, an interdenominational church of mostly military families. The Commission welcomes Johns to the staff.



DISCIPLINARY ACTIONS

Does not include cases on appeal

HEARINGS

**Mary Alice Beatson, Salesman
Century 21
Hawkins & Kolb Real Estate
Sumter, South Carolina**

For failure to complete the required continuing education courses prior to renewal. Respondent indicated on her renewal form that all required education was completed, however, was unable to provide proof to the Commission during an audit.

By Order of the Commission: Reprimand and a fine of \$750.

**Edward C. Mann, IV, Salesman
Inactive Status**

For issuing a check to the Commission in connection with his license renewal that was dishonored when presented to the financial institution on which it was drawn and for failing to make the check good upon request of the Commission staff.

By Order of the Commission: License revocation and fine of \$1,000.

**Alice H. Swope, Broker-in-Charge
Century 21
Swope-Ray Thompson Realtors
Charleston, SC**

For failing to enter into a written buyer agency agreement and failing to have the buyers and the seller sign a consent to dual agency.

By Order of the Commission: Reprimand and a fine of \$1,500. Also within six (6) months the Respondent must attend a class on agency relationships.

**Michael L. Walters, Broker-in-Charge
Michael Walters Associates
Hilton Head Island, SC**

For failure to complete the required continuing education courses prior to renewal. Respondent indicated on his renewal form that all required educa-

tion was completed, however, was unable to provide proof to the Commission during an audit. Respondent did not respond to the notice of hearing.

By Order of the Commission: License revocation and a fine of \$3,000.

CONSENT ORDERS

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

For writing a contract between a buyer and a seller that stated the seller was holding \$6,200 in earnest money. Respondent did not verify the existence of the earnest money deposit with the seller and later found out that the seller did not have the earnest money as reported.

By Consent: Reprimand and a \$4,000 fine stayed to \$2,000 and twenty-four (24) months probation.

**Michael M. Asnip, Broker
Callawassie Island Company
Okatie, South Carolina**

For failure to complete the required continuing education courses prior to renewal. Respondent indicated on his renewal form that all required education was completed, however, was unable to provide proof to the Commission during an audit. Respondent moved from North Carolina and thought that he could use his North Carolina continuing education credits.

By Consent: Reprimand and a fine of \$200.

**Jack W. Barnhill, Broker-in-Charge
Barnhill Realty
Myrtle Beach, SC**

For selling development property wherein the Respondent made verbal promises to several purchasers that the streets in the development would be paved. The Commission's investigation disclosed that more than two years after the sale the streets were

still not paved. Respondent was charged with failing to recite material facts in the contract for sale.

By Consent: License suspension stayed for sixty (60) days and permanently thereafter if he completes paving of the streets as promised. Respondent completed the paving and was reprimanded.

**Charles P. Blankin, Broker
Inactive Status**

For being convicted of a crime of moral turpitude and for failure to report same to the Commission within ten days as required by law.

By Consent: Reprimand and thirty (30) months probation.

**Eric G. Brown, Salesman
Inactive Status**

Respondent requested the closing attorney to redirect the commissions in a real estate transaction to him personally. Respondent told attorney that he had his broker's permission to receive the commission proceeds at closing.

By Consent: Reprimand and twenty-four (24) months probation. Respondent must complete thirty-eight (38) hours of continuing education designated by the Commission before he is allowed to activate his license.

**Maxwell Ross Griffith, Broker
Inactive Status**

For being convicted of a crime of moral turpitude and for failure to report same to the Commission within ten days as required by law.

By Consent: Reprimand and thirty (30) months probation.

**Elizabeth C. Hosang
Broker-in-Charge
Cedar Creek Properties, Inc.
Aiken, SC**

For failure to specifically and prominently disclose, in writing, the existence of a fee to builders. Respondent's company had a showcase builders program wherein participating builders paid a fee equal to 5% of the contract price to defray the cost of the Respondent's national advertising program. The fee was disclosed on the list of builders that was given to lot purchasers, however, that disclosure was not considered adequate by the Commission.

By Consent: Reprimand and twelve months probation. Special conditions of probation included a \$500 fine that was stayed, written waiver to the complainant of the imposition of federal fees and proof to the Commission of prominent written disclosure to all future buyers of building lots.

**Onnie "Butch" Lane, Salesman
David Brown Realty of Blythewood
Blythewood, SC**

For failure to supply buyers an Agency Acknowledgement Form at first substantive contact.

By Consent: Public reprimand and fine of \$300 with the fine being suspended.

**Douglas E. "Gunny" McConville
Property Manager
Languard Properties
Surfside Beach, SC**

For failure to maintain funds belonging to others in company escrow account. An audit by the Commission revealed a shortage in excess of \$18,000 in the company escrow account. Although the Respondent's son was the designated Property Manager-in-Charge, the Respondent had a significant role in the day to day operation of the company.

By Consent: Permanent license revocation.

**Timothy D. McConville
Property Manager-in-Charge
Languard Properties
Surfside Beach, SC**

For failure to maintain funds belonging to others in company escrow account. An audit by the Commission revealed a shortage in excess of \$18,000 in the company escrow account. Respondent was nominal property manager-in-charge, but had signatory authority on the company trust account. Escrow records were in such poor condition that the Commission could not complete an accurate audit.

By Consent: Permanent license revocation.

**Sandra A. Narcisse, Salesman
Inactive Status**

For failure to turn over to her broker-in-charge earnest money that she collected from a buyer. Respondent admits collecting \$3,000 in earnest money in the form of cash and then lost the funds.

By Consent: License revocation.

**Lynn G. Platt, Salesman
Atlantic Realty, Inc.
Ravenel, SC**

For improperly completing an agency disclosure form, having the buyer sign a consent to dual agency before obtaining the seller's permission and for failure to enter into a buyer's agency agreement.

By Consent: Reprimand a fine of \$600 and requirement to attend a course on agency.

**William J. Platt, III
Broker-in-Charge
Atlantic Realty, Inc.
Ravenel, SC**

For failing as broker-in-charge to maintain a level of supervision so as to curtail practices by a licensee that would violate the license law.

By Consent: Reprimand and twelve (12) months probation with special conditions that he complete a thirty (30) hour broker management course and revise his company policy so that it reflects proper instruction to his agents about how to handle agency relationships.

**Earnest J. Porter, Jr.
Former Broker-in-Charge
Porter Realty
Sumter, SC**

For issuing checks on his company escrow account that were returned to the payee for non-sufficient funds and for entering into a real estate transaction after his license lapsed for non-payment of license fees.

By Consent: License revocation

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

For failing to secure a written management agreement prior to managing rental property. Also for failing to disburse rental proceeds in a timely manner.

By Consent: License suspension stayed immediately to twenty-four (24) months probation and a \$2,000 fine.

**Wallace C. Thomas
Broker-in-Charge
Century 21, Carolina Realty
Beaufort, SC**

For improperly completing an agency disclosure form.

By Consent: Reprimand and fine of \$300.

**Sybil S. Thompson, Salesman
North Myrtle Beach Realty
North Myrtle Beach, SC**

For failing to have the sellers and the buyers execute a consent to dual agency form.

By Consent: Reprimand and fine of \$300.

Disciplinary Actions - continued on page 6



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

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**Mary D. VanBergen, Salesman
Inactive Status**

For issuing a check to the Commission in connection with her license renewal that was dishonored when presented to the financial institution on which it was drawn and for failing to make the check good upon request of the Commission staff.

By Consent: Public reprimand and a fine of \$250.

Cease and Desist

The Commission issued Cease and Desist Orders to the following unlicensed individuals for practicing real estate without a license. All licensees are advised not to do any real estate business with these individuals:

- Gilbert L Daniel, Sr., Hilton Head**
- Juan Jackson, Columbia, North Augusta and Charlotte**
- William B. Scott, Hilton Head Island**

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Correction

The April 2000 Newsletter incorrectly stated that Vanessa K. Patrick, of Columbia, South Carolina, was associated with Re/Max when in fact, the name of the company Patrick was affiliated with should have been listed as Realty Executives of the Midlands. We apologize for this error.