



South Carolina
Department of Labor, Licensing and Regulation



Real Estate Commission

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Limited-Service Brokerage Practices Reminder

The Commission has received an increasing number of complaints and inquiries related to the conduct of limited-service real estate brokerages. This guidance document serves as a reminder that while brokerage services offered to clients or customers may be contractually limited, **duties and responsibilities established by South Carolina Real Estate Practice Act may not be limited.**

Improper delegation or avoidance of statutory duties and responsibilities can mislead consumers, create conflicts between licensees, and expose both brokerages and licensees to disciplinary action and civil liability. The following guidance is issued to clarify statutory duties and responsibilities required by the South Carolina Real Estate Practice Act (hereinafter, "Practice Act"), in particular S.C. Code §§40-57-350, 40-57-370, and 40-57-710.

I. Statutory Duties Remain Non-Waivable

South Carolina law permits brokerage firms to offer limited or "à-la-carte" services. However, contractual agreements cannot and do **not** remove statutory duties imposed by the Practice Act. The following statutory duties apply to all licensees, regardless of service model or contractual agreement, including those that are engaged in transaction brokerage only or that are proceeding with someone as a customer only:

1. **Present all written offers and counteroffers in a timely manner.**
See S.C. Code §§40-57-350(C)(1)(b)(ii), 40-57-350(E)(1)(b)(ii), 40-57-350(L)(2)(e), 40-57-350(L)(4)(a), and 40-57-710(A)(26).
2. **Provide a meaningful explanation of brokerage relationships in real estate transactions that are offered by your brokerage and provide the Disclosure of Brokerage Relationships form at the first practical opportunity when having substantive contact with any potential buyer or seller of real estate.¹**
See S.C. Code §40-57-370(A), 40-57-350(L)(4)(c), and 40-57-710(A)(5).

¹ If that buyer or seller of real estate is already represented through an exclusive listing or selling agreement with another brokerage, it is recommended that a statement such as the following be included to prevent confusion: "Because you are already represented through an exclusive listing or selling agreement with another brokerage, the descriptions of brokerage relationships at this licensee's firm cannot be utilized by you at this time, but I am still required by law to explain them to you and to provide the Disclosure of Brokerage Relationships form."

3. **Conduct all brokerage activity with honesty, fairness, and professional integrity.**
See S.C. Code §§40-57-350(G)(1), 40-57-350(L)(2)(a), 40-57-350(L)(4)(e), and 40-57-710(A)(1), (2), (3), (4), (5), (14), (15), (16), (20), (24) and (26).

4. **Disclose to your customer or client all material adverse facts concerning the property or transaction, unless a statutory exception applies.**
See S.C. Code §§40-57-350(C)(1)(b)(iii), 40-57-350(E)(1)(b)(iii), 40-57-350(G)(1), 40-57-350(L)(2)(d), 40-57-350(L)(4)(g), and 40-57-710(A)(5) and (20).

5. **Timely accounting for all money and property received to which your client or customer has an interest.**
See S.C. Code §§40-57-350(C)(1)(b)(v), 40-57-350(E)(1)(b)(v), 40-57-350(L)(2)(b), 40-57-350(L)(4)(b) and 40-57-710(A)(5) and (11).

6. **Keep information confidential as requested in writing by your customer.** See S.C. Code §40-57-350(L)(4)(f). **For transaction brokerage, limited confidentiality is required, unless waived in writing.** S.C. Code §40-57-350(L)(2)(f). **That limited confidentiality prohibits the disclosure of:**
 1. **Information concerning a buyer's modification to buy or the buyer's willingness to make a higher offer than the price submitted in a written offer;**
 2. **Factors motivating a seller to sell or the seller's willingness to accept an offer less than the list price;**
 3. **That a seller or buyer will agree to financing terms other than those offered; and**
 4. **Information requested by a party to remain confidential, except information required by law to be disclosed.**

Note that the duties of timely accounting and confidentiality continue past the time an agency agreement terminates, expires, completes, performance is completed, or the real estate transaction closes. S.C. Code §40-57-380. These statutory obligations are non-waivable. A limited-service agreement may reduce the scope of services provided generally, but **cannot eliminate any of these statutory duties set forth in South Carolina law**, even if the limited-service agreement explicitly states that it is eliminating one or more of these statutory duties, e.g., a contract cannot override the Practice Act.

In addition to the statutory duties required to be provided to all customers, clients are also entitled to the following statutory duties:

1. **Licensees are bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.**
See S.C. Code §40-57-350(A).

2. **Advise your client to obtain expert advice on material matters that are beyond your expertise.**
See S.C. Code §40-57-350(C)(1)(b)(iv) and 40-57-350(E)(1)(b)(iv).

3. **Preserve confidential information provided by your client that may have a negative impact on your client's real estate activity.**

See S.C. Code §40-57-350(C)(1)(f), 40-57-350(E)(1)(f) and 40-57-710(A)(5).

If a brokerage enters into an agency agreement with a client, these additional three statutory obligations are also non-waivable.

II. Common Compliance Issues Observed

1. Non-Participation by the Listing Agent

The Commission has observed limited-service listing licensees who request to be identified as the “Listing Agent” in contracts yet take no active role in the negotiation or communication process. In some cases, these licensees instruct their seller’s that the buyer’s representative will facilitate contract revisions or signings on the seller’s behalf; further the listing licensee is instructing all parties to ensure to provide them with a copy of the finalized agreement.

This practice is improper because:

- The listing licensee remains responsible for ensuring that all offers and counteroffers are **timely presented and properly communicated** to the seller. See S.C. Code §§40-57-350(C)(1)(b)(ii), 40-57-350(L)(2)(e), and 40-57-350(L)(4)(a).
- Directing another licensee to prepare terms for the seller’s benefit may result in **unauthorized representation or interference** with both the seller’s and the buyer’s agent–client relationships. S.C. Code §§40-57-350(A), 40-57-350(C)(1)(f), 40-57-350(E)(1)(f), and 40-57-710(A)(5) and (24).
- Failure to perform statutory duties may result in disciplinary action under S.C. Code §40-57-710.

Why it matters:

- The listing agent’s duties cannot be delegated. Most significantly, this practice places at risk the duty of confidentiality, especially with regard to confidential information provided by your client that may have a negative impact on your client’s real estate activity which may be inadvertently disclosed to the Buyer’s agent during such an exchange.
- Buyer agents placed in this position risk violating their disclosure duties and engaging in conduct inconsistent with established agency relationships with their buyer clients.
- Limited participation by the listing licensee can cause consumer confusion regarding which agent is representing the best interests of the seller and may damage public trust.

Example:

A listing agent instructs the buyer’s agent, “Write up the seller’s counter and send it for signature.” The buyer’s agent complies, not realizing that this may constitute acting in violation of the Practice Act and expose both agents to risk under S.C. Code §40-57-710, as well as cause potential harm to the seller and/or buyer.

2. Interference with Established Agency Relationships

- Limited-service licensees who fail to engage or disclose their brokerage relationships may cause buyer’s agents to communicate directly with the seller to complete a transaction. This may result in one or both of the brokerages engaging in or permitting conduct that **inconsistent with another licensee’s client relationship**, prohibited by S.C. Code §40-57-710(A)(24).

Why it matters:

- Allowing other licensees to perform your statutory duties invites interference claims against the Buyer’s agent, failure to perform statutory duties claims against the Seller’s agent, and overall consumer complaints and dissatisfaction.

3. Clarity of Service Limitations

A licensee may contract to provide fewer services, but statutory obligations—such as the duty to timely present offers and disclose material facts—remain in force. It is incorrect to present in any form that legal duties are reduced or waived due to the limited nature of their agreement.

(S.C. Code §40-57-350(C) and (L))

Why it matters:

- Consumers cannot waive statutory protections.
- The statutory duties of licensees were created to ensure fair and lawful transactions.
- Licensees remain accountable for all duties imposed by the Practice Act regardless of any private contract language.

III. Guidance for Buyer’s Agents Encountering Limited-Service Listings

When working with a limited-service listing, buyer’s agents should:

1. **Confirm, in writing, who is authorized to receive and present offers to the seller.**
2. **Decline to draft or negotiate counteroffer terms on behalf of the seller.**
These terms must originate from the listing licensee or the seller directly.
3. **Provide brokerage relationship disclosure** at the first substantive contact with the seller.²
(S.C. Code §40-57-370(A))
4. **Document and retain a record all communications and submissions** of offers to demonstrate compliance with the Practice Act.
5. **Notify your Broker-in-Charge** if the listing licensee’s limited participation creates confusion or potential conflict with license law.

IV. Guidance for Limited-Service Licensees

Limited-service licensees are reminded that:

- Contractual limitations do not reduce statutory obligations.
- You must **timely present all offers and counteroffers** and fulfill all duties owed under §40-57-350 and other relevant sections of the Practice Act.
- A brokerage may not delegate statutory duties to another firm.
- You must remain reasonably available throughout negotiations.
- You must clearly disclose the limited scope of services in writing and ensure your client has received and acknowledged the **brokerage relationship disclosure** required by S.C. Code §40-57-370.

Why it matters:

- Transparency reduces consumer confusion.

² Under S.C. Code §40-57-370(C), it is presumed that a potential buyer or seller is a customer of a brokerage firm and that the brokerage firm will act as a transaction broker unless or until the potential buyer or seller signs an agency representation agreement. In the case of a potential seller that is already represented through an exclusive listing agreement with a brokerage firm, the presumption under S.C. Code §40-57-370(C) no longer exists because of the exclusive listing agreement and remains non-existent for as long as an exclusive listing agreement is in place with another brokerage.

- Failure to fulfill statutory duties, even if agreed to by the customer in a contract, may result in disciplinary action under S.C. Code §40-57-710.
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V. Illustrative Scenarios

Permissible:

A limited-service licensee discloses the scope of services in writing, remains responsive during negotiations, and promptly presents all offers received.

Not Permissible:

A limited-service licensee advises their seller that the buyer's agent will "prepare and send over the counteroffer" on the seller's behalf, implying that this is standard procedure. The limited-service licensee neither reviews, nor participates in the preparation or presentation of the counteroffer. This practice shifts statutory duties owed by the listing brokerage to the buyer's agent, misleads the client regarding lawful practice, and exposes both licensees to potential disciplinary action.

VI. Summary

- Limited-service brokerage is lawful only when conducted within the statutory framework of S.C. Code Title 40, Chapter 57.
- **Statutory duties must be complied with no matter what a private listing agreement states.**

Disclaimer: This guidance document is not intended as legal advice. The Commission is providing this guidance document to educate licensees on this area of the law with practical, everyday examples. This guidance document is only a high-level overview and may not take into consideration all the intricacies that may be present in a real-life event.