

**South Carolina Real Estate Commission
Meeting Minutes**

Wednesday, September 11, 2024 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.

Commissioners Present:

John Rinehart, Chair – 5th Congressional District
David Burnett, Vice-Chair – 4th Congressional District
Candace Pratt – 1st Congressional District
Allen Wilkerson – 2nd Congressional District
William “Andy” Lee – 3rd Congressional District
Janelle Mitchell – 6th Congressional District
Gary A. Pickren, Esq. – At-Large Member
Johnathan Stackhouse – Public Member

SCLLR STAFF PRESENT:

Erica Wade, Commission Executive
Ashlynn Brown, Administrative Coordinator
Kyle Tennis, Esq., Office of Advice Counsel
Meredith Buttler, Program Director
Erin Baldwin, Esq., Office of Disciplinary Counsel
Shannon Davis, Esq., Office of Disciplinary Counsel
Wattie Wharton, Lead Investigator Office of Investigations and Enforcement
Chuck Waters, Office of Investigations and Enforcement
Chuck Turkal, Office of Investigations and Enforcement

PRESENT:

Cortney Glover, Court Reporter
Austin Smallwood, Esq., SCR
Matt Butler
Wendell Hawkins
Rod Atkinson
Scott McCulla
Alexander Alderman
Victor Sanchez
Jolene Puffer
Kimla Hatten

CALLED TO ORDER: Mr. Rinehart called the meeting to order at 10:04 a.m.

INVOCATION

Mrs. Mitchell gave the invocation.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all present.

INTRODUCTION OF COMMISSIONERS AND STAFF

Commissioners and staff introduced themselves.

APPROVAL OF EXCUSED ABSENCES

Motion: To approve the absence of W. Brown Bethune.

Mrs. Pratt made a motion to approve, which was seconded by Mr. Lee. The motion carried by unanimous vote.

APPROVAL OF AGENDA

Motion: To approve the agenda as written.

Mr. Lee made a motion to approve, which was seconded by Mrs. Pratt. The motion was carried by unanimous vote.

APPROVAL OF MEETING MINUTES

Motion: To approve the June 12, 2024 meeting minutes.

Mr. Burnett made a motion to approve, which was seconded by Mr. Wilkerson. The motion carried by unanimous vote.

Motion: To approve the August 14, 2024 meeting minutes.

Mrs. Mitchell made a motion to approve, which was seconded by Mr. Lee. The motion carried by unanimous vote.

CHAIRMAN'S REMARKS

Mr. Rinehart welcomed former Commission Administrator, Rod Atkinson and thanked Mr. Lee for his work and dedication as the previous Commission Chair.

AT-LARGE SEAT ELECTION

The Commission was previously provided a copy of each candidate's resume and short biography. Each candidate present was allotted 3 minutes to present information about themselves and why they would like to serve on the Commission.

After the candidates made their speeches, the Commission voted by anonymous ballot.

Mr. Pickren was re-elected for the At-Large Seat.

STAFF REPORTS

a. Office of Investigations and Enforcement (OIE) Report

Mr. Wharton reported that from January 1, 2024, to September 5, 2024, 730 complaints have been filed. OIE currently has 245 active investigations and 142 cases have been closed during that time period.

b. Investigative Review Conference (IRC) Report

Mr. Wharton reported that the IRC met on August 27, 2024, via WebEx. The IRC recommends the following: 17 cases for dismissal, 1 case for letters of caution, 3 cases for Cease and Desist, and 2 formal complaints.

Mr. Wilkerson requested Mr. Wharton provide further detail regarding complainants' failure to respond, specifically, to address if there are any patterns between complainants' failure to respond and types of complaint. Mr. Wharton believes in cases where the complainant does not respond, the complaint filed appears to be retaliatory behavior towards the licensee. In each case, investigators reach out to the complainant via telephone, email, and letter. When investigations do not receive a response from the complainant, they close the case. Generally, investigators require cooperation from the complainant to gather proof and corroborating evidence of the alleged violations.

Mrs. Pratt inquired if the Office of Investigations or Inspections does any follow-up on cases where the respondent is sent a cease and desist. Mrs. Baldwin stated that the Commission cannot, as it is not within statute. However, if there are multiple complaints on the same respondent alleging the same violations in multiple ceases and desists, further action may be taken through the Administrative Law Court.

Mr. Burnett inquired if case 2024-309 was filed before or after the change to recent license law and if the Commission can fine for non-license practice? Mr. Wharton explained this particular case was before the license law changes from May 21, 2024. For Cases after the May 21st license law changes, the Commission may implement fines for non-licensed practice.

Mr. Pickren requested the "IRC Logic" explanation be made clearer in future IRC reports. There has been confusion regarding respondent's license status and Commissioners want to ensure they understand the exact license status of a licensee in a case.

Mr. Lee asked if the cease and desists were selling homes without license, and if those cases are considered wholesaling? Mr. Wharton explained that the cases are connected, however these particular cases suggested for cease and desists are not wholesaling.

Mr. Burnett shared concerns that there are more timeshare complaints than he recalls from previous IRC reports. Mr. Wharton explained that the office of investigations and enforcement implemented systematic changes; and that the number of timeshare complaints has not necessarily changed, but that the complaints are now being brought to the attention of the Commission since it has been added to this licensing board through statutory changes.

Motion: To accept IRC recommendations as presented.

Mr. Lee made a motion to accept the IRC recommendations as presented, which was seconded by Mr. Pickren. The motion was carried by unanimous vote.

c. Office of Disciplinary Counsel (ODC) Report

Mrs. Baldwin reported as of August 28, 2024, there are 37 open cases of which 17 are pending hearings and agreements, 0 pending closure, 0 appeal, and 1 have been closed since the last report.

d. Board Executive Report

Mrs. Wade reported there are currently 7,263 active broker-in-charge licensees; 4,892 active broker licensees; 33,417 active associate licensees; 1,499 active property manager-in-charge licensees; and 1,933 active property manager licensees. The Commission was also presented the totals for timeshare salesperson registrants, real estate or property management office registrations, and initial application volume from 2015 to present.

The Commission's current account balance as of July 31, 2024, is \$6,752,395.58. The Cash balance report for the Education and Research Fund as well as the Timeshare Fund was included in the meeting materials.

Mrs. Wade advised that staff collaborated with SCR for Agent Safety Month. On September 10, 2024, both organizations co-hosted an agent safety workshop. The presentation by Mr. Daniel Creseap was well received by the licensees in attendance. Licensees are welcome to watch the presentation by visiting SCR's website to watch the replay.

Mrs. Wade stated that staff is currently working on the proposed regulations that were discussed in the August Commission meeting. Staff will be working closely with advice counsel on the proposed regulation changes. Once staff has completed the framework, they will forward the documentation to the Commission for review and feedback. The Commission is welcome call for a special-called Web-Ex meeting to discuss the regulations and, if approved, regulations can be submitted before the October 7, 2024 deadline.

Mr. Wilkerson inquired why the cash balance, is lower than usual. Mrs. Buttler explained the fiscal year runs from July 1st to June 31st. The new fiscal year has begun and what the Commission is seeing reflects one month of the ten dollars being deducted from renewals. Similarly, the Education Department completed the purchase agreements for the new core course and other required courses.

Mr. Pickren inquired why Broker-in-Charge applications seem lower compared to previous years. Mrs. Buttler explained the numbers depicted are applications specifically for Broker-in-Charge. However, some licensees apply for a Broker license first and, after passing the Broker's exam, some applicants opt to become licensed as a Broker-in-Charge. Those individuals then complete and pay for Broker-in-Charge initial licensure. They are "applying" for the Broker-in-Charge designation through a different process, rather than directly applying for the Broker-in-Charge licensure.

Mr. Rinehart mentioned the new statutes regarding BIC. Mr. Rinehart requested BIC duties and responsibilities be added as an agenda topic at a future meeting.

Mrs. Buttler reminded the Commission that the financial taskforce previously approved a guidance document be created. Once staff has researched laws from across the nation, they can then begin building the guidance document.

APPLICATION HEARINGS

a. Sara Fitch

Mrs. Fitch did not appear before the Commission for an associate application hearing, despite being properly noticed.

b. Kimla Hatten

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

Motion: To approve Ms. Hatten to sit for the associate exam.

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

c. Joseph Molo

Mr. Molo did not appear before the Commission for a broker supplication hearing, despite being properly noticed.

OLD BUSINESS

a. Guidance Document- Recent Settlement and SC Law

Mr. Tennis explained the purpose of the guidance document is to address questions regarding the recent National Association of Realtors settlement. Paragraph 58 subsection 6 of the settlement states, “unless inconsistent with state or federal law and regulation, all REALTORS® working with a buyer must enter into a written agreement with that buyer before the buyer tours any home.” The NAR agreement requires specific details regarding compensation as well. The Commission has voted to publish a public guidance document reminding licensees that this conflicts with existing South Carolina law. South Carolina law does not require a written agreement to tour a house. Licensees must provide the brokerage relationship form to all potential buyers and sellers, with whom they have substantive contact. Since the September 5th special-called meeting, the Commission has received further questions regarding the NAR settlement and SC Law. Further clarification will be added to the previously approved guidance document and, if approved, the guidance document will be posted to the Commission website.

Motion: To go into executive session for legal advice where no votes will be taken.

Moved by Mr. Lee and seconded by Mr. Wilkerson. The motion carried by unanimous vote.

Motion: To return to open session.

Moved by Mr. Stackhouse and seconded by Mrs. Pratt. The motion carried by unanimous vote.

Motion: For advice counsel to redraft the guidance document with necessary changes for Chair approval.

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

NEW BUSINESS

a. **Disclosure of Brokerage Relationships form**

The Commission has previously discussed the South Carolina disclosure of brokerage relationships form.

Motion: To go into executive session for legal advice, where no votes will be taken.

Moved by Mrs. Pratt and seconded by Mrs. Mitchell. The motion carried by unanimous vote.

Motion: To return to open session.

Moved by Mrs. Pratt and seconded by Mr. Lee. The motion carried by unanimous vote.

Mr. Burnett stated the Disclosure of Brokerage Relationships form is propagated by the Commission for use by South Carolina licensees. The Commission wants to ensure that information on this form is accessible for the benefit the consumer, to protect the consumer, and to ensure the consumer can make informed decisions about what they are involved in. Licensees have brought forth questions regarding this form. The Commission recommends a few small changes to the Disclosure of Brokerage Relationship form to clarify what licensee can and cannot do.

Motion: For Advice Counsel to update the Disclosure of Brokerage Relationships form with final approval by the Chair.

Moved by Mr. Burnett and seconded by Mr. Lee. The motion carried by unanimous vote.

b. **LLC's, Members of LLC's, and Licensing Law**

Mr. Tennis stated staff has received questions regarding LLC's, members of LLC's, and license law. This is being brought to the Commission's attention for clarification and guidance. Mr. Tennis provided the following hypothetical and proposed the following questions for the Commission's guidance.

Hypothetical: An LLC, organized in another state, acting as a finder of property, introduces potential buyers to potential real property sellers of real estate resulting in the LLC receiving a finder's fee. The owner/member of the out-of-state LLC is not a South Carolina resident, does not have a South Carolina license, and does not maintain an office or physical presence in South Carolina. The owner/member of the LLC is an individual, acting on behalf of the LLC, and facilitating the interaction of the potential buyer and the

potential real property seller. The finder's contract provides the finder is entitled to receive a specified percentage commission of the final purchase price of the real property where the finder finds for the potential buyer and the potential buyer actually purchases, and where the sale of the real property was initiated by the finder's introduction of the buyer and the seller.

Questions:

1. When the individual member of the LLC facilitates an introduction of the parties, is that individual practicing real estate?

Mr. Lee stated that if an individual is expecting any compensation for the introduction, then yes, that is the practice of real estate. Mr. Pickren stated that the introduction of the parties (buyer and seller) with the expectation of compensation is different from a referral. It is also distinct from a lead generator, for example, Zillow. Mr. Pickren expressed the issue here is they are not paying for an actual lead, but only paying if it procures a closing and then paying a percentage. If they were charging for every lead, then it is considered a lead generator and there would be no issue. Mrs. Pratt expressed her concerns that if an individual is receiving a fee, then they would need a license to practice real estate. Mr. Lee stated SC statute addresses out-of-state companies, noting if there is another real estate company involved in the process, then yes, pay the referral fee. Mr. Tennis advised unlicensed practice can be addressed by Cease & Desists or the Commission's new authority to issue citations.

2. Can an out-of-state LLC avoid licensure requirements by asserting that LLCs or corporations are not required to have a license?

The Commission unanimously agreed no; an out-of-state LLC or corporation cannot avoid licensure requirements.

3. Does South Carolina licensing statutes require an out-of-state LLC to be a real estate brokerage firm (in the hypothetical above) thereby requiring the individual to be a South Carolina Licensed Broker-in-Charge?

The Commission unanimously agreed where an individual, acting on behalf of an out-of-state LLC, that LLC does not have to be a brokerage firm. However that individual must be South Carolina licensed and practicing under the supervision of a South Carolina licensed Broker-in-Charge.

4. Where an individual, acting on behalf of an LLC is practicing real estate, does the LLC need a South Carolina licensed Broker-in-Charge?

Mr. Pickren explained it depends on what the LLC is doing. The Commission agreed that if the LLC is expecting to receive direct payment, then a South Carolina licensed Broker-in-Charge is required. The compensation may not go directly to an agent, rather they must go to the Brokerage-in-Charge.

c. North Carolina Reciprocity

Mr. Tennis stated earlier this year, the Commission entered into a Reciprocity Agreement with North Carolina. Staff is inquiring if the North Carolina agreement needs to be amended to reflect the new South Carolina license laws, specifically where an applicant needs five years of active South Carolina Associate licensure to qualify for

South Carolina Broker licensure. The current North Carolina Reciprocity Agreement requires a minimum of three years of active North Carolina Broker licensure (excluding time acting under provisional licensure) to qualify for a South Carolina Broker licensure.

Motion: To go into executive session for legal advice, where no votes will be taken.
Moved by Mr. Lee and seconded by Mr. Stackhouse. The motion carried by unanimous vote.

Motion: To return to open session.
Moved by Mrs. Mitchell and seconded by Mr. Lee. The motion carried by unanimous vote.

Motion: For staff to review and redraft the Reciprocal agreement with North Carolina, have the Chair review and authorize, and send to North Carolina Commission for approval.
Moved by Mr. Lee and seconded by Mrs. Pratt. The motion carried by unanimous vote.

AGENDA TOPICS FOR FUTURE MEETINGS

Mr. Lee requested staff review the South Carolina and Georgia Reciprocity agreement to make sure it is also in compliance with new South Carolina laws.

PUBLIC COMMENTS

Austin Smallwood on behalf of SCR congratulated Mr. Pickren on being re-elected for the At-Large seat and thanked the Commission for their efforts on updating the disclosure form and providing the settlement guidance document.

Mr. Smallwood asked if the Commission had any comments regarding the topic of installment contracts and wholesaling. Mr. Lee stated a meeting with the wholesaling guidance taskforce will be held soon and the Commission will provide more insight on the topic following that taskforce meeting.

Mr. Stackhouse thanked Mr. Tennis for his service with the Commission.

ADJOURNMENT

Motion: To adjourn.
Moved by Mr. Lee and seconded by Mrs. Pratt. The motion carried by unanimous vote.

The meeting adjourned at 2:15pm