

**South Carolina Real Estate Commission
Meeting Minutes**

Wednesday June 21, 2023 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
John Rinehart, Vice Chair – 5th Congressional District
Candace Pratt – 1st Congressional District
Allen Wilkerson – 2nd Congressional District
David Burnett – 4th Congressional District
Janelle Mitchell – 6th Congressional District
W. Brown Bethune – 7th Congressional District
Gary A. Pickren, Esq. – At-Large Member
Jonathan Stackhouse – Public Member

SCLLR STAFF PRESENT:

Kyle Tennis, Esq., Office of Advice Counsel
Meredith Buttler, Administrator
Ashlynn Kirk, Administrative Coordinator
Micah Hurtt, Administrative Coordinator
Joi Middleton, Education Manager
Rowland Alston, Esq., Office of Disciplinary Counsel
LeAnna McMenamin, Esq., Office of Disciplinary Counsel
Chuck Waters, Office of Investigations and Enforcement
James Kemfort, Office of Investigations and Enforcement
Wattie Wharton, Office of Investigations and Enforcement

PRESENT:

Nadine Garrett, Court Reporter	Yorlondo Wheeler
Kristen Allen	Sonya Martin
Krystal Allen	Marion Patterson
Doc Smith	Austin Smallwood (SCR)
Afra Barnett	Lindsay Jackson (SCR)
Shawn Riley	Ruth Smith

CALLED TO ORDER: Mr. Lee, Chair, called the meeting to order at 10:00 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

None

APPROVAL OF AGENDA

Motion: To approve the agenda.

Moved by Mr. Burnett and seconded by Ms. Pratt, the motion carried by unanimous vote.

APPROVAL OF MEETING MINUTES

Motion: To approve the May 17, 2023 Commission meeting minutes with Amendment.

Moved by Mr. Rinehart and seconded by Mr. Wilkerson, the motion carried by unanimous vote.

Motion: To approve the May 23, 2023 Education Taskforce meeting minutes.

Moved by Mr. Burnett and seconded by Ms. Pratt, the motion carried by unanimous vote.

CHAIRMAN'S REMARKS

Mr. Lee elected to forego remarks.

STAFF REPORTS

a. Office of Investigations and Enforcement (OIE) Reorganization

On behalf of Donnell Jennings, Esq., Mr. Kemfort provided an update regarding the combination of the Office of Advice Counsel, Office of Disciplinary Counsel and Office of Investigations and Enforcement under the new "Office of Legal Services and Enforcement." Chief investigators will now have the title of "Lead Investigators" and the investigative teams will be divided into smaller teams with fewer boards to focus on. It is not anticipated that the Commission will see any negative change of service. Mr. Burnett questioned if the inspections team would be following something similar. Mr. Kemfort confirmed the inspections team is included in this reorganization.

b. Office of Investigations and Enforcement (OIE) Report

Mr. Kemfort reported that from January 1, 2023, to June 16, 2023, 318 complaints have been filed. OIE currently has 96 active cases and 15 cases have been closed during that time period.

Mr. Pickren questioned the large number of complaints yet the lower number of active cases. Mr. Kemfort explained that most of the received complaints are weeded out through the complaint analyst's review before coming before the IRC. The reason most are not able to be opened is that the complaint does not fall under the Commission's

jurisdiction as provided in the law. Mr. Pickren asked to include the number of complaints that were not opened for cases in future reports.

c. Investigative Review Conference (IRC) Report

Mr. Kemfort reported the IRC met on June 6, 2023, via teleconference. The IRC recommends the following: 8 cases for dismissals, 2 cases for Letters of Caution, 0 cases for dismissal with a cease and desist, and 5 formal complaint.

Mr. Pickren asked for explanations regarding the cases recommended for Letters of Caution. The investigators, Mr. Wharton and Mr. Waters, provided explanations for these cases.

Motion: To accept IRC recommendations as presented.

Moved by Mr. Bethune and seconded by Mr. Stackhouse, the motion carried by unanimous vote. Mr. Pickren abstained from voting on cases 2023-134 and 2023-7

d. Office of Disciplinary Counsel (ODC) Report

Mr. Alston reported as of June 7, 2023, there are 50 open cases of which 30 are pending hearings and agreements, 0 pending closure, 1 appeal, and 48 have been closed since January 1, 2023.

d. Administrator Report

Mrs. Buttler reported there are currently 6,412 active broker-in-charge licensees with 1,010 in active-in-renewal status; 4,256 active broker licensees with 623 in active-in-renewal status; 27,713 active salesperson licensees with 5,980 in active-in-renewal status; 1,288 active property manager-in-charge licensees with 142 in active-in-renewal status; and 1,601 Property Manager licensees with 175 in active-in-renewal status. The Commission was also presented the totals for timeshare salesperson registrants, real estate or property manager office registrations, and initial application volume from 2015 to present.

The Commission's current account balance as of May 31, 2023 is \$7,839,277.92. Also included in the meeting materials is the cash balance report for the Education and Research Fund as well as the Timeshare Recovery Fund. As noted in the report, the \$10 allocation to the Education and Research Fund is active.

Mrs. Buttler announced that the final days for renewals are coming up and at present the current renewal rates stand at 62% for Salesperson, 73/74% for broker and broker-in-charge, and 79% for property manager and property manager-in-charge. Mrs. Buttler had hoped that the renewal rates would have been higher by this point and stated she will send out one more notice from the Commission reminding licensees that if a completed renewal application is not received by midnight on June 30, 2023, then the license will be lapsed and practice may not occur until the license have been reinstated.

Mr. Wilkerson asked if staff had the renewal numbers and percentages compared to last year. Mrs. Buttler will obtain that data for the next Commission meeting.

APPLICATION HEARINGS

a. Afra Barnett

Ms. Barnett appeared before the Commission for a salesperson application hearing. She waived her right to counsel and was sworn in by the court reporter. Application hearings are recorded by a certified reporter in the event a verbatim transcript is necessary.

Motion: To enter into executive session for legal advice where no votes will be taken. Moved by Mr. Burnett and seconded by Mr. Rinehart, the motion carried by unanimous vote.

Motion: To exit executive session and return to open session. Moved by Mr. Stackhouse and seconded by Ms. Pratt, the motion carried by unanimous vote.

Ms. Barnett withdrew her application and will reapply at a later date.

b. Krystal Allen

Ms. Allen appeared before the Commission for a salesperson application hearing. She waived her right to counsel and was sworn in by the court reporter. Ms. Kirsten Allen was also sworn in and testified on Ms. Allen's behalf. Application hearings are recorded by a certified reporter in the event a verbatim transcript is necessary.

Motion: To enter into executive session for legal advice where no votes will be taken. Moved by Mr. Bethune and seconded by Ms. Pratt, the motion carried by unanimous vote.

Motion: To exit executive session and return to open session. Moved by Mr. Rinehart and seconded by Mr. Wilkerson, the motion carried by unanimous vote.

Motion: To approve Ms. Allen to sit for the salesperson exam. Following passing of the exam and issuance of license, Ms. Allen must take the 4-hour "Disclose, Disclose, Disclose" continuing education course within six (6) months of license issuance and provide to the Commission office proof of completion of the course. The hours received for this course will not be computed in and will not count toward the calculation of total continuing education hours required for licensure or renewal. Failure to do so will result in her license being administratively suspended. Moved by Mr. Bethune and seconded by Ms. Mitchell, the motion carried by unanimous vote.

- c. Marion Patterson
Ms. Patterson appeared before the Commission for a salesperson application hearing. She waived her right to counsel and was sworn in by the court reporter. Application hearings are recorded by a certified reporter in the event a verbatim transcript is necessary.

Motion: To approve Ms. Patterson to sit for the salesperson exam.

Moved by Mr. Bethune and seconded by Mr. Pickren, the motion carried by unanimous vote.

- d. Princeton Linder
Mr. Linder did not appear before the Commission for a salesperson application hearing despite being properly noticed.

- e. Yorlondo Wheeler
Mr. Wheeler appeared before the Commission for a salesperson application hearing. He waived his right to counsel and was sworn in by the court reporter. Application hearings are recorded by a certified reporter in the event a verbatim transcript is necessary.

Motion: To approve Mr. Wheeler to sit for the salesperson exam. Following passing of the exam and issuance of license, Mr. Wheeler must take the 4-hour “Disclose, Disclose, Disclose” continuing education course within six (6) months of license issuance and provide to the Commission office proof of completion of the course. The hours received for this course will not be computed in and will not count toward the calculation of total continuing education hours required for licensure or renewal. Failure to do so will result in his license being administratively suspended.

Moved by Mr. Pickren and seconded by Mr. Stackhouse, the motion carried by unanimous vote.

TASKFORCE REPORTS

- a. Education Taskforce- David Burnett

Mr. Burnett stated that the Education Taskforce is still working and plans to meet again soon. The Taskforce is putting together a list of suggested regulatory changes. Mr. Burnett stated the Taskforce is reviewing the Commission’s question of placing a limit to the number of times an applicant may take the examination before the applicant must retake the course. It is being reviewed as to whether or not this can be addressed through regulations. Currently, there is not a limit on the number of times an individual may take the exam.

The Taskforce is also discussing continuing education course design, with a notable change of requiring courses to be competency-based. The proposed regulations will reflect this language. The proctoring for continuing education is also under review. The Taskforce is reviewing a process for asynchronous online continuing education to include more competency bases pop-up questions and quizzes.

Mr. Burnett also reported that he had received information from a family friend that had taken the national exam recently. He was told that the national exam is quite difficult and that the prep class they took after the pre-licensing class was the only thing that helped prepare him for the national exam. The Education Taskforce will continue working diligently to update the pre-licensing and continuing education courses so that they may even more helpful to licensees in the long run.

Mr. Lee stated that due to the current statutes, there is not enough time to teach all needed content for pre-licensing courses. A bill would need to be introduced to include a statute change to increase the allotted time to include all needed content for pre-licensing and continuing education courses.

Mrs. Buttler reminded those in attendance and watching online that individuals can report to ARELLO if instructors/providers are not in compliance with the ARELLO standards for asynchronous or synchronous classes. This will initiate an investigation and should ARELLO remove a provider's or instructor's approval, this will result in the provider or instructor no longer being approved in South Carolina.

Motion: To enter into executive session for legal advice where no votes will be taken.
Moved by Mr. Bethune and seconded by Mr. Wilkerson, the motion carried by unanimous vote.

Motion: To exit executive session.
Moved by Mr. Rinehart and seconded by Ms. Pratt, the motion carried by unanimous vote.

NEW BUSINESS

a. **Clarification of "No Representation" on Residential Property Disclosure**

The updated Residential Property Disclosure form has been placed into effect as of June 1, 2023. Mr. Lee stated that section of the form regarding "no representation" is not a "plea the fifth" option; either the owner knows or does not know. Owners are required by law to acknowledge known information on the form. "No Representation" should not be selected if the owner simply wishes to not disclose information or answer the question. Selecting "No Representation" does not waive liability if owner is aware or subsequently becomes aware.

Mr. Burnett requested an e-mail blast from the Commission office to licensees re-stating that the updated form should be in use and that licensees should pay particular attention to the "No Representation" section of the form.

b. **Continuing Education Revision to include Fair Housing Course Requirement**

Mr. Burnett stated that the National Association of REALTORS (NAR) is adding two (2) hours of fair housing continuing education for their members. Mr. Burnett is asking if the Commission's continuing education requirements can be amended to include this for all licensees.

Mr. Pickren suggested that fair housing be a part of the mandatory core course every six (6) to eight (8) years. Mr. Lee stated that to make the fair housing hours a requirement for continuing education would require a change to the practice act.

c. Clarification of Brokerage Appearance in Advertising and Discussion on Potential Regulations

It has come to the Commission's attention that there is an increase in the number of complaints where it is difficult to identify the brokerage on mailers, signs, etc. Mr. Smallwood with SCR provided an example for yard signage of what they advise licenses. SCR recommends brokerage listing should be clearly visible when one is sitting in a car on the opposite side of the street.

Mr. Burnett is asking if there is a way to abbreviate the reporting process for these cases in order to bring into compliance. Mr. Alston explained the process when a complaint is submitted and the respondent takes corrective action. These cases do not typically continue before the Commission if compliance is reached prior to the IRC.

Mrs. Buttler and Mr. Tennis will research how other states handle the issue and bring the information back in September.

e. Clarification on the Practice of Cross Marketing and Limitations of Agency

It has come to the Commission's attention that licensees are "sitting in" at open houses for a listing not with that licensee's brokerage. Mr. Rinehart mentioned fractional brokerages which is something that North Carolina is taking on. This matter includes limitation of agency.

Mr. Pickren states the law is clear: agents can only work under one brokerage and can only show for that brokerage, and non-licensees cannot do showings.

Mrs. Buttler and Mr. Tennis will do additional research regarding improved verbiage on this issue.

f. Clarification on Administrative Procedures for Licensees Changing Licensure Categories- Meredith Buttler

Mrs. Buttler is asking the Commission for clarification on licensees changing license types between property manager and salesperson/broker.

The Commission states that licensees cannot hold both license types at the same time, as per S.C. Code Ann. § 40-57-110(A). When switching categories, the initial license will be closed once the new license is issued. If the licensee wishes to switch back to a prior license the licensee will need to reapply, meeting current requirements for that license type.

g. Clarification on Requirements for Initial Licensure and Administrative Procedures- Meredith Buttler

Mrs. Buttler brought forth three administrative concerns regarding licensure.

The first concern is that SC Code Ann § 40-57-120(A) requires "active status" for a non-resident applicant. Mrs. Buttler is asking if the December 13, 2017 decision to allow "inactive" status less than 6 months from the date of the application is legally allowable.

The Commission stated that non-resident applications must have active licensure from another jurisdiction at the time of Application submission or licensure from another jurisdiction can be expired within 6 months of application date. Mr. Tennis stated that S.C. Code Ann. § 40-57-320(B)(6) is the operative statutory provision regarding this concern.

The second concern is regarding requirements for broker licensure found in S.C. Code Ann. § 40-57-320(A)(2)(a), specifically the experience requirement (... “and three years active salesperson licensure within the past five years.”) Ms. Buttler requested clarification regarding whether non-resident applicants who hold an active license in another jurisdiction have to provide proof of active licensure as a broker for a minimum of three years within the last five. Upon review of the practice act, its definitions, and following discussion regarding the terms, qualifications, and requirements other states use for their licensees, the Commission stated that “salesperson” is a defined term with a specific meaning and means a South Carolina-licensed salesperson pursuant to the definitions of “salesperson” and “licensee” in the practice act.

The third concern is regarding license cancellations, SC Code Ann. § 40-57-110(E) requires licenses to be cancelled if not reinstated before December 31st of the renewal year. This requires licensees to reapply and meet the current licensure requirements. Because of the way licensure is set up, the cancellation reapplication penalizes South Carolina Residents. If a licensee lives in South Carolina and holds licensure in both North Carolina and South Carolina (with no issues or orders), they must complete all pre-licensing education requirements and pass the national and state exams. Whereas a licensee who lives in North Carolina and holds both North Carolina and South Carolina licensure (with no issues or orders) need only show North Carolina residency and active North Carolina practice to take the state exam per S.C. Code Ann. § 40-57-320(B)(6). Mr. Rinehart would like to see this correction. Mr. Tennis stated this may need be a statutory change. Mrs. Buttler and Mr. Tennis will research and bring this topic back to the next meeting.

- h. Topics for Core Course and BIC Course- Joi Middleton
Mrs. Middleton is working on an advisory group for the core course and BIC course. She asked the commissioners if there are any particular topics they would suggest for the courses.
Suggested course topics included: Disclosure, BIC Proper Supervision & Consequences, Agent Understanding & Expectations of Brokers, Understanding Agency, Statutory (similar to the “a walk through the law” course), Advertising/Cross Marketing, and Fair Housing.
- i. Notice of Drafting Update- Kyle Tennis, Esq.
Mr. Tennis stated that a Notice of Drafting was filed with the State Register Friday, June 9, 2023, and should be published around June 23, 2023 edition of the State Register. The drafting was submitted as to comport with S.C. Code Ann. § 27-50-10(2).

AGENDA TOPICS FOR FUTURE MEETINGS

None

PUBLIC COMMENTS

None

ADJOURNMENT

Motion: To adjourn.

Moved by Mr. Rinehart and seconded by Ms. Pratt, the motion carried by unanimous vote.

The meeting adjourned at 3:23 pm.