

South Carolina Real Estate Commission
Wholesaling Taskforce Teleconference Meeting Minutes
Tuesday, October 15, 2024 at 2:30p.m. via WebEx

Public notice of this meeting was properly posted at the S.C. Real Estate Commission Office, Synergy Business Park, Kingstree 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. The telephone number and access code were provided on the posted agenda for members of the public wishing to join.

Taskforce Members Present:

Andy Lee – Commissioner
John Rinehart – Commissioner
W. Brown Bethune- Commissioner
Austin Smallwood, Esq., SCR
Charles Mace

SCLLR STAFF PRESENT:

Erica Wade, Commission Executive
Carolyn Sutherland, Esq., Office of Advice Counsel
Ashlynn Brown, Administrative Coordinator
Meredith Buttler, Program Coordinator
Erin Baldwin, Esq., Office of Disciplinary Counsel
Shannon Davis, Esq., Office of Disciplinary Counsel
Rowland Alston, Esq., Office of Disciplinary Counsel
Wattie Wharton, Lead Investigator Office of Investigations and Enforcement

PRESENT:

Tina Behles, Court Reporter
Lisa Harris
Alex Fisher
Lindsay Hutto

CALLED TO ORDER: Mr. Lee, Chair, called the meeting to order at 2:37 p.m.

APPROVAL OF AGENDA

Motion: To approve the agenda.

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

INTRODUCTION OF TASKFORCE MEMBERS AND STAFF

Taskforce members and staff introduced themselves.

DISCUSSION AND DEVELOPMENT WHOLESALING GUIDANCE DOCUMENT

a. Review of SC Law and Potential Regulations

Mr. Lee explained the need of a guidance document in regards to the new South Carolina Law and wholesaling. He believes that there may be a need to add regulations that mimic the guidance document. Mr. Mace questioned how detailed and how in depth the guidance document needs to be? Mr. Mace looked at a few elements of the drafted version of the guidance document and different legal instruments, he is aware that there are individuals finding different legal instruments to implement wholesaling. Mr. Mace provided different examples that he has seen being used.

Mr. Lee said there will be multiple meetings for the taskforce, through the meeting the taskforce can decide what efforts would be best to assist licensees and the public with understanding the new licensure law that was signed into effect May 21, 2024.

Mr. Lee explained that individuals who practice wholesaling are misinterpreting the statute 40-57-135(E)(1) where it states “The advertising and marketing of real property is to be distinguished from the advertising and marketing of a contractual position in a sales agreement to purchase real estate. An advertisement that markets a contractual position to acquire real property from a person with either equitable or legal title **and** does not imply, suggest, or purport to sell, advertise, or market the underlying real property is permissible under this section. “

The ‘and’ is the important part that those who practice wholesaling are not paying attention to, and as a result, and are continuing to practice wholesaling.

With the examples of what have been seen, Mr. Lee inquired if the guidance document is enough to explain to the public and licensees or should the Commission build regulations in regards to wholesaling?

Mrs. Sutherland advised the Commission, the guidance document should not simply restate what is currently in the statutes, but should offer guidance on how the law should be interpreted or will be enforced. Any enforcement guidance must be supported by statute or regulation.

Mr. Lee believes that the taskforce should look into how to make the statutes in relation to wholesaling clearer. If the guidance document is enough to make it clear, then the Commission needs to release that document to the public. If the guidance document is not enough to offer clarification to the public, then the taskforce will need to look into recommendations for regulations.

Mr. Bethune inquired how the Commission would handle unlicensed individuals who are practicing wholesaling? Mrs. Sutherland explained that the Commission would issue a Cease and Desist Order, and if needed the Commission does have statutory authority to issue citations. Mrs. Baldwin provided the process that disciplinary counsel would take in regards to unlicensed practice cases. She also recommended that the Commission could issue cease-and-desists to non-licensed individuals, but for licensed individuals the Commission could either issue citation or proceed with a formal complaint. She also explained that for cases where a cease and desist is filed, if numerous are filed against the same individual for the same reasonings, then the Commission can take that individual to Administrative Law Court.

Mr. Lee believes that for cease-and-desist cases, if individual continues to practice unlicensed, then further legal action would be the best course of action.

Mr. Mace questioned if the jurisdiction of unlicensed practice of the law for contracts would fall under the Commission or another agency? Mrs. Baldwin explained that complaint would need to go to the South Carolina Bar as an Unauthorized Practice of Law (UPL) Complaint. Contracts cannot go against what is legally written in statutes. Mr. Lee is under the assumption that with all the issues being experience after the statutes were placed into effect, that more clarity is needed.

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

Motion: To return to open session.
Moved by Mr. Mace and seconded by Mr. Rinehart. The motion carried by unanimous vote.

Mr. Bethune left the meeting at 3:15pm.

Mr. Lee recommends bringing the guidance document to Commission for approval and, if approved, to release the guidance document to the public. If approved, the wholesaling taskforce will reconvene in late November or early December to see what the results are from the guidance document being released. Mr. Rinehart requested at next commission meeting that investigators/Office of Disciplinary Counsel provide a presentation on the process for a case where a citation is issued.

Motion: To bring the guidance document to the commission for approval to post to the public
Moved by Mr. Mace and seconded by Mr. Rinehart. The motion carried by unanimous vote.

b. Installment Contract

Mr. Lee advised that individuals with inquiries regarding installment contracts should seek legal counsel and would need stay within legal parameters of the statutes.

PUBLIC COMMENTS

No public comments.

ADJOURNMENT

Motion: To adjourn the meeting.
Moved by Mr. Rinehart and seconded by Mr. Mace, the motion carried by unanimous vote.

The Wholesaling Taskforce meeting adjourned at 3:50 p.m.