

AN ACT TO AMEND SECTION [40-57-135](#), AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DUTIES OF REAL ESTATE BROKERS-IN-CHARGE AND MANAGERS-IN-CHARGE, POLICIES, AND RECORDKEEPING, SO AS TO, AMONG OTHER THINGS, FURTHER SPECIFY PROCEDURES FOR HANDLING CHECKS RECEIVED AS ESCROW OR SECURITY DEPOSITS FOR SALES OR LEASE AGREEMENTS AND PROCEDURES FOR MARKETING LISTINGS BY COMPANIES THAT ARE MEMBERS OF A MULTIPLE LISTING SERVICE; TO AUTHORIZE REAL ESTATE LICENSEES TO USE PUBLIC INFORMATION TO CONTACT INDIVIDUALS BY TELEPHONE, MAIL, OR ELECTRONIC MAIL FOR THE PURPOSE OF SELLING OR MARKETING REAL PROPERTY; TO REQUIRE A LICENSEE TO REVEAL HIS LICENSE STATUS IN A PERSONAL TRANSACTION INVOLVING THE PURCHASE, SALE, EXCHANGE, RENTAL, LEASE, OR AUCTION OF REAL ESTATE AND PROVIDE THE CONDITIONS UNDER WHICH THE LICENSEE IS CONSIDERED TO HAVE MET THIS REQUIREMENT; TO FURTHER SPECIFY POLICIES RELATING TO DUAL AGENCY, CONTENTS OF LISTING OR BUYER'S AGREEMENTS, AND PROPERTY MANAGEMENT AGREEMENTS; AND TO SPECIFY REAL ESTATE TRANSACTION ACTIVITIES THAT MUST NOT BE CONDUCTED BY AN UNLICENSED INDIVIDUAL EMPLOYED OR SUPERVISED BY AN OWNER OF A REAL ESTATE COMPANY; TO AMEND SECTION [40-57-137](#), RELATING TO REAL ESTATE BROKERAGE COMPANY DUTIES TO CLIENTS, SO AS TO, AMONG OTHER THINGS, PROVIDE THAT NO CAUSE OF ACTION EXISTS AGAINST AN AGENT WHO HAS TRUTHFULLY DISCLOSED KNOWN DEFECTS TO A BUYER OR AGAINST A REAL ESTATE LICENSEE FOR INFORMATION CONTAINED IN VARIOUS REPORTS, SUCH AS TERMITE AND HOME INSPECTIONS; TO SPECIFY PROCEDURES FOR OBTAINING INFORMED CONSENT TO ACT AS A DUAL AGENT; TO SPECIFY AN EXCEPTION TO REQUIRING A DUAL AGENCY RELATIONSHIP WHEN A LICENSEE IN A COMPANY'S MAIN OFFICE CONDUCTS BUSINESS IN A BRANCH OFFICE; TO SPECIFY SERVICES A LICENSEE MAY PROVIDE TO REAL ESTATE CUSTOMERS AND POLICIES AND PROCEDURES FOR PROVIDING THESE SERVICES; TO ESTABLISH REQUIREMENTS THAT A BROKER-IN-CHARGE MUST SATISFY TO ASSIGN DESIGNATED AGENTS TO EXCLUSIVELY REPRESENT DIFFERENT CLIENTS IN THE SAME TRANSACTION; TO FURTHER PROVIDE FOR THE TRANSACTION OF REAL ESTATE BUSINESS BY DESIGNATED AGENTS AND TO PROVIDE THAT COMPENSATION OR THE PROMISE OF COMPENSATION DOES NOT DETERMINE WHETHER AN AGENCY RELATIONSHIP HAS BEEN CREATED; TO AMEND SECTION [40-57-139](#), RELATING TO AGENCY DISCLOSURE REQUIREMENTS, SO AS TO PROVIDE THAT FORMS REGARDING THE RELATIONSHIP CREATED BETWEEN THE LICENSEE AND THE CUSTOMER MUST BE ACKNOWLEDGED IN THE LISTING, BUYER'S, OR AGENCY AGREEMENT; TO REQUIRE AN AGENCY RELATIONSHIP TO BE CREATED BEFORE RATIFICATION OF THE REAL ESTATE SALES AGREEMENT, TO SPECIFY

CONDITIONS UNDER WHICH AN AGENCY RELATIONSHIP DOES NOT EXIST, AND TO PROVIDE EXCEPTIONS TO THESE AGENCY DISCLOSURE REQUIREMENTS; TO AMEND SECTION [40-57-140](#), RELATING TO THE EFFECT OF TERMINATION, EXPIRATION, OR COMPLETION OF AGENCY AGREEMENTS, SO AS TO REQUIRE CONTINUED CONFIDENTIALITY OF CONFIDENTIAL INFORMATION AND TO PROVIDE THAT THE DUTY TO BE TRUTHFUL PREVAILS OVER MAINTAINING CONFIDENTIALITY; TO AMEND SECTION [40-57-145](#), RELATING TO GROUNDS FOR DENIAL OF LICENSURE AND FOR DISCIPLINARY ACTIONS, SO AS TO FURTHER SPECIFY ELEMENTS OF THESE GROUNDS AND TO ADD ADDITIONAL GROUNDS; TO AMEND SECTION [40-57-150](#), RELATING TO INVESTIGATIONS OF VIOLATIONS, SO AS TO EXTEND THE TIME WITHIN WHICH THE REAL ESTATE COMMISSION MUST RENDER A DECISION AND TO AUTHORIZE THE COMMISSION TO RECOVER THE COSTS OF THE INVESTIGATION AND PROSECUTION; TO AMEND SECTION [40-57-180](#), RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND THE REAL ESTATE COMMISSION, SO AS TO PROVIDE THAT NO CAUSE OF ACTION EXISTS FOR FAILURE OF A LICENSEE TO DISCLOSE THE LOCATION OF SEX OFFENDERS AND CERTAIN OFF-SITE HAZARDS OR PSYCHOLOGICAL IMPACTS; AND TO REQUIRE APPROVED INSTRUCTORS TO ATTEND DEVELOPMENT WORKSHOPS OR TO PROVIDE EVIDENCE OF CONTINUING EDUCATION; TO AMEND SECTION [40-57-70](#), RELATING TO LICENSE FEES, NONRENEWAL PENALTIES AND APPLICATION FEES FOR REAL ESTATE BROKERS, SALESMEN, AND PROPERTY MANAGERS, SO AS TO REQUIRE THAT THOSE FEES MUST BE ESTABLISHED THROUGH A REGULATION PRIOR TO ITS IMPLEMENTATION AND TO REQUIRE THE REAL ESTATE COMMISSION SUBMIT TO THE CHAIRMAN OF THE HOUSE AND SENATE LABOR, COMMERCE AND INDUSTRY COMMITTEES BY AUGUST FIRST OF EACH YEAR A REPORT ON HOW THE FUNDS WERE EXPENDED FOR THE PRECEDING FISCAL YEAR AND TO AMEND SECTION [40-57-60](#), RELATING TO THE POWERS AND DUTIES OF THE REAL ESTATE COMMISSION, SO AS TO AUTHORIZE THE COMMISSION TO ESTABLISH A FEE SCHEDULE THROUGH REGULATION.

Be it enacted by the General Assembly of the State of South Carolina:

Duties of broker-in-charge, property manager-in-charge

SECTION 1. Section [40-57-135](#)(A)(1) of the 1976 Code is amended to read:

"(1) adequately supervise employees or associated licensees to ensure their compliance with this chapter and maintain real estate trust accounts when required by law;"

Active real estate trust account

SECTION 2. Section [40-57-135](#)(B)(5)(b) of the 1976 Code as last amended by Act 285 of 2000, is further amended to read:

"(b) filing of an interpleader action in a court of competent jurisdiction, by filing such an action, the escrow agent may deposit the earnest money with the court, according to the rules and procedures governing interpleader actions;"

Treatment of monies

SECTION 3. Section [40-57-135](#)(B)(8) of the 1976 Code is amended to read:

"(8) All cash monies or certified funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge or property manager-in-charge immediately must be delivered to the broker-in-charge or property manager-in-charge, except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge or property manager-in-charge as soon as the sales or lease agreement is ratified by both parties."

Corporation may be formed

SECTION 4. Section [40-57-135](#)(B) of the 1976 Code as last amended by Act 285 of 2000, is further amended by adding at the end:

"(12) A licensee may form a corporation allowing the licensee's broker-in-charge to pay commission to that corporation; however, for the corporation to receive compensation, all principals of the corporation shall have an active real estate license under that same broker-in-charge."

Specific office location

SECTION 5. Section [40-57-135](#)(C)(4), (5), and (6) of the 1976 Code is amended to read:

"(4) 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 from the owner and when advertising or marketing in any medium including site signage, a licensee clearly shall identify the full name of the company with which the licensee is affiliated. Brokers-in-charge who are members of a multiple listing service must be allowed to make their company listings available for any cooperative marketing or advertising program, subject to the rules and regulations of the multiple listing service and with the consent of the owner. Consent may be contained and obtained from the owner through the listing agreement.

(5) When operating under a trade or franchise name, a licensee clearly shall reveal the identity of the franchisee or holder of the trade name. Notwithstanding another provision of law, a real estate licensee may use any public information from local government

source to contact an individual by telephone, mail, electronic mail, or other means for the purpose of selling or marketing real property and real property services. This section does not apply to state government agencies.

(6) A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate. A licensee meets the requirements of this section by disclosing in underlined capital letters on the first page of the contract his license status in the real estate sales contract, exchange, rental, or lease agreement. 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."

Principal place of business

SECTION 6. Section [40-57-135](#)(C)(7)(f) of the 1976 Code is amended to read:

"(f) residential property condition disclosure statement;"

Listing or buyer's representation agreement

SECTION 7. Section [40-57-135](#)(D)(4)(a) of the 1976 Code is amended to read:

"(a) a description of the agent's duties or services to be performed for the principal including, but not limited to, an explanation of the office policy regarding dual agency and designated agency, if offered by the brokerage;"

Further

SECTION 8. Section [40-57-135](#)(D)(4) of the 1976 Code is amended by adding at the end:

"(h) a listing or buyer's representation agreement may not contain a provision requiring a party signing the agreement to notify the licensee of his intention to cancel the agreement after the definite expiration date;

(i) a listing or buyer's representation agreement must be clearly defined if intended to be either an 'exclusive agency' listing or buyer's representation agreement or 'exclusive right to sell' listing or 'exclusive right to buy' buyer's representation agreement;

(j) a listing or buyer's representation agreement must clearly specify any exception or variation in amount of commission to be paid and circumstances which would apply;

(k) a copy of the listing or buyer's representation agreement must be given to the seller or buyer at the time of, or directly following, signing; and

(l) a buyer's representation agreement must provide a price or price range for property of interest to the buyer and a listing agreement must state the price of the listed property."

Further requirements of a listing agreement

SECTION 9. Section [40-57-135](#)(D)(5) of the 1976 Code is amended to read:

"(5) Reserved."

Requirements of licensee's of a multi-unit rental location

SECTION 10. The first unnumbered paragraph of Section [40-57-135](#)(E) of the 1976 Code is amended to read:

"(E) The management of each residential multi-unit rental location must be provided by an on-site licensee or an off-site licensee if there is no on-site staff."

Written management agreement for certain licensees

SECTION 11. Section [40-57-135](#)(E)(3) and (4) of the 1976 Code is amended to read:

"(3) Reserved.

(F) Licensees who manage residential and commercial property shall do so under a written management agreement which shall set forth, at a minimum, the:

(1) names and signatures of authorized parties to the agreement;

(2) property identification;

(3) method of compensation to the licensee;

(4) term, including definite expiration date; however, the contract shall contain a clause in underlined capital letters on the first page of the contract to provide for compensation in the event the licensee has secured a tenant during the original term of the management agreement. In addition to this requirement, a management agreement may not contain any automatic renewal clause or provision, unless the management agreement also contains a clause or provision that allows either party to cancel the management agreement for any or no cause with thirty days' notice after the original definite expiration date;

(e) terms and conditions of tenant rental or lease arrangements; however, the management agreement may not contain a provision binding the property under a future listing agreement if the property is to be sold in the future. A separate listing agreement is required."

Prohibitions

SECTION 12. Section [40-57-135](#) of the 1976 Code, as last amended by Act 285 of 2000, is further amended by adding at the end:

"(G) For all types of real estate transactions, including leases and sales, an unlicensed employee of the owner or an unlicensed individual working under the supervision of a licensee may not:

- (1) discuss, negotiate, or explain a contract, listing, buyer agency, lease, agreement, or other real estate document;
- (2) vary or deviate from the rental price or other terms and conditions previously established by the owner or licensee when supplying relevant information concerning the rental of property;
- (3) approve applications or leases or settle or arrange the terms and conditions of a lease;
- (4) indicate to the public that the unlicensed individual is in a position of authority which has the managerial responsibility of the rental property;
- (5) conduct or host an open house or manage an on-site sales office;
- (6) show real property;
- (7) answer questions regarding company listings, title, financing, and closing issues, except for information that is otherwise publicly available;
- (8) discuss, negotiate, or explain a contract, listing, buyer agency, lease, agreement, or other real estate document;
- (9) be paid solely on the basis of real estate activity including, but not limited to, a percentage of commission or any amount based on the listing or sales compensation or commission;
- (10) negotiate or agree to compensation or commission including, but not limited to, commission splits, management fees, or referral fees on behalf of a licensee;
- (11) engage in an activity requiring a real estate license as required and defined by this chapter."

Disclosures of buyer's licensee

SECTION 13. Section [40-57-137](#)(F) of the 1976 Code is amended to read:

"(F) A licensee who represents a seller shall treat all prospective buyers honestly and may not knowingly give them false or misleading information about the condition of the

property which is known to the licensee or, when acting in a reasonable manner, should have been known to the licensee. Notwithstanding another provision of law, no cause of action may be brought against a seller's agent that has truthfully disclosed to a buyer any known material defect including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a seller for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A seller's agent is not obligated to discover latent defects in property or to advise the agent's clients on matters outside the scope of the agent's real estate expertise. A seller's agent, the company, and the broker-in-charge are not liable to a buyer for providing the buyer with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete."

Disclosures of buyer's licensee

SECTION 14. Section [40-57-137](#)(K) of the 1976 Code is amended to read:

"(K) A licensee who represents a buyer shall treat all prospective sellers honestly and may not knowingly give them false or misleading information about the buyer's ability to perform the terms of a transaction. A buyer's agent is not obligated to discover latent defects in property or to advise his clients on matters outside the scope of his real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a buyer's agent that has truthfully disclosed to a buyer known material defects including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a buyer for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A buyer's agent, his company, and the broker-in-charge are not liable to a seller for providing the seller with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete."

Dual agency agreement

SECTION 15. Section [40-57-137](#)(M) of the 1976 Code is amended to read:

"(M)(1) A licensee may act as a disclosed dual agent only with the prior informed and written consent of all parties. The informed consent must be evidenced by a dual agency agreement, promulgated by the commission, and must be signed by the buyer before writing an offer and by the seller before signing the sales contract. The agreement must specify the transaction in which a licensee is serving as dual agent and must state that:

- (a) in acting as a dual agent, a licensee represents clients whose interests may be adverse and that agency duties are limited;
 - (b) the dual agent may disclose information gained from one party to another party if the information is relevant to the transaction, except if the information concerns:
 - (i) the willingness or ability of a seller to accept less than the asking price;
 - (ii) the willingness or ability of a buyer to pay more than an offered price;
 - (iii) confidential negotiating strategy not disclosed in an offer as terms of a sale; or
 - (iv) the motivation of a seller for selling property or the motivation of a buyer for buying property.
 - (c) the clients may choose to consent to disclosed dual agency or may reject it; and
 - (d) the clients have read and understood the agency agreement and the agency disclosure form and acknowledge that their consent to dual agency is voluntary.
- (2) A broker-in-charge and his affiliated licensees in the broker's main office may conduct business with a client in any of the broker's branch offices as a customer or client without creating a dual agency relationship, so long as the branch offices each have a separate broker-in-charge and do not share the same broker-in-charge or real estate licensees as the main office."

Agency relationship, choose not to establish

SECTION 16. Section [40-57-137](#)(O) and (P) of the 1976 Code are amended to read:

"(O)(1) Prospective buyers and sellers of unlisted real estate who do not choose to establish an agency relationship with a licensee but who use the services of the licensee are considered customers. A licensee may offer the following services to a customer including, but not limited to:

- (a) identify and show property for sale, lease, or exchange;
- (b) provide real estate statistics and information on property;
- (c) provide pre-printed real estate form contracts, leases, and related exhibits and addenda;
- (d) act as a scribe in the preparation of real estate form contracts, leases, and related exhibits and addenda;

(e) locate a list of architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and

(f) identify schools, shopping facilities, places of worship, and other similar facilities on behalf of any of the parties in a real estate transaction.

(2) A licensee offering services to a customer shall:

(a) timely present all offers to and from the parties involving the sale, lease, and exchange of property;

(b) timely account for all money and property received by the broker on behalf of a party in a real estate transaction;

(c) provide a meaningful explanation of agency relationships in real estate transactions;

(d) provide an explanation of the scope of services to be provided by the licensee; and

(e) be fair and honest and provide accurate information in all dealings.

(3) Nothing in this section limits the seller's and buyer's responsibility to conduct an inspection of the property.

(4) A licensee offering services to a customer may not knowingly give a party in a real estate transaction false information; however, the licensee is not liable to a party for providing false information to the party if the real estate licensee did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection limits an obligation of a seller under applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property or limits the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, improvements located on the property, and the area in which the property is located. No cause of action arises on behalf of a person against a real estate licensee for revealing information in compliance with this subsection. No licensee is liable for failure to disclose a matter other than those matters enumerated in this subsection. Violations of this subsection do not create liability on the part of the real estate licensee absent a finding of fraud on the part of the licensee.

(5) Notwithstanding another provision of law, no cause of action may be brought against a real estate licensee who has truthfully disclosed to a customer known material defects including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a customer for information contained in any reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A real estate licensee may not be the subject of an action and no action may be instituted against a real estate

licensee by a customer for information contained in the form prescribed by Chapter 50, Title 27 unless the real estate licensee is signatory to that opinion or report.

(P)(1) A broker-in-charge may assign, through the adoption of a company policy, different licensees affiliated with the broker-in-charge as designated agents to exclusively represent different clients in the same transaction. Any company policy adopted to fulfill the requirements of this subsection must contain provisions reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter.

(2) A broker-in-charge may personally, or through the broker's duly authorized real estate licensed representative, specifically designate, in a written agency agreement obtained in accordance with this chapter, one or more affiliated licensees who will be acting as agent of the buyer client or seller client to the exclusion of all other affiliated licensees. Buyers and sellers shall consent to enter into designated agency relationships. The informed consent must be evidenced by a designated agency agreement, promulgated by the commission, and must be signed by the buyer before writing the offer and by the seller before signing the sales agreement. The designated agency agreement must include language informing the buyer and seller of the obligations of the broker-in-charge and affiliated agents under this section. The designated agency agreement shall include language informing the buyer and seller of the obligations of the broker-in-charge and affiliated agents under this section.

(3) If a buyer client of a designated agent wants to view a property that was personally listed by the broker-in-charge, the broker-in-charge shall act as a dual agent with the written consent of the buyer and seller, as required by subsection (M).

(4) A designated agent of a seller client has the duties and obligations set forth in subsections (C) through (G). A designated agent of a buyer client has the duties and obligations set forth in subsections (H) through (K).

(5) In a transaction where both buyer and seller are represented by designated agents and the designated agents are supervised by the same broker-in-charge, the broker-in-charge shall act as a dual agent pursuant to subsection (M). The broker-in-charge is not required to complete a dual agency agreement under this provision. Consent must be contained in the designated agency agreement.

(6) A designated agent may disclose to the designated agent's broker-in-charge, or his licensed representative, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a transaction.

(7) If a buyer client of a real estate licensee in a designated agent role wants to view and make an offer to purchase a property owned by a seller client of the same real estate licensee, the real estate licensee must act as a dual agent with the written consent of the buyer and seller, as required by subsection (M).

(8) If a broker-in-charge appoints different designated agents in accordance with subsection (P)(1), the broker-in-charge, all remaining affiliated licensees, and the real estate brokerage firm must be deemed to be dual agents, except for the designated licensees and those licensees in the firm's branch offices so long as those branch offices have a separate broker-in-charge. The broker-in-charge is not required to complete a dual agency agreement under this provision. Consent must be contained in the designated agency agreement.

(9) When designated agents are appointed in accordance with subsection (P)(1), the broker-in-charge, the clients, and the designated agents must be considered to possess only actual knowledge and information; there may be no imputation of knowledge or information between and among the broker-in-charge, the designated agents, and the clients. Designated agents must not disclose, except to the designated agent's broker-in-charge, information made confidential by written request or instruction of the client whom the designated agent is representing, except information allowed to be disclosed by this section or required to be disclosed by this section. Unless required to be disclosed by law, the broker-in-charge of a designated agent may not reveal confidential information received from either the designated agent or the client with whom the designated agent is working. For the purposes of this section, confidential information is information the disclosure of which has not been consented to by the client and that could harm the negotiating position of the client.

(10) The designation of one or more of a broker-in-charge's affiliated licensees as designated agents does not permit the disclosure by the broker-in-charge or affiliated licensees of any information made confidential by an express written request or instruction by a party before or after the creation of the designated agency. The broker-in-charge and affiliated licensees shall continue to maintain this confidential information unless the party from whom the confidential information was obtained permits its disclosure by written agreement or disclosure is required by law. No liability is created as a result of a broker-in-charge and affiliated licensee's compliance with this subsection.

(Q) The provisions of this section which are inconsistent with applicable principles of common law supersede the common law, and the common law may be used to aid in interpreting or clarifying the duties described in this section. Except as otherwise stated, nothing in the section precludes an injured party from bringing a cause of action against licensees, their companies, or their brokers-in-charge."

Determination of creation of agency relationship

SECTION 17. Section [40-57-137](#) of the 1976 Code is amended by adding at the end:

"(R) The payment or promise of payment of compensation to a real estate licensee by a seller, buyer, landlord, or tenant does not determine whether an agency relationship has been created between any real estate licensee and a seller, buyer, landlord, or tenant."

Licensee to provide seller and buyer certain information

SECTION 18. Section [40-57-139](#) of the 1976 Code is amended to read:

"Section [40-57-139](#). (A) A licensee shall provide at the first practical opportunity to all buyers and sellers with whom the licensee has substantive contact:

(1) a meaningful explanation of agency relationships in real estate transactions that are offered by that brokerage;

(2) an agency disclosure form prescribed by the commission.

(B) A licensee who becomes a seller's agent shall provide an agency disclosure form to the seller at the time the listing is obtained and signed. Acknowledgement of receipt of the form must be contained in the listing agreement.

(C) A licensee who becomes a buyer's agent shall provide an agency disclosure form to the buyer at the time an agency agreement is signed. Acknowledgement of receipt of the form must be contained in the buyer agency agreement.

(D) A licensee who becomes a disclosed dual agent shall provide to both buyer and seller an agency disclosure form in accordance with Section [40-57-137](#) after buyer has completed and signed a buyer agency agreement and seller has completed and signed a listing agreement. Acknowledgement of receipt of the form by buyer and seller must be contained in their separate agency agreements.

(E) A licensee who has substantive contact with a potential buyer or seller shall provide to the potential buyer or seller an agency disclosure form at the first substantive contact. At the time of contact, it is presumed that the potential buyer or seller is to be a customer of the licensee as defined by this chapter and that the licensee shall offer services to a customer as defined by Section [40-57-137](#)(O) only until the potential buyer or seller requests representation; however, before ratification of the real property sales agreement, the real estate licensee must represent either the buyer or seller in an agency capacity in order to be in compliance with this chapter.

(F) If first contact occurs over the telephone or other electronic means, including the Internet and electronic mail, a licensee shall provide a buyer with the agency disclosure form at the first substantive contact or a copy of the form may be sent by electronic means, including the Internet and electronic mail.

(G) For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a brokerage company and its affiliated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its affiliated licensees agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant, or licensee or created orally or by implication. A licensee must not be considered to have an agency relationship with a party or have agency obligations to a party but is responsible only for exercising

reasonable care in the discharge of the licensee's specified duties, as provided in this chapter, and, in the case of a client, as specified in the agency agreement.

(H) If a licensee with an existing or prior agency agreement with either a customer or a client enters into a new agency agreement with the customer or client, the licensee shall timely disclose that fact and the new agency relationship to all licensees, customers, or clients involved in the contemplated real estate transaction.

(I) The agency disclosure requirements of this section do not apply if:

- (1) the transaction is regarding the rental or lease of residential or commercial property;
- (2) the communication from the licensee is a solicitation of business; or
- (3) the transaction is regarding the sale of property by auction."

No duty or obligation owed client under certain circumstances

SECTION 19. Section [40-57-140](#) of the 1976 Code is amended to read:

"Section [40-57-140](#). (A) A real estate broker and all associated licensees owe no duty or obligation to a client following termination, expiration, completion, or performance of an agency agreement or closing of the real property transaction, whichever occurs first, except the duties of:

- (1) accounting in a timely manner for all money and property related to and received during the relationship; and
- (2) keeping confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, except as provided for in Sections [40-57-137\(C\)\(6\)](#) and [40-57-137\(H\)\(6\)](#) unless:
 - (a) the client permits the disclosure by written agreement;
 - (b) the disclosure is required by law; or
 - (c) the information becomes public from a source other than the broker.

(B) Notwithstanding another provision to the contrary contained in this chapter, if a conflict arises between a broker's duty to keep the confidence of a client and the duty not to give customers false information, the broker's duty not to give false information to customers prevails and governs the broker's actions. No cause of action arises on behalf of a person against a broker-in-charge or affiliated licensees for revealing information in compliance with this subsection.

(C) A broker-in-charge and his affiliated licensees in the broker's main office may conduct business with a previous client of the broker's branch offices as a customer or client, so long as the branch offices have a separate broker-in-charge and do not share the same broker-in-charge as the main office."

Grounds for denial of issuance of license or disciplinary action

SECTION 20. Section [40-57-145](#)(A)(3), (8), (11), and (14) of the 1976 Code is amended to read:

"(3) pursues a continued and flagrant course of misrepresentation or makes false and misleading promises through associated licensees or through any medium of advertising or otherwise;

(8) is convicted of violating the federal and state fair housing laws, forgery, embezzlement, breach of trust, larceny, obtaining money or property under false pretense, extortion, fraud, conspiracy to defraud, or any other offense classified as a felony or involving moral turpitude, or pleading guilty or nolo contendere to any such offense in a court of competent jurisdiction of this State, any other state, or any federal court;

(11) pays a commission or compensation to an unlicensed individual;

(14) receives compensation in a real estate transaction or directly resulting from a real estate transaction from more than one party except with the full knowledge and written consent of all parties;"

Further grounds

SECTION 21. Section [40-57-145](#)(A) of the 1976 Code is amended by adding at the end:

"(22) induces a party to break a contract of sale or lease, listing agreement, or buyer agency agreement;

(23) engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their clients;

(24) fails upon probable cause of an investigator of the commission to make all records required to be maintained under this chapter available to the commission for inspection and copying by the commission or fails to appear upon probable cause for an interview with an investigator of the commission."

Investigations of violations

SECTION 22. Section [40-57-150](#)(C)(3) of the 1976 Code is amended to read:

"(3) The commission shall render a decision and shall serve, within ninety days, notice, in writing, of the commission's decision to the licensee charged. The commission also shall state in the notice the date upon which the ruling or decision becomes effective."

Commission may recover costs of investigations

SECTION 23. Section [40-57-150](#)(E)(2) of the 1976 Code is amended to read:

"(2) Upon determination by the commission that one or more of the grounds for discipline exists, as provided for in Section [40-1-110](#) or Section [40-57-140](#), the commission may impose a fine of not less than one hundred or more than one thousand dollars for each violation. The commission may recover the costs of the investigation and the prosecution as provided for in Section [40-1-170](#)."

No cause of action to arise under certain circumstances

SECTION 24. Section [40-57-180](#)(E) and (F) of the 1976 Code is amended to read:

"(E) 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 which has been determined by medical evidence as being highly unlikely to be transmitted through occupancy of a dwelling place 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.

(F) Nothing in subsection (E) precludes an action against an owner of real estate or agent of the owner who makes intentional misrepresentations in response to direct inquiry from a buyer or prospective buyer with regard to psychological impacts, offsite conditions, or stigmas associated with the real estate."

Instructors to attend workshops

SECTION 25. Section [40-57-180](#)(G)(7) of the 1976 Code is amended to read:

"(7) Approved instructors shall attend instructor development workshops sponsored by the department or provide evidence of equivalent hours of continuing education that increases their knowledge of the subject content in their area of expertise or their teaching techniques."

Fees

SECTION 26. Section [40-57-70](#) of the 1976 Code is amended to read:

"Section [40-57-70](#). (A) All fees relevant to the licensure and regulation of real estate brokers, salesmen, and property managers must be established in accordance with Section [40-1-50\(D\)](#) and promulgated through regulation prior to implementation.

(B) For each active license and inactive license not renewed by its expiration date, the department may assess a reinstatement penalty of twenty-five dollars per month for each month or part of a month for a period not to exceed six months during which the license may be reinstated.

(C) All application and license fees are payable to the department in advance and must accompany an examination application or a license application. Application fees are nonrefundable.

(D)(1) The department may allocate up to ten dollars of each license renewal fee to the South Carolina Real Estate Commission Education and Research Fund which must be established as a separate and distinct account within the office of the State Treasurer. The funds collected must be deposited in this account and used exclusively for:

(a) the advancement of education and research for the benefit of those licensed under this chapter and for the improvement and increased efficiency of the real estate industry in this State;

(b) the analysis and evaluation of factors which affect the real estate industry in this State; and

(c) the dissemination of the results of the research.

(2) The commission shall submit to the Chairmen of the House and Senate Labor, Commerce and Industry Committees by August first of each year a report on how the funds were expended for the preceding fiscal year."

Powers and duties of commission

SECTION 27. Section [40-57-60](#) of the 1976 Code is amended to read:

"Section [40-57-60](#). The commission shall set general policy with regard to administering and enforcing this chapter and regulations promulgated under this chapter. Powers and duties include, but are not limited to:

- (1) determining the standards for qualifications and eligibility of applicants for licensure;
- (2) conducting disciplinary hearings on alleged violations of this chapter and regulations promulgated under this chapter and deciding disciplinary actions as provided in this chapter for those found to be in violation;
- (3) recommending changes in legislation and promulgating regulations governing the real estate industry relative to the protection of the safety and welfare of the public;
- (4) establishing a fee schedule through regulation."

Time effective

SECTION 28. This act takes effect on January 1, 2005.

Ratified the 27th day of April, 2004.

Approved the 29th day of April, 2004. -- S.

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