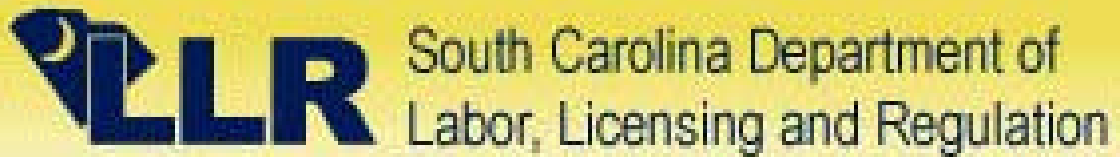


**South Carolina
Real Estate Commission**

Core Course 2008

**“Top Ten Ways
To Be Disciplined”**

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Welcome to the South Carolina Real Estate Commission's mandatory core course. It is our hope that the content of this course will provide an in-depth review of license law along with a defined focus on the most common license law violations.

Through this update, two outcomes can be achieved:

- **The licensee becomes more familiar with license law and utilizes the law to determine parameters for specific behaviors.**
- **The consumer is better served by a more knowledgeable licensee, resulting in fewer complaints to the Commission.**

The course length is two hours, including a 10-minute break. In order to receive credit for this course to use for license renewal, the attendee is required to remain in the training room for the entire time, with the exception of the scheduled break. In addition, the attendee will be required to participate in discussions, group activities and individual exercises that are included in the course. Failure to follow these rules may result in denial of the course completion certificate.

We hope you enjoy the update class and continue to upgrade your skills through other educational opportunities, whether for continuing education credit or professional development. As always, the staff of the South Carolina Real Estate Commission is available to take your questions or comments.

Identify the Key Issues That Could Result in Disciplinary Action

List the References From License Law

1. Tom, a licensee with Capital One Realty, has an exclusive buyer agency agreement with Dan and Lois Weber. Based upon instructions from the Webers, Tom writes an offer on a property listed with Galaxy Realty Inc. The Webers sign the offer, and Tom presents it to the listing agent the same day. The offer has many contingencies, and there are three counters before all parties reach agreement. The sellers and buyers initial and date all final changes. However, after the agreement is reached and all executed copies delivered to the parties, Tom notes that the Webers did not initial and date who was responsible for paying for the termite report. Tom calls the Webers, who are now on a business trip, and explains the oversight. The Webers state they will be responsible for the payment and tell Tom to go ahead and initial and date the change for them. Tom follows the Webers' instructions and sends the changed contract back to the listing agent after mailing a copy to the Webers.

2. Jim, an agent with Summertown Realty, has just listed a very competitive commercial property. The owner has instructed Jim to price the property at "\$1,000,000 firm" and to tell buyers that he will not consider offers less than full price. He also tells Jim not to bother him with offers for less than full price. Over the next few weeks, Jim undertakes extensive marketing of the property and has two purchasers who are interested. One is a customer of Jim's and the other is being represented by an outside buyer's agent. During the showings, Jim tells each buyer they should make a full-price offer if they want it to be considered by the seller. The buyer customer asks Jim to "see if the seller will take the million for the property while financing at least 75%." Jim tells the buyer to put something in writing. The buyer declines to give a written offer, and Jim does not tell the seller about the "offer," as he has nothing in writing. In the meantime, the outside buyer's agent produces an offer of \$950,000 cash, with minimal contingencies. Jim reminds the buyer's agent that the seller had directed that he not bother him with offers for less than full price. The buyer's agent says this is the offer the buyer is making on the property. Jim does not present the offer, following his seller client's instructions.

Top Ten Ways to Be Disciplined

1. Failure to Comply With Trust Fund Accounting Measures

- **A licensee can be disciplined if he/she accepts deposit money which is to be delivered to the licensee's principal in a real estate transaction without informing the payor and having the payor acknowledge in writing who will hold the money received by the licensee.**
- **There should be an acknowledgement on the real estate contract where the holder of the deposit money is agreed to by the parties.**
- **Many licensees do not realize they must have a personal trust account to safeguard a tenant's trust funds if they have personal rental property on which a deposit is held.**
- **Monies received in a personal rental transaction must be deposited in the licensee's personal trust account and do not have to be deposited in the broker's trust account unless the real property is managed by the broker's company.**

Depository Requirements for Trust Funds

Sales Transactions

Cash or Certified Check

Company or Personal Check

Rental Transactions

2. Misrepresentation—A false representation of a material fact or failure to disclose a known property or transaction defect which would cause the purchaser or seller to suffer damages.

- **Misrepresentations can be made by statements, actions, inactions and silence.**
- **Real estate practitioners must always present a true picture when involved in a real estate transaction. A half-truth can be considered a misrepresentation, because if it is near the truth it will be more likely to be believed by the consumer.**
- **If a licensee hears a party in the transaction making statements that reveal an obvious misunderstanding or misinterpretation, it is a passive misrepresentation if the agent does not clear up the misunderstanding.**
- **There are serious implications about the BIC's responsibility for his/her associated licensees' misrepresentation in the form of false promises or any statement in any advertising.**

Misrepresentation can be:

Innocent

Negligent

Fraudulent

3. Failure to Disclose Material Facts

- **A licensee who fails to disclose any material facts concerning a real estate transaction can be disciplined, no matter the instructions of the seller or buyer. Silence, in and of itself, can be considered to be passive fraud where there is a duty to speak.**
- **Real estate licensees have an agency relationship with their clients, with a legal and moral duty to give loyal service to the principal. Fundamental to this relationship is the duty to fully disclose all material facts to the principal that are relevant to the agency.**
- **Notwithstanding another provision of law, no cause of action may be brought against a real estate licensee who has truthfully disclosed to a consumer known material defects, including, but not limited to, any information contained in property reports.**
- **A real estate licensee may not be the subject of an action, and no action may be instituted against a real estate licensee, for information contained in the form prescribed by Chapter 50, Title 27 (Residential Property Condition Disclosure Form) unless the real estate licensee is a signatory to that form.**

If you were purchasing a property, what facts (other than property condition) would you consider material?

Are material defects in the property ever considered confidential?

Stigmatizations to Property

- **No cause of action may arise against an owner of real estate or licensed real estate agent of any party to a transaction for failure to disclose in a transaction:**
 1. **That the subject real estate is or was occupied by an individual who was infected with a virus or any other disease determined by medical evidence as being highly unlikely to be transmitted through occupancy of a dwelling either presently or previously occupied by the infected individual;**
 2. **That the death of an occupant of a property has occurred or the manner of the death;**
 3. **The location of any registered sex offender;**
 4. **Any offsite condition or hazard that does not directly impact the property being transferred; or**
 5. **Any psychological impact that has no material impact on the physical condition of the property being transferred.**
- **Nothing in the previous subsection protects you from making an intentional misrepresentation in response to a direct inquiry.**



4. Violating Buyer's Freedom to Choose Outside Service Providers

- **A licensee can be disciplined if he/she violates any provision of law relating to a buyer's freedom of choice in choosing an attorney, insurance agent, title insurance agent or any other service provider to facilitate the buyer's real estate transaction.**
- **Some licensees have close ties with these service providers and often steer buyers to favorites.**
- **A seller, generally a builder or developer, can offer incentives that would create a desire for the buyer to use his/her recommended service providers, but cannot violate the buyer's freedom of choice if the buyer chooses not to do so.**
- **It is advisable to let the buyers choose who they want to use to provide these necessary services. It is acceptable to give sellers and buyers a list of service providers and let them make the call to arrange for service.**

5. Paying an Unlicensed Person for Activities Requiring a License

- **A licensee can be disciplined who pays a commission or compensation to an unlicensed individual for activities requiring a license. A licensee may not pay or offer to pay a referral fee or finder's fee to an unlicensed individual who is not a party in the real estate transaction.**
- **A resident licensee may pay a part of his/her commission on a cooperative basis to a licensee of another state or jurisdiction if that licensee does not conduct any of the negotiations for which a fee, compensation or commission is paid in this state.**
- **A licensee may not pay a fee or compensation to an unlicensed person for making a referral, giving a name or "bird-dogging" for an agent, as solicitation of a referral is an activity requiring a license.**

6. Failure to Disclose Agency Relationships

- **A licensee can be disciplined if he/she fails to disclose the party or parties for whom the licensee will be acting as an agent in a real estate transaction.**
- **Surveys have shown the public does not understand agency **or** how the common law and state statutes control the actions and behavior of real estate licensees. When buyers or sellers do not get a meaningful explanation of agency, the typical misunderstandings can cause harm to the consumer.**
- **Licensees are required to give a meaningful explanation of agency at first substantive contact and to give the agency disclosure brochure to all consumers (both buyers and sellers) with whom they have substantive contact.**
- **A licensee who becomes an agent of a consumer shall have all of the terms and conditions of the representation in writing. The agreement must contain the minimal terms covered in license law as well as all material understandings between the consumer and the agency.**

Regarding Dual and Designated Agency

- **Representing more than one party in a real estate transaction without the full knowledge and written consent of all parties is a license law violation.**
- **The consent to dual (or designated) agency forms are often not used by licensees in an appropriate manner. When dual agency is practiced and not timely authorized in writing, it is illegal. The penalties can range between loss of license, rescission of the contract by either party, reimbursement of the commission, or a combination of all of these.**
- **Many licensees believe the language in the listing and buyer representation agreements is all that is needed to confirm dual or designated agency. Timeliness in getting the documentation signed is extremely important. Buyers must sign the consent to dual or designated agency agreement before the offer is written, and sellers must sign it before reviewing the offer.**

7. Acting in a Dual Capacity as Agent and Undisclosed Principal

- **A licensee who acts in the dual capacity of agent and undisclosed principal in a real estate transaction is in violation of license law.**
- **No licensee, either directly or indirectly, may buy for his/her own account or for a corporation or any other business in which he/she holds an interest, or for a close relative, any real estate listed with him/her without making his/her true position clearly known in writing to all parties involved.. In addition, no licensee, either directly or indirectly, may buy real estate for which he/she has been approached by the seller or prospective buyer to act as agent without first making his/her true position clearly known in writing to all parties involved.**
- **It is required that an agent forego buying property that is listed with his/her company without having full disclosure of the agent's true position in writing. The seller and agent should also agree in writing that the seller is no longer responsible for the agent's fee. The SC Supreme Court stated:**

When selling to himself, a real estate broker fails to satisfy his fiduciary duty to disclose all material facts to the principal if the broker fails to secure an agreement from the seller acknowledging both his change in position along with the seller's right to refuse the commission payment.

- **When a licensee is buying an in-house listing, true position means full disclosure of the licensee's intentions and plans for the property. It does not merely mean that the purchaser is a South Carolina licensee. Courts have also stated:**

“When selling to himself, a licensee must meet the extremely high standards of his fiduciary obligation as well as carry the burden of proof to show full disclosure of his position to the principal.”

In a situation where the agent is on both sides of a transaction, the broker can only meet these responsibilities by obtaining an agreement of at least the same formality as the initial agreement creating the agency relationship. To earn a commission a real estate agent must fulfill his or her duties to the client.

- **This disclosure of the agent's licensure is accomplished by making a statement regarding his/her licensure on the first page of any real estate contract (including leases, sales, exchanges, etc.). The documentation must be in all capital letters and underlined to meet the terms of license law.**
- **Upon request of the department, the licensee shall provide evidence of having made this disclosure.**

8. Inducing a Party to Break a Contract

- **If a licensee induces a party to break a contract of sale or lease, listing agreement or buyer agency agreement, he/she will be in violation of license law.**
- **Some licensees feel it is an acceptable practice to try to talk someone into breaking a representation agreement with another so that the licensee can get the person to enter into an agreement which benefits the licensee.**
- **In addition to being a violation of license law, there is a legal concept that one can be sued for wrongful interference with the contract of another.**
- **Occasionally, licensees are guilty of advising tenants to break leases so they can sell them a property.**
- **Licensees should take care not to take action that interferes with the agency relationship of another licensee. This means a licensee should not take a buyer client directly to the seller of an exclusively listed property and try to negotiate the transaction with the seller without the knowledge and permission of the listing broker. It also means the listing agent should not make direct contact with the buyer client of another licensee without the knowledge and permission of the buyer's agent.**

9. Being Paid by More Than One Party Without Written Consent

- **A licensee who receives compensation in a real estate transaction, or directly resulting from a real estate transaction, from more than one party can be disciplined except when the fee is accepted with the full knowledge and written consent of all parties.**
- **This rule applies, no matter the source of the payment, to:**
 - **Fees from affiliated business arrangements, such as home warranties**
 - **Bonuses from the seller**
 - **Gift cards from the builder**
 - **Any other consideration or compensation from a third party, such as the relocation company**
- **The fee for services is set by the client. How shortages or overages are handled should be made part of the representation agreement and discussed with the client as part of the agency presentation.**

10. Dual Contracting

- A licensee can be disciplined who makes a dual set of contracts, written or otherwise, by stating a sales price higher than the actual sales price in an effort to obtain a larger loan from a lender or lending institution or for the purpose of misinforming a government agency, or any other reason.
- Dual contracting occurs when the information furnished to the lender does not represent exactly the agreement between the parties.

BONUS

Failure to Ensure Complete Closing Statements

- Every licensee shall ensure that at closing both the buyer and the seller in a real estate transaction receive a complete and detailed closing statement properly accounting for all funds paid, received and expended in connection with the transaction.
- If the licensee has financially participated in the transaction, whether by rebating a portion of the fee received to the client or paying for any closing services, care should be taken to ensure that this participation is disclosed on the closing statement.
- Regarding real estate closings, licensees should always:
 - Advise clients to hire attorneys who exclusively represent them
 - Advise clients to require the attorney to sign the settlement statement
 - Deal with reputable and bonded law firms
 - Purchase owner's title insurance from the best provider



Implementation Exercise

An acquaintance calls to tell you that he wants to list his property with you and asks you to come over to give him suggestions on getting the property in the best condition to list and sell. You tour the property with him, giving him pointers. During the outside inspection, you notice some sinking on the side of the house that looks as if there is some structural damage. You recommend the seller have a company that specializes in foundations come over to assess the problem.

Two weeks later, the seller calls you to come over to list the property. He says he has completed the repairs. At the appointment to list, you specifically ask about the side of the house. You ask if he followed your recommendation to have a foundation company over to assess the situation. He states that he did not, but, instead, filled in some dirt himself and landscaped. You look at the previous problem and realize that no one would be able to see the covered damage, if any.

You also have a buyer client who is interested in this property. The buyer has asked you if there is “anything I should know” before making an offer on the property. You tell the buyer that you represent the seller and cannot disclose anything that is confidential to your seller client. The buyer moves forward to purchase the property.

Questions to answer are:

Is this even a disclosure issue?

Does the seller have to put this “problem” on the property disclosure form?

What if the seller refuses to disclose the situation?

What if the seller tells you that you can’t disclose it?

Additional points for consideration are:

List the elements of license law that apply:

South Carolina Real Estate Commission

Board News

Real Estate licensees will be able to renew their license online at <https://renewals.llronline.com>. Renewal will begin May 15, 2007 through December 31, 2007 (late fees will be added after June 30, 2007.) Online renewal is available anytime of the day or night. Pocket card will be mailed within 48 hours of processing.

- [Online Renewal Questions & Support](#)
- **NEW!** [Payment of Unlicensed Individuals](#)
- [Agency Disclosure Brochure](#) (pdf)
- [Beware of Violating RESPA](#)
- [Real Estate License Law](#) (pdf)
- [S.C. Trust Account Guidelines](#) (pdf)
- [Designated Agency Agreement](#) (pdf)
- [Dual Agency Agreement](#) (pdf)
- [Language that needs to be added to contracts](#) (pdf)
- [Agency Power Point Presentation](#) (pdf)
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- [How to file a complaint?](#)
- [Tideland and Wetlands Act](#) (pdf)
- [Deed Recording Fee Summary](#) (pdf)
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South Carolina Real Estate Commission

Board Purpose

The purpose of the South Carolina Real Estate Commission is to protect the interest of the public when involved in a real estate transaction through the effective administration of the Real Estate License Law and Regulations, the Uniform Land Sales Practice Act, and the Vacation Time Sharing Plan Act.

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