

## Advertising Memo Draft – updated following H.4754’s passage

### Question 1: Are there license laws addressing a licensee advertising another’s listing?

#### Commission’s Commentary:

S.C. Code Ann. § 40-57-5 *et seq.*, (“the Real Estate Practice Act”) was significantly updated in 2024 when House Bill 4754 passed. Included in these updates were the advertising laws — specifically S.C. Code Ann. § 40-57-135(E)(1) and (2) — that address real-world situations licensees face in light of ever-evolving industry practices and technology. The most applicable sections of S.C. Code Ann. § 40-57-135(E)(1) and (2) are reproduced below:

(E)(1) A licensee may not advertise, market, or offer to conduct a real estate transaction involving real estate owned, in whole or in part, by another person without first obtaining a written listing agreement between the property owner and the real estate brokerage firm with whom the licensee is associated. However, the signature of the owner of real estate is not required for a sublease agreement involving real estate if the lease allows for subletting. Licensees not associated with the listing brokerage firm may advertise real estate owned, in whole or in part, by another person only if they have written authorization from the listing brokerage firm and acknowledge the listing brokerage firm in the advertisement in a clear and conspicuous way. Authorization may be contained and obtained from the owner through the listing agreement.

...

(2) When advertising his real estate services or marketing real estate owned, in whole or in part, by another person in any medium, a licensee clearly must:

(a) Identify the full name of the real estate brokerage firm with which the licensee is employed and supervised in accordance with regulations.

(b) If advertising on the Internet or in another electronic media, the above requirements may be met by including a link from the advertisement to the homepage of the brokerage firm or property management company.

(Emphasis added).

Pursuant to the updated laws, when advertising or marketing another brokerage firm’s listing, a licensee must first obtain the written permission from that listing brokerage firm before advertising or marketing another brokerage firm’s listing in any medium. Additionally, the licensee must acknowledge the listing brokerage firm in the advertisement in a clear and conspicuous way. For example, if a licensee wants to repost another agent’s listing on social media, the licensee must first get the written permission to do so from that agent’s brokerage firm before the licensee reposts the listing on their social media account. The law also requires that the licensee reposting the listing on social media must clearly and conspicuously identify the listing brokerage firm in the social media post. Finally, the reposting licensee must also identify their own real estate brokerage firm in the social media post as required by S.C. Code Ann. § 40-57-135(E)(2).

Concerns have been raised regarding the listing brokerage firm’s liability if the licensee reposting the firm’s listing makes edits and/or comments to the original listing that could violate areas of the law, such as fair

housing. It is the Commission's position that the licensee making the comments and/or edits would likely be found in violation rather than the listing brokerage firm.

**Question 2: Are there any laws addressing a licensee advertising his or her own services generally (as an associate, broker, broker-in-charge, property manager, or property manager-in-charge) when the advertising is not connected to a specific real estate transaction?**

**Commission's Commentary:**

Yes. S.C. Code Ann. § 40-57-135(E)(2) was updated in 2024 and applies in both of the following two situations:

- 1) when a licensee advertises, in any medium, the licensee's own services generally; and
- 2) when the licensee markets, in any medium, real estate owned by another.

So, licensees advertising their own services in any medium must comply with S.C. Code Ann. § 40-57-135(E)(2), which requires that the licensee identify the full name of the real estate brokerage firm with which the licensee is employed and supervised. If this advertising is done via the internet or any other electronic medium, including social media, this requirement can be met by including a link from the advertisement to the homepage of the brokerage firm or property management company.

Examples of a licensee advertising their own services as opposed to marketing a real estate transaction include but are not limited to:

- A licensee making a social media post regarding an area of town generally
- A licensee making a social media post regarding trends, without including any identifying features or specific properties
- A licensee identifying themselves on a billboard as a trusted professional in the area

Importantly, S.C. Code Ann. § 40-57-135(E)(2) becomes effective May 15, 2025.

**Question 3: Are brokers-in-charge and property managers-in-charge responsible for ensuring their supervised licensees comply with these advertising laws?**

**Commission's Commentary:**

Yes. Brokers-in-charge ("BICs") and property managers-in-charge ("PMICs") are responsible for supervising their supervised licensees to ensure they are complying with the license laws. This responsibility was further strengthened in the 2024 update to the Real Estate Practice Act, as reflected in the updated definitions for both broker-in-charge and property manager-in-charge in S.C. Code Ann. § 40-57-30:

(7) "Broker-in-charge" means the sole broker designated by the commission to have responsibility over the actions of all supervised licensees. A broker-in-charge is responsible for:

- (a) the day-to-day management of the brokerage firm;
- (b) the control and liability for a real estate trust account; and
- (c) ensuring compliance with all applicable laws and regulations.

(30) "Property manager-in-charge" means a property manager who is designated as having the responsibility over the actions of supervised licensees and also the responsibility and control over and liability for real estate trust accounts. A property manager-in-charge is responsible for the day-to-day management of the office for which the property manager-in-charge is registered with the commission and is responsible for ensuring compliance with all applicable laws and regulations.

(emphasis added)

*See also* S.C. Code Ann. § 40-57-135(A)(1) ("A broker-in-charge or property manager-in-charge shall... adequately supervise employees or supervised licensees to ensure their compliance with this chapter[.]")

Finally, in the 2024 update, a supervising BIC or PMIC must now attend the disciplinary hearing of their supervised licensee if the supervised licensee is required to appear for a hearing regarding misconduct that is alleged to have occurred during the BIC or PMIC's period of supervision. Failure to attend may result in the BIC or PMIC facing disciplinary action himself for not attending unless good cause is shown why the BIC or PMIC failed to appear. *See* S.C. Code Ann. § 40-57-710(B).