

# SC License Law Update


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Today's Date: Sunday, March 5, 2017

## South Carolina Real Estate Commission



### Board News

Applications are processed in the order received and one must allow normal processing times (7 business days).  
Criminal and disciplinary history or application deficiencies will require additional time.

### CRIMINAL BACKGROUND CHECK NOW REQUIRED:

A criminal background check is required of all applicants from a source approved by the Commission Pursuant to S.C. Code Section 40-57-115. Please visit the following link to obtain your SC Real Estate Commission criminal background check prior to submission of your application: <http://llr.sc.gov/recheck>

### THE ANSWERS TO YOUR COMMON QUESTIONS:

Do you have a question regarding licensing or renewals? Before you contact us, look below to see if your question is

### Board Meetings

- Calendar
- Agendas
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- Board Members

### Licensure

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- Applications and Forms
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- Renew Your License
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## REAL ESTATE LICENSE LAW REVISION: EFFECTIVE JANUARY 1, 2017

A revision of the South Carolina Real Estate Licensing law (S.1013/Act.170) was signed into law on May 23, 2016. The new license law will take effect on January 1st, 2017. There are multiple changes which will affect licensees or applicants.

- Ten (10) hours of biennial continuing education will be required for broker and salesperson licensees including 4 hour mandatory core course. (\*Will begin with licenses which expire June 30th 2018)
- Brokers in Charge will have an additional mandatory 4 hour CE class out of their 10 hours in addition to the mandatory core course. (\*Will begin with licenses which expire June 30th 2018)
- Sales initial licensure applicants will have to complete 90 hours of pre-licensing education prior to being issued a license. There will no longer be a one year "provisional" license issued after completing 60 hours and passing the exam. Applicant must complete the additional 30 hours prior to issuance of a full sales license.
- Applicants who are non-residents and licensees of other jurisdictions will have to submit a certification of licensure from their licensed jurisdiction and apply to take the South Carolina sales or broker exam. South Carolina resident applicants will be required to take the South Carolina qualifying pre-licensing courses.
- To become a Property Manager in Charge, applicants will need to complete a 7 hour PMIC class in addition to the 30 hour Property Management pre-licensing course.

There are many other updates, including reporting of contact information and residency changes, marketing and disclosure duties, teams, transaction brokerage, personal transactions involving licensees, and consequences of denial or revocation of licensure.

There are also **NEW FORMS AND FORM LANGUAGE** that will need to be implemented January 1st, 2017.  
Links to these forms are below:

1. **South Carolina Disclosure of Real Estate Brokerage Relationships** (formerly Agency Disclosure Brochure)
2. **Offer Rejection Form** (New form must be used when seller rejects an offer without counteroffer)
3. **Required Language for S.C. Listing, Buyer Representation and Transaction Brokerage Contracts**
4. **Transaction Broker Agreement Template** (Not a required or official document)

Here is a link to the final version of Act.170 as passed: [http://www.scstatehouse.gov/sess121\\_2015-2016/bills/1013.htm](http://www.scstatehouse.gov/sess121_2015-2016/bills/1013.htm)

Here is a link to a PDF that outlines many of the significant 2017 changes to the licensing law: **2017 Real Estate Commission New License Law Changes Outline**



# New Law

- ▶ Seven years in the making – a significant upgrade from law that found its beginning in the late 1950's
- ▶ Likely a small “clean-up” bill in the 2017/18 session.
- ▶ Real Estate Commission has very little appetite to endorse major changes until these have gone into effect.



# Education

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# New Requirements

- ▶ Ten (10) hours of biennial continuing education will be required for broker and salesperson licensees including 4 hour mandatory core course. (\*Will begin with licenses which expire June 30th 2018)
- ▶ Brokers in Charge will have an additional mandatory 4 hour CE class out of their 10 hours in addition to the mandatory core course. (\*Will begin with licenses which expire June 30th 2018)
- ▶ NC resident licensees can complete CE in NC and it counts for SC.
- ▶ Existing CE exemption is grandfathered. HOWEVER, going forward, now requires an application if you are 65 and have 25 years of licensure you can exempt the 6 hours but will be required to take the 4 hours state law course for renewal.

# New Requirements

- ▶ Sales initial licensure applicants will have to complete 90 hours of pre-licensing education prior to being issued a license. There will no longer be a one year "provisional" license issued after completing 60 hours and passing the exam. Applicant must complete the additional 30 hours prior to issuance of a full sales license.
- ▶ Applicants who are non-residents and licensees of other jurisdictions will have to **submit a certification of licensure from their licensed jurisdiction and apply to take the South Carolina sales or broker exam.** South Carolina resident applicants will be required to take the South Carolina qualifying pre-licensing courses.



# New Requirements

- ▶ In order to renew as active, Salesperson and Broker licensees who are not exempt must have completed ten (10) hours of CE beginning 2018. Four (4) of these hours must include the core course, and the additional hours may be electives.
- ▶ A regularly updated calendar of upcoming CE courses is available at the following link: <http://llronline.com/POL/REC/recpdf/Doc151.pdf>
- ▶ Remember that licenses which expire on June 30, 2017 and are not renewed before January 1, 2018 will be canceled by statute. After the June 30th expiration date, an additional \$25 late fee will be assessed for each month it is late through December.
- ▶ As a South Carolina Real Estate Licensee, it is your responsibility to keep up with your expiration date and to renew. Licensees are required to renew whether or not they receive notice.

# Key Terms

# Key Terms

- ▶ “Associated Licensees” – No longer “agents” as we now have a non-agency option – Transactional Brokerage
- ▶ “Material adverse fact” means: (a) a condition or occurrence that is generally recognized as: (i) significantly and adversely affecting the value of the real estate; (ii) significantly reducing the structural integrity of improvements to real estate; or (iii) presenting a significant health risk to occupants of the real estate; or (b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction.

# Key Terms

- ▶ “Subagent” means an agent of an agent. An ‘associated licensee’ is a subagent of the real estate brokerage firm if the firm is an agent of a buyer, seller, landlord, or tenant.
- ▶ “Substantive contact” means contact in which a discussion or dialogue between the consumer and the associated licensee **moves from casual introductory talk to a meaningful conversation regarding the selling or buying motives or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer’s bargaining position.**



# Key Terms

- ▶ “Team” means two or more associated licensees working together as a single unit within an office established with the commission and supervised by a broker-in-charge.
- ▶ “Transaction broker” means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party.



# Transactional Brokerage

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# Transactional Brokerage -

- ▶ Forget what you think you know about Transactional Brokerage – SC rewrote the “norm”
- ▶ License law presumes customer level services –
- ▶ Verbal Transactional Brokerage is presumed at first substantive contact
- ▶ This can ONLY be changed when an agency agreement is signed (i.e. listing agreement or buyer agency agreement).

# Transaction Brokerage

- ▶ The following are the permissible brokerage relationships a real estate brokerage firm may establish: (1) seller agency; (2) buyer agency; (3) disclosed dual agency; (4) designated agency; or (5) transaction brokerage.
- ▶ If there are no clients involved in the transaction, a real estate brokerage firm acting as a transaction broker shall complete a compensation agreement to be signed by the agent and the compensating party. This agreement must contain the amount of the compensation and identify the party responsible for payment.



# Transaction Brokerage

- ▶ A licensee who represents one party to a real estate transaction may provide assistance to other parties to the transaction by performing ministerial acts such as writing and conveying offers, and providing information and aid concerning other professional services not related to the real estate brokerage services being performed for a client. Performing ministerial acts does not create an agency relationship.
- ▶ A real estate brokerage firm may offer transaction brokerage to potential buyers and sellers. A transaction broker may be a single agent of a party in a transaction, giving the other party customer service or the transaction broker may facilitate the transaction without representing either party.

# Transaction Brokerage

- ▶ Licensees operating as transaction brokers are required to disclose to buyers and sellers their role and duties in offering customer services to the consumer that shall include the following:
- ▶ (a) honesty and fair dealing;
- ▶ (b) accounting for all funds;
- ▶ (c) using skill, care and diligence in the transaction;
- ▶ (d) disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;
- ▶ (e) promptly presenting all written offers and counteroffers; AND . . .

# Transaction Brokerage

- ▶ (f) limited confidentiality, unless waived in writing by a party.
- ▶ This limited confidentiality prohibits disclosing: (i) information concerning a buyer's motivation to buy or the buyer's willingness to make a higher offer than the price submitted in a written offer; (ii) factors motivating a seller to sell or the seller's willingness to accept an offer less than the list price; (iii) that a seller or buyer will agree to financing terms other than those offered; and (iv) information requested by a party to remain confidential, except information required by law to be disclosed;
- ▶ (g) additional duties that are entered into by separate agreement.



# Advertising and Personal Transactions



# Advertising

- ▶ ADVERTISING When advertising or marketing real estate owned, in whole or in part, by another person in any medium, including site signage, a licensee **clearly must identify the full name of the real estate brokerage firm** with which the licensee is associated. When advertising on the Internet or in another electronic media, this requirement may be met by including a link from the advertisement to the homepage of the brokerage firm.

# Personal Transactions

If a licensee wishes to purchase real estate listed with his brokerage firm, the broker-in-charge shall ensure that the licensee shall first make his true position clearly known in writing to all parties involved. Upon request of the commission, the broker-in-charge shall provide evidence of the licensee having made this disclosure, including:

- (a) purchases made directly or indirectly by the licensee;
- (b) purchases made for the licensee's own account or for a corporation or another business in which the licensee holds an interest or purchases made for a close relative; and
- (c) real estate for which the licensee has been approached by the seller or prospective buyer to act as agent.

# Personal Transactions

In order for a real estate brokerage firm to claim a fee for the sale of a listed property to an associated licensee, a separate written agreement signed by the seller client must acknowledge the purchaser as a licensee affiliated with the real estate brokerage firm and recognize the right of the seller to not pay the brokerage fee.



# Offers and Rejections



# Offers -

- ▶ The broker-in-charge shall ensure that associated licensees prepare all offers and counteroffers in writing, have them dated and signed by the offerors, and promptly present them to the offerees or the offerees' representative and ensure that:
- ▶ (a) changes or modifications made during negotiations are in writing and initialed and dated by both parties before proceeding with the transaction;
- ▶ (b) all of the terms and conditions of the transaction are included in the offer to purchase; and
- ▶ (c) if associated licensees obtain a written acceptance of an offer or counteroffer, true, executed copies will be promptly delivered to all parties.

# Offers – and Offer Rejection

- ▶ A licensee acting as a buyer's agent may offer properties which interest his buyer client to other potential buyers. However, if the licensee has two competing buyer clients in a single real estate transaction, the agent will give written notice to each buyer client that neither will receive the confidential information of the other.
- ▶ If an offer is rejected without counter, an offer rejection form, promulgated by the commission, signed by the licensee affirming presentation of the offer must be provided to the offeror by the licensee, whether the agent of the buyer, the seller, or if acting as a transaction broker.

# Trust Funds

- ▶ TRUST FUNDS: Trust Funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for the broker-in-charge or property manager-in-charge must be delivered to the broker-in-charge or property manager-in-charge no later than the following business day. A broker-in-charge or property manager-in-charge who disburses trust funds contrary to the terms of the contract or fails to disburse trust funds not in dispute is considered to have demonstrated incompetence to act as a broker-in-charge or property manager-in-charge.

# Teams



# Teams

- ▶ South Carolina is one of only 8 or 9 States in the United States that have addressed Teams by statute in any manner
- ▶ It is a current and active topic at the ARELLO conference in 2016
- ▶ If you cross the state line, you are subject to the SC rules

# Teams

- ▶ Section 40-57-360. (A) The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage.
- ▶ (B) The team may act as disclosed dual agents only and with the prior informed and written consent of all parties and as addressed in the broker-in-charge's written office policy.

# Teams

- ▶ (C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge. A team may not have their own office – but only one established with the commission.
- ▶ (D) Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.

# Teams

- ▶ (E) No team may imply that the team is a separate entity from the brokerage firm of its employment. Team names may not include the terms 'realty', 'real estate', 'realtors', or similar terms suggesting a brokerage.
- ▶ (F) The team, and any and all team members, must display and promote that they are directly connected to the brokerage firm under which the team works. The brokerage firm name under which the team works is to be displayed prominently and visibly in a meaningful and conspicuous way on all methods of advertising.





# New Forms

# Disclosures of Real Estate Brokerage Relationships

- ▶ NEW FORM – old Agency Disclosure is gone – New form
- ▶ Disclose at first substantive contact
- ▶ Have form signed
- ▶ Redisclose if the parties positions change

## SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission  
PO BOX 11847, Columbia, S.C. 29211-1847  
Telephone: (803) 896-4400 Fax: (803) 896-4427  
<http://llr.sc.gov/POL/REC/>

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.**

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client**-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

### **You Are a Customer of the Brokerage Firm**


South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following **basic duties** when dealing with **any** real estate buyer or seller as customers: **present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, provide limited confidentiality, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.**

*Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer"*

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# New Forms

## ► Offer Rejection Form

**REAL ESTATE OFFER REJECTION FORM**  
South Carolina Real Estate Commission  
PO BOX 11847, Columbia, S.C. 29211-1847  
Telephone: (803) 896-4400 Fax: (803) 896-4427  
<http://llr.sc.gov/POL/REC/>

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-135(I)(5), this offer rejection form is promulgated by the South Carolina Real Estate Commission for use when a real estate purchase offer is rejected without a counter offer. A signed copy of this form is to be provided to the buyer.

Written offer from \_\_\_\_\_ (Buyer) in the amount of  
\$ \_\_\_\_\_ for the property located at \_\_\_\_\_  
\_\_\_\_\_ ,  
was presented to the Seller on \_\_\_\_\_ (date) at \_\_\_\_\_ [a.m./p.m.](time)

**The offer has been rejected by the Seller without a counter offer.**

\_\_\_\_\_  
BROKERAGE FIRM

By: \_\_\_\_\_  
BROKER/LICENSEE SIGNATURE      DATE

This form has been approved by the South Carolina Real Estate Commission. Reprinting without permission is permitted provided no changes or modifications are made.

# New Forms

## ► Transactional Brokerage Form

### TRANSACTION BROKER AGREEMENT (NON-AGENCY AGREEMENT)

As a **Transaction Broker**, the real estate brokerage firm \_\_\_\_\_ will assist the Customer \_\_\_\_\_ under the following terms:

1. **Customer agrees to compensate the Transaction Broker.** THE AMOUNT OF COMPENSATION SHALL BE \$ \_\_\_\_\_ OR \_\_\_\_\_ percent of the selling price plus appropriate sales/service tax, which may be satisfied in whole or in part by payments from a cooperating brokerage firm or party to the transaction.
2. **Standard Terms:**
  - a. Customer agrees that Transaction Broker is not an agent of the Customer, Customer has not established a client relationship with the Transaction broker, and the Transaction Broker is not acting in a fiduciary capacity to the Customer.
  - b. Customer agrees that Transaction Broker is not an advocate for the interests of Customer.
  - c. Customer and Transaction Broker agree that Transaction Broker will assist the Customer as outlined in the "Description of Services Offered" section of this agreement.
  - d. Customer agrees that Transaction Broker will act under limited confidentiality and will not disclose:
    - If Customer is the buyer, information concerning Customer's motivation to buy or willingness to make a higher offer than the price submitted on a written offer.
    - If Customer is the seller, factors motivating the Customer to sell or willingness to accept an offer less than list price.
    - That Customer as a seller or buyer will agree to financing terms other than those offered.
    - Information requested by Customer to remain confidential, except information required by law to be disclosed.

#### 3. Description of Services Offered:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

#### 4. Term of Transaction Broker Agreement: This agreement shall begin



# New Forms

## ► Required Language for Contract

### Required Language for South Carolina Listing Contracts, Buyer Representation Agreements and Transaction Broker Agreements



South Carolina Real Estate Commission  
PO BOX 11847, Columbia, S.C. 29211-1847  
Telephone: (803) 896-4400 Fax: (803) 896-4427  
<http://llr.sc.gov/POL/REC/>

**Language that is required if a written transaction broker agreement is entered into with a customer (limited confidentiality language is not required if limited confidentiality is waived in writing by the customer):**

Customer agrees that Transaction Broker is not an agent of the Customer, Customer has not established a client relationship with the Transaction Broker, and the Transaction Broker is not acting in a fiduciary capacity.

Customer agrees that Transaction Broker is not an advocate for the interests of Customer.

Customer agrees that Transaction Broker will act under limited confidentiality and will not disclose:

- If Customer is the buyer, information concerning Customer's motivation to buy or willingness to make a higher offer than the price submitted on a written offer.
- If Customer is the seller, factors motivating the Customer to sell or willingness to accept an offer less than list price.
- That Customer as a seller or buyer will agree to financing terms other than those offered.
- Information requested by Customer to remain confidential, except information required by law to be disclosed.

***\*ALSO be sure to include the term of the agreement, a description of Customer services to be provided and the compensation (if any) for the services to be performed by the transaction broker.***

# Other Resources

- ▶ SC Realtors® Checklist
- ▶ [lr.state.sc.us/POL/REC](http://lr.state.sc.us/POL/REC)
- ▶ SC Realtors® Hotline  
(common issues: forms,  
transactional brokerage,  
and teams)



## 2017 LICENSE LAW UPDATE CHECKLIST

This checklist is a useful training tool, but should always be supplemented by you reading educational sessions at your local REALTOR® association, viewing SCR videos on YouTube, attending SCR annual conferences, viewing SCR webinars at [www.screaltors.org](http://www.screaltors.org), attending SCR webinars, reading SCR education materials (online and print), reading information provided by LPE, attending education from providers, participating in association legal/legislative committees, attending brokerage training sessions.

2017 License Law Update Highlights include: increasing continuing education to 10 hours, expanding customer service - transaction brokerage, and requirements for prompt license renewal for real estate transactions outside of brokerage. Also, various risk management language for licensees to turn in trust funds to BIC no later than next business day following receipt.

License law and related information can be read at the South Carolina Real Estate Commission website: [www.screaltors.org](http://www.screaltors.org) and all South Carolina laws can be read at the South Carolina Statehouse website: [www.scstatehouse.net](http://www.scstatehouse.net)

### 2017 License Law Checklist:

- ☐ Train associated licensees on new and old relationships between consumers and the broker

# Q & A

- ▶ Questions and Answers / Suggestions / Options