

*LLR*

**SC REAL ESTATE  
COMMISSION**



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# Jurisdiction

The Commission regulates and enforces the Real Estate Licensing Practice Act (S.C. Code Title 40 Chapter 57) and the Timeshare Act (S.C. Code Title 27 Chapter 32) and Uniform Land Sales (S.C. Code Title 27 Chapter 29) Registration Acts

# S.1013 (Passed in May 2016)

Effective Date of January 1, 2017.

## Highlights

- Updates and Adds New Definitions
- Slightly Increases Hours Required for Continuing Education
- Reorganizes the licensing law and divides out a section on property managers
- Updates licensure qualification criteria for licensees of other jurisdictions
- Defines and sets limitations for Teams.
- Defines and creates “transaction brokerage” relationship.
- Changes certain disclosure requirements.
- Expands Trust Fund procedures
- Requires Offer Rejection form, and Transaction Broker Form
- Requires Providers to Electronically Report CE.
- Potentially opens door for distance qualifying Education



## **S.1013: License Law DEFINITIONS**

**‘Limited function referral office’** means a brokerage where the office policy allows only the placement of referrals through the broker-in-charge.

**‘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.

## S.1013: License Law DEFINITIONS

**‘Ministerial act’** means an act performed by a licensee not involving an exercise of discretion or judgment of a licensee on behalf of a person who is not a client and that assists the nonclient to consummate a real estate transaction

**‘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.

## S.1013: License Law DEFINITIONS

**‘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.

## **S.1013: License Law CHANGES**

### **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.

## S.1013: License Law CHANGES

### PERSONAL TRANSACTIONS

A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate at first substantive contact with a consumer and in advertising or marketing in any media. A licensee also shall disclose his licensed status in bold underlined capital letters on the first page of a contract for the purchase, sale, exchange, rental, or lease of real property.

No licensee either directly or indirectly may buy for his own account or for a corporation or another business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to all parties involved. Upon request of the department, the licensee shall provide evidence of having made this disclosure.



## **S.1013: License Law CHANGES**

### **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.

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.

## **S.1013: License Law CHANGES**

### **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.

## **S.1013: License Law CHANGES**

### **TRANSACTION BROKERAGE CONT.**

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.

## **S.1013: License Law CHANGES**

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; (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.

## **S.1013: License Law CHANGES 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.

## **S.1013: License Law CHANGES OFFERS**

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.

## **S.1013: License Law CHANGES**

### **OFFER REJECTION FORM**

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.

## **S.1013: License Law CHANGES**

### **Alternative Communication of Offers**

An offer and counteroffer may be communicated by use of a fax or other secure electronic means including, but not limited to, the Internet, and the signatures, initials, and handwritten or typewritten modifications to the foregoing documents are considered valid and binding upon the parties as if the original signatures, initials, and handwritten, or typewritten modifications were present on the documents in the handwriting of each party.



## **S.1013: License Law CHANGES**

### **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.

## **S.1013: License Law CHANGES**

### **TRUST FUNDS:**

- (C)(1)(a) Except as provided in subitem (b), trust funds received by a broker-in-charge or property manager-in-charge in a real estate rental or lease transaction must be deposited as follows in a real estate trust account as follows:
- (i) cash or certified funds must be deposited within forty-eight hours of receipt, excluding Saturday, Sunday, and bank holidays; and
  - (ii) checks must be deposited within forty-eight hours after a lease or rental agreement is signed by the parties to the transaction, excluding Saturday, Sunday, and bank holidays.
- (b) Rent received by a licensee who is directly employed by the owner of rental property may be deposited in an operating or other similar account, but otherwise must be properly accounted for as provided in this section. However, an advance rental deposit is a trust fund and must be treated as such.

## **S.1013: License Law CHANGES**

### **DISPUTED TRUST FUNDS:**

If a dispute concerning the entitlement to, and disposition of, trust funds arises between a buyer and a seller, and the dispute is not resolved by reasonable interpretation of the contract by the parties to the contract, the deposit must be held in the trust account until the dispute is resolved by:

- (1) a written agreement which:
  - (a) directs the disposition of monies signed by all parties claiming an interest in the trust monies, and
  - (b) must be separate from the contract which directs the broker-in-charge or property manager-in-charge to hold the monies;
- (2) filing an interpleader action in a court of competent jurisdiction;
- (3) an order of a court of competent jurisdiction; or
- (4) voluntary mediation.

## **S.1013: License Law CHANGES**

### **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.
- (C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge.
- (D) Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.

## **S.1013: License Law CHANGES**

### **TEAMS! CONTINUED:**

- (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.
- (G) The commission may promulgate regulations regarding the creation and operation of real estate teams.

## **S.1013: License Law CHANGES**

### **AGENCY DISCLOSURE AT FIRST SUBSTANTIVE CONTACT:**

Section 40-57-370.

- (A) A licensee shall provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:
- (1) a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;
  - (2) Disclosure of Brokerage Relationships form prescribed by the commission.

## **S.1013: License Law CHANGES**

### **AGENCY DISCLOSURE AT FIRST SUBSTANTIVE CONTACT:**

- (B) An 'Acknowledgement of Receipt of the Disclosure of Brokerage Relationships' form must be included in an agency agreement and in a sales contract. In addition, each sales contract must require the buyer and the seller to acknowledge whether they received customer or client service in that real estate transaction.
  
- (C) At the time of first substantive contact, it is presumed that the potential buyer or seller is to be a customer of the real estate brokerage firm and that the real estate brokerage firm will be acting as a transaction broker as defined by this chapter and that the real estate brokerage firm shall offer services to a customer as defined by Section 40-57-350(L) only until the potential buyer or seller signs an agency representation agreement.

## **S.1013: License Law CHANGES**

### **AGENCY DISCLOSURE AT FIRST SUBSTANTIVE CONTACT:**

(D) If first substantive contact occurs over the telephone or other electronic means, including the Internet and electronic mail, an 'Acknowledgement of Receipt of the Disclosure of Brokerage Relationships' form may be sent by electronic means, including the Internet and electronic mail.



# **S.1013: License Law Bill**

## **UPDATES TO CONTINUING EDUCATION**

- **Broker or Salesperson** – 10 hours (4 hours Mandatory Core, 6 hours elective).
- **Broker in Charge** – 10 hours (4 hours Mandatory Core, 4 Hour BIC specific Mandatory Course), 2 hours elective
- **Property Manager or Property Manager in Charge** – No CE
- **Experience Partial CE Exemption** – 25 years licensure (eliminates age requirement but still have to take Mandatory Courses). Licensees with existing exemptions “grandfathered”.

# S.1013: License Law Bill

## UPDATES TO LICENSE QUALIFICATIONS

- **No More “Provisional Sales”** and 30 hour Post-licensing course. Applicants must complete 90 hours prior to licensure. The post-licensing course will become Unit II: Advanced Real Estate Principles pre-licensing course.
- Must have **3 years of Active Sales licensed experience within the last 5 years to qualify for Broker.**
- **No more credit reports required**
- **Property Manager in Charge – 7 Hour additional qualifying course.**

## S.1013: License Law Bills

- **Criminal Background Check Required for all Applicants. Grounds for denial have been modified.**

“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 has been convicted of a felony sex-related, felony drug-related, felony real estate-related, felony financial, or felony violent offense, or pleading guilty or nolo contendere to such an offense in a court of competent jurisdiction of this State, another state, or a federal court; “



## S.1013: License Law Bill

- **Applicant Denied licensure** : Cannot re-apply for 2 years.
- **Licensee Revoked**: Cannot re-apply for 3 years.
- **SC Residents** must qualify with **SC Education**
- **License Recognition**: Licensees of other jurisdictions can qualify by taking the S.C. Examination. No full reciprocity language.

## **S.1013: License Law**

### Other Statutory Requirements

- 1.** Failure to maintain updated contact information grounds for Administrative Suspension. Contact Information includes Mailing and Residence Addresses, Phone Number, Email Address.
- 2.** Must Notify Commission of Change of Residency State from SC or to SC (30 days)

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## **S.1013: License Law**

### Other Statutory Requirements

The “Agency Disclosure Brochure” will become the “South Carolina Disclosure of Real Estate Brokerage Relationships” form.

- Adds description of the “Transaction Brokerage” relationship.
- Contains “Consumer Acknowledgement of Receipt” signature spaces.

# Education Odds n Ends

1. Potential for Distance Qualifying Education
2. Coming Soon!: 100% CE Auditing and Electronic Reporting.





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