

**South Carolina Real Estate Commission
Meeting Minutes**

Thursday, September 22, 2022 at 10:00 am
110 Centerview Dr. Kingtree Building, Room 105
Columbia, South Carolina

Public notice of this meeting was properly posted at the S.C. Real Estate Commission Office, Synergy Business Park, Kingtree Building, Commission website, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

Commission Members Present:

William “Andy” Lee, Chair – 3rd Congressional District
Candace Pratt – 1st Congressional District
David Burnett – 4th Congressional District
John Rinehart – 5th Congressional District
Janelle Mitchell – 6th Congressional District
W. Brown Bethune – 7th Congressional District
Gary A. Pickren – At-Large Member
Johnathan Stackhouse – Public Member

SCLLR STAFF PRESENT:

Emily Farr, LLR Agency Director
Patrick Jarvis, Director of Finance and Procurement
Kyle Tennis, Esq., Office of Advice Counsel
Robbie Boland, LLR Assistant Deputy Director
Meredith Buttler, Administrator
Shaun Strother, Administrative Assistant
Rowland Alston, Esq., Office of Disciplinary Counsel
Rodney Pigford, Office of Investigations and Enforcement
Chuck Waters, Office of Investigations and Enforcement
James Kemfort, Office of Investigations and Enforcement
Michael “Doc” Smith, Office of Investigations and Enforcement
Rosa McCoy, Office of Investigations and Enforcement
Wattie Wharton, Office of Investigations and Enforcement

PRESENT:

Katherine Boone, Court Reporter
Bill Beckwith
William Herlong
Austin Smallwood

CALLED TO ORDER: Mr. Lee, Chair called the meeting to order at 10:03 am.

INVOCATION

Mr. Rinehart gave the invocation.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all present.

INTRODUCTION OF COMMISSION MEMBERS AND STAFF

Commission members and staff introduced themselves.

APPROVAL OF EXCUSED ABSENCES

Motion: To approve Mr. Lockwood's absence.
Pratt/Bethune/Approved.

APPROVAL OF AGENDA

Motion: To approve the agenda.
Mitchell/Pratt/Approved.

FINANCE DISCUSSION

Ms. Farr and Mr. Jarvis presented the projected finances for the Commission based upon fees remaining as is. Due to increased expenses, the Commission's cash balance is high but plateauing and it is now the time for the Commission to begin developing a plan to spend the cash balance set aside for Education and Research, among other funds. Brief discussion followed and Commissioners were asked to share ideas on how they would like to the money spent. Ms. Farr asked that the Commission entertain the idea of a committee to develop a plan for spending and present that to the Agency for review and approval. The Agency will then work with the State Procurement office to get spending approvals where necessary.

Motion: To develop a Finance Committee focused on creation of a spending plan for the Education and Research fund. Commission members on the Committee to include Pickren, Rinehart, and Burnett as well as representatives from the SCRA and public.
Mitchell/Pratt/Approved.

APPROVAL OF MINUTES

Motion: To approve the meeting minutes from August 17, 2022.
Pratt/Rinehart/Approved.

CHAIR'S REMARKS

Mr. Lee elected to forgo remarks.

NEW BUSINESS

1. Investigative Review Committee (IRC) Presentation

Mr. Alston, Esq. along with Mr. Beckwith and Mr. Herlong, public members appointed by the Commission to the IRC, presented to the Commission an overview of the IRC's responsibilities and operating processes. Commission members voiced concerns regarding virtual meetings of the IRC, the parameters by which formal complaint sanctions are derived, and the limited information included in the IRC reports. Ms. Buttler addressed the Commission explaining that though most IRCs preferred to meet in-person, their charge of determining whether or not there is sufficient evidence to warrant a formal complaint can be done sufficiently via teleconference or WebEx. Ms. Buttler

also proposed the development of IRC Parameters which will give the IRC members guidance for the sanctions to be crafted should a formal complaint be recommended. Ms. Buttler will conduct research on prior Commission decisions and present the proposed IRC Parameters at a later meeting date.

Motion: To require a minimum of three (3) professional members comprised of licensees, licensed attorneys, or former Commission members, for IRC meetings.
Pickren/Pratt/Approved.

2. Limitations on Retaking Licensing Examinations

Mr. Tennis, Esq. provided the Commission with a report breaking down the exam pass rate broken down by number of attempts from 2008 to August 2022. In review of the statutes, Mr. Tennis found the Commission likely has the statutory authority to develop re-examination parameters in regulations. Further research was presented regarding the practice of re-examination in surrounding states for discussion purposes only. Review of Pass/Fail rates over the previous years' indicates a correlation between applicants taking the online courses and an increase in the fail rates. Lack of unified curriculum standards and need to review school educational reports were identified by the Commission as needing further investigation.

Motion: To submit a Notice of Drafting for the development of regulations addressing re-examination parameters.
Burnett/Mitchell/Approved.

Upon further discussion, the Commission is going to develop an Education Taskforce to investigate the factors leading to low examination pass rates and develop a proposal for corrective action(s). Members of the Taskforce to include Mr. Bethune, Mr. Pickren, Mr. Burnett, and Ms. Dianna Brouthers.

3. SC Vacation Rental Act and Disclosure Statements

The Commission discussed the issue of rental properties with short term bookings being sold and the responsibilities of the new owner. The Commission identified best practice to include the disclosure containing language identifying the property as a short term rental and requiring the buyer to acknowledge and honor ninety (90) days of the booked rentals in accordance with S.C. Code Ann. § 27-50-250(A). Mr. Tennis will conduct further research and draft a clarification statement for the Commission to review at an upcoming meeting.

4. Handling Earnest Money

Mr. Burnett voiced concerns regarding the current practice of earnest money being handled by an attorney rather than by a broker. Per the law, trust accounts must be held by the broker and money only released when both parties come to an agreement. If a broker utilizes an attorney for holding of the trust account, the attorneys are not bound by the same legal requirements regarding release of earnest money. To best protect the

public and ensure licensees are aware of the risk of such practice, the development of additional education on the topic was recommended for the Education Taskforce to look into.

5. Long-Term Listing Agreements

Mr. Pickren recused himself from discussion. Mr. Boland presented a copy of a deed containing a forty (40) year listing agreement. Following discussion to determine if the arrangement violates the statutes or regulations, the Commission requested Mr. Tennis conduct further research and report back to the Commission at an upcoming meeting.

6. Property Management and Homeowner Access to Documentation

Mr. Tennis shared with the Commission an inquiry submitted to the Commission office regarding a property owner's right to review an active rental agreement issued by a property management company to ensure the correct rental amount is being charged.

Discussions were held, during which time the Commission members discussed agency law and the role of confidentiality. The Commission noted that pursuant to agency law, the leasing agent is an agent of the owner, owes fiduciary duties to the owner, and therefore the owner of the property would likely have a right to view the agreement unless there was negotiated language in the agreement itself that prohibited that information from being disclosed with the owner. With that said, the Commission does not issue advisory opinions or provide legal advice; members of the public are encouraged to seek the legal advice of counsel with respect to any specific fact pattern.

7. CE Broker

Mr. Boland reported to the Commission that for the 2023 renewal cycle, it is expected that 17,000 licensees have yet to activate their CE Broker account. Having gone through CE Broker implementation with several licensing boards, Mr. Boland recognized Ms. Buttler to address the Commission. Understanding the Commission's desire to implement CE audits following renewals, Ms. Buttler recommended a tiered approach to implementation, beginning first with a section of the licensees and then building with each subsequent renewal. This will ensure the administrative processes built to facilitate the audits will be constructed correctly and honed to process as efficiently as possible. The tiered approach will also allow time for Ms. Buttler to visit with the various state associations and provide instruction and education regarding CE Broker and the Commission's utilization of it. Ms. Buttler will prepare an implementation plan for CE Broker and present it to the Commission for review and approval at an upcoming meeting.

Mr. Stackhouse left the meeting at 1:51 p.m.

8. Regulatory Review

Mr. Tennis reviewed the State mandate for all regulatory boards to review their regulations every five years.

Motion: To include a Notice of Drafting to amend S.C. Code of Regulations Chapter 105.
Pickren/Bethune/Approved.

9. 2023 Commission Meeting Dates

Mr. Boland presented the proposed 2023 Commission Meeting dates. The proposed November date conflicts with a national conference and an alternate date was identified. The Commission will incorporate a second meeting day every quarter to address administrative issues.

Motion: To approve the 2023 meeting dates as amended.
Burnett/Bethune/Approved.

10. Approval for Staff Travel: ARELLO Regulatory Investigations Seminar (Raleigh, NC, November 1-3, 2022)

Motion: To approve travel for nine Commission investigators and inspectors, Commission Administrator and Commission Advice Counsel.
Bethune/Pratt/Approved.

OLD BUSINESS

1. Wholesaling

Motion: To develop a Wholesaling Taskforce. Commission members on the Taskforce to include Mr. Bethune, Mr. Lee, and Mr. Rinehart.

EXECUTIVE SESSION

Executive session was not needed.

PUBLIC COMMENTS

Mr. Smallwood with the SCRA informed the Commission that the SCRA Board recently developed a Vacation Rental Disclosure Form. Mr. Smallwood also asked the Commission take under consideration the clarifying of language in the Property Disclosure, specifically paragraph 7, subsections A and B. SCRA is seeking clarification as to whether those subsections apply on to roof issues or if they apply to the items listed in the heading of Section II. Additionally, the Attorney General's Office released an opinion regarding what licensees are to do with earnest money that has been sitting for years, with the opinion providing that brokers-in-charge have limited options in disbursing trust funds when the terms of the contract are unclear or the parties dispute who is entitled to those funds, with the Attorney General's Office ultimately finding that it believes legislative clarification is necessary. Mr. Smallwood also brought to the Commission's attention that the Attorney General's Office also recently issued an opinion regarding appraisals and provided that the Attorney General's Office did not find a provision in the South Carolina Real Estate Appraiser License and Certification Act, SC. Code Ann. § 40-60-5 et seq. that prohibited other real estate professionals from using the term "value," among other

issues involved in the letter. In light of numerous requests to the SCRA office for spanish versions of the various forms, SCRA has begun creating forms in spanish and other languages. The forms are only to be used for information purposes with the english form being the accepted final forms. Finally, Mr. Smallwood extended SCRA's gratitude on a job well done to Mr. Boland for leading the Commission following Mr. Atkinson's departure.

ADJOURNMENT

Motion: To adjourn.

Bethune/Mitchell/Approved.

The meeting adjourned at 2:15 pm.