

**South Carolina Real Estate Commission
Meeting Minutes**

Thursday, September 14, 2023 at 10:00 am
110 Centerview Dr., Kingtree Building, Upstate Conference Room
Columbia, South Carolina 29210

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
Allen Wilkerson – 2nd Congressional District
David Burnett – 4th 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, Commission Executive
Ashlynn Kirk, Administrative Coordinator
Chuck Waters, Office of Investigations and Enforcement
Todd Bond, Office of Investigations and Enforcement
Wattie Wharton, Office of Investigations and Enforcement
Rowland Alston Esq., Office of Disciplinary Counsel
LeAnna McMenamin Esq., Office of Disciplinary Counsel
Roger Richardson, Office of Investigations and Enforcement

PRESENT:

Nadine Garrett, Court Reporter
Austin Smallwood, Esq., SCR
Charles Mace
Tony Nalley

CALLED TO ORDER: Mr. Lee, Chair, called the meeting to order at 10:02 am.

INVOCATION

Mr. Burnett 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 the absence of Commissioners Candace Pratt and Janelle Mitchell.
Moved by Mr. Bethune and seconded by Mr. Rinehart, the motion carried by unanimous vote.

APPROVAL OF AGENDA

Motion: To approve the agenda.
Moved by Mr. Stackhouse and seconded by Mr. Rinehart, the motion carried by unanimous vote.

CHAIRMAN'S REMARKS

None

STAFF REPORTS

- a. Office of Inspections Report
On behalf of Jennifer Stillwell, Mr. Roger Richardson provided the Office of Inspections report.
Currently the Office of Inspections has 3 inspectors, each inspector is able to inspect 2-3 offices per month. To date, a total of 40 inspections have been completed for 2023. The Office of Inspections has hired additional inspectors, and they are currently in training. The most common issue found during inspections are brokers-in-charge and property managers-in-charge not reconciling books correctly, with some sending them to a third party to complete. Mr. Richardson also answered questions from the Commission. Commission staff is currently working on updating the inspection forms, of which are to include an in-state vs. out-of-state inspection form.
- b. Office of Investigations and Enforcement (OIE) Report
Mr. Wharton and Mr. Bond reported from January 1, 2023, to September 06, 2023, 409 complaints have been filed. OIE currently has 84 active cases, 32 cases have been closed during that time period, 169 were not opened, 94 are pending complaint analyst review, 17 are pending Board action, and 13 are pending review by the IRC.

Motion: To go into executive session to seek legal advice.
Moved by Mr. Pickren and seconded by Mr. Wilkerson, the motion carried by unanimous vote.

Motion: To return to open session and for the minutes to reflect no votes were taken during executive session.
Moved by Mr. Stackhouse and seconded by Mr. Pickren, the motion carried by unanimous vote.

c. Investigative Review Counsel (IRC) Report

Mr. Wharton reported the IRC met on September 5, 2023, via teleconference. The IRC recommends the following: 5 cases for dismissals, 6 cases for Letters of Caution, 2 cases for dismissal with a cease and desist, and 1 formal complaints. In addition, the 3 requested cases from the previous Commission meeting were brought back to the Commission from the August 16, 2023 meeting.

Motion: To accept the IRC recommendations with exception that Case No. 2022-878 be changed to a dismissal.

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

d. Office of Disciplinary Counsel (ODC) Report

Mrs. McMenamain reported as of August 30, 2023, there are 54 open cases of which 24 are pending hearings and agreements, 0 pending closure, and 57 have been closed since January 1, 2023.

NEW BUSINESS

a. Complaint Acknowledgment Process and Procedures

Todd Bond was present to answer the Commissioners' questions and concerns regarding the complaint process and procedures. Mr. Burnett stated that complainants are frustrated by the lack of updates on the progress of their cases, stating they receive the initial notice but then do not hear anything regarding the case until resolution. Mr. Burnett inquired if there could be a monthly update provided to the complainants, as well as a more comprehensive dismissal letter.

Mr. Bond stated that it may be difficult to provide a monthly update, however, the Agency may be able to share milestones throughout the investigation. Mr. Bond was open to the suggestion of a more comprehensive dismissal letter. Mr. Burnett asked if the Cease and Desist (C&D) process can be expedited so that it can be issued at the first opportunity. This allows the Commission to better address the issue of unlicensed practice and take appropriate action.

The Commission discussed whether or not to expedite the process or leave the process as is. The Commission determined the process is to be left as is with the modification that C&D orders be sent via certified mail.

b. Clarification of Subagency in Relation to Co-Listing

Mr. Pickren requested clarification from the Commission regarding ownership of a listing in the event an agent leaves a brokerage firm. Following discussion, the Commission confirmed that when an agent leaves a brokerage firm, the listing remains with the brokerage firm. This is also applicable in the event the broker-in-charge leaves the brokerage firm; the listing still belongs to the brokerage firm. This is in accordance with the statutory definitions found in S.C. Code Ann. § 40-57-30 and other applicable sections of the Real Estate Practice Act. Commissioners requested this clarification be provided to education providers. Mrs. Buttler confirmed an e-blast can be sent as well as clarification posted on the website.

Mr. Pickren also requested clarification regarding an agent's ability to co-list with another agent from a different brokerage firm. The Commission clarified that a salesperson, broker and broker-in-charge are subagents of the brokerage firm, pursuant to statute. As such, a subagents cannot create another subagency with another agent outside of their brokerage firm. In order for an agent to co-list with another agent from a different brokerage firm, the seller would need to list with both brokerage firms using non-exclusive listing agreements.

Review of National Lawsuits Impacting the Practice of Real Estate

As requested at the August meeting, Mr. Pickren presented the Commission with a summary of several national lawsuits, involving the National Association of Realtors, which have the potential of impacting on the practice of real estate in South Carolina. Among the summarized cases, there is a lawsuit regarding a listing agent's ability to pay part of commission to a buyer's agent for bringing the buyer, otherwise known as "adverse commission." At this time the settlement amounts are not known yet. As South Carolina is one of the few states that has buyer agency, ruling in these cases could lead to potential disclosure issues.

Another case involves litigation against Private Listing Services (PLS). Listing exemptions could create potential discrimination to small firms as well as potential for fair housing violations.

Mr. Burnett noted an update in North Carolina law, House Bill 422, which prohibits unfair real estate service agreements for residential real estate to include long term listing agreements, has passed and become law. He stated a similar bill has been introduced to the South Carolina General Assembly.

OLD BUSINESS

a. Clarification of Licensure Requirements for Salesperson and Broker

Mrs. Buttler requested further clarification of the licensure requirements for salesperson and broker based on the information the Commission provided on this topic at the June 2023 meeting. Mrs. Buttler provided a chart to the Commission summarizing the pre-licensing requirements for salesperson and broker based off the previous Commission directives as well as an updated chart reflecting review of the statutes. The revised chart acknowledges the Commission's ability to enter into reciprocal agreements in accordance with S.C. Code Ann § 40-57-120(A) which provides waivers for education, experience, and/or examination with other jurisdictions through the use of reciprocal agreements. As such, the Commission is not able to recognize prior licensure experience in another jurisdiction if the other jurisdiction and the Commission have not entered into a reciprocal agreement. Unless subject to a reciprocal agreement, all individuals applying for a salesperson, broker, or broker-in-charge license must first meet the education and experience requirements detailed in S.C. Code Ann § 40-57-320(A) to be made eligible for licensure. The chart also reflects an exemption from the national portion of the examination only if the applicant is a nonresident and holds an active license in another jurisdiction per S.C. Code Ann § 40-57-320(B)(6).

Motion: To go into executive session to seek legal advice and for Ms. Buttler to remain for informational purposes.

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

Motion: To return to open session and for the minutes to reflect no votes were taken during executive session.

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

Motion: To approve the revised summary chart as presented by Mrs. Buttler.

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

After extensive discussion regarding applicants from other states, the Commission charged Mrs. Buttler to reach out to the North Carolina Real Estate Commission and see if a reciprocity agreement can be reached.

Mr. Pickren suggested the allocation of funds for research of other states' license law and requirements regarding applicants from other states.

Mr. Burnett requested the review of continuing education exemptions be added to the October Meeting Agenda.

b. Regulations on Marketing: Cross Marketing, Limitations of Agency and Brokerage Identification

At the request of the Commission from the June Meeting, Mrs. Buttler presented the research Ms. Kirk compiled on marketing statutes and regulations in other states. Mrs. Buttler also advised that she has reached out to other state administrators regarding marketing statutes and regulations specific to the ability to cross market listings. The Commission shared concerns of the brokerage appearance in advertising and that potential regulations changes may be needed.

Motion: Form a taskforce to research cross marketing and create a Notice of Drafting for cross marketing.

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

EXECUTIVE SESSION – Legal Advice regarding revising Title 40, Chapter 57

Motion: To go into executive session to seek legal advice.

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

Motion: To return to open session and for the minutes to reflect no votes were taken during executive session.

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

PUBLIC COMMENTS

None

AGENDA TOPICS FOR FUTURE MEETINGS

None

ADJOURNMENT

Motion: To adjourn.

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

The meeting adjourned at 2:56 pm.