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**Department of Labor, Licensing & Regulation**

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# **SOUTH CAROLINA REAL ESTATE LICENSE LAW**

## **Title 40 - Professions and Occupations**

### **CHAPTER 57.**

#### **REAL ESTATE BROKERS, SALESMEN, AND PROPERTY MANAGERS**

##### **SECTION 40-57-5.** Applicability of chapter; conflicts of laws.

Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to real estate brokers, salesmen, and property managers; however, if there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

##### **SECTION 40-57-10.** Creation and purpose of South Carolina Real Estate Commission.

There is created the South Carolina Real Estate Commission under the administration of the Department of Labor, Licensing and Regulation. The purpose of this commission is to regulate the real estate industry so as to protect the public's interest when involved in real estate transactions.

##### **SECTION 40-57-20.** Valid licensure requirement for real estate brokers, salesmen and property managers.

It is unlawful for an individual to act as a real estate broker, real estate salesman, or real estate property manager or to advertise as such without a valid license issued by the department.

##### **SECTION 40-57-30.** Definitions.

For purposes of this chapter:

- (1) "Associated licensee" means a licensee who is affiliated with a broker-in-charge or property manager-in-charge.
- (2) "Branch office" means a suboffice of a company in which full-service real estate activities are conducted and at which a broker-in-charge or property manager-in-charge is licensed to conduct real estate transactions.
- (3) "Broker" means an individual who for a fee, salary, commission, or other valuable consideration or who with the intent or expectation of receiving compensation:
  - (a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements thereon;
  - (b) auctions or offers to auction real estate;
  - (c) solicits a referral in order to conduct activities set forth in this section;

**Section 40-57-30 (continued)**

- (d) offers advisory services as a real estate consultant or counselor;
  - (e) offers to act as an agent representing a principal in a real estate transaction;
  - (f) advertises or otherwise holds himself out to the public as being engaged in any of the foregoing activities.
- (4) "Broker-in-charge" means the broker who is designated as having responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for any real estate trust accounts.
- (5) "Client" means a person with whom a licensee has established an agency relationship.
- (6) "Commission" means the group of individuals charged by law with the responsibility of licensing or otherwise regulating the practice of real estate within the State of South Carolina.
- (7) "Customer" means a person with whom a licensee has not established an agency relationship.
- (8) "Department" means the Department of Labor, Licensing and Regulation.
- (9) "Licensee" means an individual currently licensed under this chapter.
- (10) "Office" means the principal office location where a broker-in-charge or a property manager-in-charge is licensed to conduct real estate business.
- (11) "Property manager" means an individual who for a fee, salary, commission, or other valuable consideration or who with the intent or expectation of receiving compensation:
- (a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements thereon;
  - (b) lists or offers to list and provide services in connection with the leasing or rental of real estate or improvements thereon;
  - (c) advertises or otherwise holds himself out to the public as being engaged in any of the foregoing activities.
- (12) "Property manager-in-charge" means the property manager who is designated as having the responsibility over the actions of associated property managers and also the responsibility and control over and liability for real estate trust accounts.
- (13) "Real estate" means land, buildings, and other appurtenances, including all interests in land, whether corporeal, incorporeal, freehold, or nonfreehold, whether the real estate is situate in or outside of this State.

**Section 40-57-30 (continued)**

(14) "Real estate transaction" means an activity involving the sale, purchase, exchange, or lease of real estate.

(15) "Salesman" means a licensee associated with a broker-in-charge who, for compensation, engages in or participates in an activity included in item (3).

(16) "Trust account" means an escrow account or properly designated bank account established and maintained by a broker-in-charge or a property manager-in-charge to safeguard funds belonging to parties to a real estate transaction.

**SECTION 40-57-40. Membership; terms of appointment.**

(A) The South Carolina Real Estate Commission consists of nine members elected or appointed as follows:

(1) Six members who are professionally engaged in the active practice of real estate, one elected from each of the six congressional districts by a majority of house members and senators, representing the house and senate districts located within each of the congressional districts.

(2) Two members representing the public who are not professionally engaged in the practice of real estate, each appointed by the Governor with the advice and consent of the Senate.

(3) The eight elected and appointed members shall elect from the State at large, one additional member who must be in the active practice of real estate.

(B) Commission members serve a term of four years and until their successors are elected or appointed and qualify. A vacancy on the commission must be filled in the manner of the original election or appointment for the remainder of the unexpired term.

(C) Before entering upon the discharge of the duties of the office, a member's election or appointment must be certified by and the member shall take and file with the Secretary of State, in writing, an oath to perform the duties of the office as a member of the commission and to uphold the Constitutions of this State and the United States.

(D) A member's term commences on the date election or appointment is certified by the Secretary of State.

(E) A member may be removed from office in accordance with Section 1-3-240.

**SECTION 40-57-50.** Election of officers; official seal, rules and procedures.

The commission annually shall elect from its total membership a chairman, vice-chairman, and other officers the commission determines necessary. The commission may adopt an official seal and shall adopt rules and procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings.

**SECTION 40-57-60.** Powers and duties of commission.

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.

**SECTION 40-57-65.** Annual report.

The commission shall submit to the department an annual report in accordance with guidelines established by the department.

**SECTION 40-57-70.** License fees and non-renewal penalties; application fees and payment.

(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) 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

**Section 40-57-70 (continued)**

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:

(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.

**SECTION 40-57-80. Qualifications for licensure.**

To be eligible for licensure, an applicant shall:

(1) have attained the age of twenty-one if applying for a license as a broker, broker-in-charge, or property manager-in-charge;

(2) have attained the age of eighteen if applying for a license as a salesman or property manager;

(3) submit to a credit report which shall indicate creditworthiness satisfactory to the commission. If notified of unsatisfactory credit, the applicant has sixty days to respond;

(4) have graduated from high school or hold a certificate of equivalency;

(5) submit proof of completion of education and, if applicable, experience requirements as specified in this chapter;

(6) pass the applicable examination.

**SECTION 40-57-90. Application for examination or licensure; form and fees.**

An application for examination or licensure must be made in writing on a form prescribed by the department and must be accompanied by all applicable fees.

**SECTION 40-57-100.** Educational requirements conditional to application for licensure.

(A) As a condition for and before applying to take a license examination, an applicant for a salesman, broker, or property manager license shall provide proof of having met these educational requirements within the last five years:

(1) For a salesman's license, completion of sixty hours of classroom instruction in fundamentals of real estate principles and practices or evidence submitted to the department of a Juris Doctor, Bachelor of Laws degree, or a baccalaureate degree with a major in real estate from an accredited college or university. Within one year following licensure, a salesman shall provide proof of satisfactory completion of thirty hours of post-licensing instruction in advanced real estate principles and practices. Failure to complete the post-licensing education within one year will result in cancellation of the license;

(2) For a broker's license, completion of one hundred fifty hours, ninety hours of which may be the hours required for a salesman's license, of classroom instruction in advanced real estate principles and practices and related topics, and three years of experience with a salesman's license or evidence submitted to the department of a Juris Doctor, Bachelor of Laws degree, or a baccalaureate degree with a major in real estate from an accredited college or university or the commission may accept proof of related education and at least five years of experience immediately preceding license application in business activities equivalent to or closely related to real estate transactions;

(3) For a property manager's license, completion of thirty hours of classroom instruction in property management principles and practices or evidence submitted to the department of a Juris Doctor, Bachelor of Laws degree, or a baccalaureate degree with a major in real estate from an accredited college or university.

(B) As a condition of licensure, an applicant shall submit to an examination which must be conducted by the department or a designated test provider at a time and place specified by the department.

The applicant must receive a passing grade on the examination, in accordance with a cut-score determination established by the department.

An applicant who fails an examination may be reexamined within the six-month period following initial examination. If an applicant passes one part of a two-part examination and fails the other, the applicant may be reexamined on the failed portion within the succeeding six-month period.

An applicant who passes the examination must apply for a license within one year, or the applicant must reapply for and retake the examination.

An individual who, at the time of application, holds a real estate license in another state or jurisdiction or whose real estate license in another state or jurisdiction expired not more than six months before application is required to pass only the state portion of the examination to qualify for licensure.

The department or test provider is authorized to collect and retain reasonable examination fees. An applicant for an examination to be conducted by a test provider shall pay the fee directly to the test provider.

**SECTION 40-57-110.** Issuance and classification of license; revocation; inactive status.

(A) The department shall issue licenses in the classifications of broker, salesman, or property manager to individuals who qualify under and comply with the requirements of this chapter. No individual may be licensed in more than one classification at the same time. The license must be in the form and size as the department prescribes and is not transferable.

(B) The department may issue a designated broker-in-charge license to a broker or one qualified to be licensed as a broker and may issue a designated property manager-in-charge license to a licensed property manager or one qualified to be licensed as a property manager upon application on a form prescribed by the department and accompanied by applicable fees; however, no broker-in-charge or property manager-in-charge license may be issued to or renewed for an applicant unless the applicant:

- (1) has an ownership interest in the applicant's company; or
- (2) is actively engaged in the operation and management of the company.

(C) Applicants also must submit to a credit report which must indicate creditworthiness satisfactory to the department. If notified of unsatisfactory credit, the applicant shall have sixty days to respond.

(D) An individual holding an active broker or salesman license must be licensed under a broker-in-charge who is licensed by the department and may not be licensed during the same period with more than one broker-in-charge. When a licensee becomes disassociated with a broker-in-charge for any reason, the broker-in-charge immediately shall notify the department by letter and furnish a forwarding address.

(E) An individual holding an active property manager license must be licensed under a property manager-in-charge or broker-in-charge who is licensed by the department or must be designated as a property manager-in-charge. A property manager may not be licensed during the same period with more than one property manager-in-charge or broker-in-charge. When a licensee becomes disassociated with a broker-in-charge or property manager-in-charge for any reason, the broker-in-charge or property manager-in-charge immediately shall notify the department by letter and furnish a forwarding address.

(F) After revocation of a license, a new license may not be issued to the same individual within a period of one year from the date of revocation or at any time thereafter except upon an affirmative vote of a majority of the members of the commission. A person seeking licensure after revocation shall:

**Section 40-57-110 (continued)**

- (1) submit to the commission satisfactory proof that the person is trustworthy, has a good reputation for honesty and fair dealing, and is competent to transact the business of a real estate licensee;
- (2) submit proof of educational qualifications as set forth in this chapter if the proof of educational qualifications on file is more than five years old;
- (3) pass the applicable examination; and
- (4) meet any other qualifications and conditions which apply to individuals applying for a license who have never been licensed.

(G) A licensee may place a license on inactive status by informing the department in writing. To maintain an inactive license status, the license must be renewed in the same manner as provided for active license renewals. Upon proper compliance with the renewal requirements, a license may remain on inactive status for an indefinite period of time. An individual seeking to reactivate a license shall apply for the same license classification which was placed on inactive status, pay the appropriate fee, and meet the continuing education requirements as prescribed.

(H) A license must be renewed in accordance with procedures established by the department pursuant to Section 40-1-50(E). It is the licensee's responsibility to renew the license whether or not notice is received.

(I) A license which has not been renewed by its date of expiration is lapsed and may be reinstated within six months following expiration upon payment of applicable fees plus penalties as provided for in Section 40-57-70.

(J) A license which has lapsed and has not been reinstated by the last day of the sixth month following expiration must be canceled.

**SECTION 40-57-120. Reciprocity agreements with other jurisdictions.**

(A) The commission may enter into reciprocal agreements with real estate regulatory authorities of other jurisdictions which provide for waivers of education requirements or examinations if the commission considers the education and examination requirements of another jurisdiction to be substantially equivalent to the requirements of this chapter.

(B) An individual applying for a license by reciprocity shall submit an application, license fee, and certification of licensure from the real estate regulatory authority of the jurisdiction where the current or previous license was held and shall comply with additional requirements as may be established by the commission. The applicant also shall provide copies of the records of any disciplinary actions taken against the applicant.

(C) A nonresident real estate salesman license may not be granted to an applicant unless that applicant is affiliated with a resident or nonresident broker-in-charge licensed by the commission. If a nonresident licensee terminates the affiliation with a broker-in-charge licensed by the commission, the license of the nonresident is canceled unless the licensee

places the license on inactive status or affiliates with another broker-in-charge licensed by the commission.

(D) A nonresident is not required to maintain a place of business in this State if the nonresident maintains an active place of business in the state of domicile. A nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court in a judicial circuit of the state in which a cause of action may arise or in which the plaintiff may reside, by the service of process or pleading, authorized by the laws of this State, on the chairman of the commission or any authorized assistant or deputy appointed by the Director of the Department of Labor, Licensing and Regulation. The consent shall stipulate that the service of process or pleading must be taken and held in all courts to be as valid and binding as if service had been made upon the applicant in South Carolina. If the process or pleadings mentioned in this chapter are served upon the chairman of the commission or any authorized assistant or deputy appointed by the Director of the Department of Labor, Licensing and Regulation, it must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by the commission by registered or certified mail to the applicant against whom the process or pleadings are directed, at the last known address of the applicant as shown by the records of the commission.

(E)(1) A resident licensee who becomes a nonresident must notify the commission in writing, within sixty days, of the change in residency and comply with nonresident requirements or place his license on inactive status to avoid cancellation of the license.

(2) A nonresident licensee who becomes a resident of South Carolina must notify the commission in writing, within sixty days, of the change in residency and comply with the requirements of this chapter or place his license on inactive status to avoid cancellation of the license.

(3) Failure to notify the commission of the change in residency and compliance with the requirements of this subsection is a violation of this chapter and subject to the penalties provided for in Section 40-57-150.

(F) A nonresident applicant or licensee must comply with all requirements of commission regulations and of this chapter. The commission may adopt regulations necessary for the regulation of nonresident licensees.

**SECTION 40-57-130.** Conditions of renewal of license; continuing education; exemptions.

(A) As a condition of active license renewal, a broker or salesman shall provide proof of satisfactory completion biennially of eight hours of continuing education in courses approved by the department and taught by instructors approved by the department. The eight hours shall include a minimum of two hours of instruction in current federal and state law affecting brokers and salesmen.

(B) The following are exempt from the biennial continuing education required by subsection (A):

**Section 40-57-130 (continued)**

- (1) a broker or salesman who successfully completes a post-licensing course is exempt for the period during which the course was taken;
- (2) a broker or salesman while on inactive status; however, the eight-hour requirement must be completed and proof submitted with an application to return to active status;
- (3) instructors of approved courses if they request in writing continuing education credit for time spent teaching or developing approved continuing education courses;
- (4) a nonresident broker or salesman who has successfully satisfied the continuing education requirements of the jurisdiction of residence;
- (5) a broker or salesman upon reaching the age of sixty-five years with a minimum of twenty-five years of licensure.

(C) Brokers or salesmen taking more than the required number of hours during a two-year period may not carry forward any excess hours to another renewal period.

(D) A broker or salesman who fails to complete the continuing education requirements required by this section by the date of license renewal may renew by submitting applicable fees but must immediately be placed on inactive status and may not engage in the practice of real estate while on inactive status. The license may be reactivated upon proof of completion of required continuing education and payment of applicable fees.

**SECTION 40-57-135.** Duties of broker-in-charge and manager-in-charge; policies and recordkeeping.

(A) The duties of the broker-in-charge or property manager-in-charge are to:

- (1) adequately supervise employees or associated licensees to ensure their compliance with this chapter and maintain real estate trust accounts when required by law;
- (2) review and approve all forms of listing agreements, agency agreements, offers, sale contracts, purchase contracts, leases, options, contract addenda, or other routinely used contractual documents;
- (3) maintain adequate, reasonable, and regular contact with associated licensees engaged in real estate transactions so as to prevent or curtail practices by a licensee which would violate any provision of this chapter, Title 40, Chapter 1, the Interstate Land Sales Practices Act, or the Vacation Time Sharing Plans Act;
- (4) instruct employees and associated licensees on the proper handling of trust funds;
- (5) be available to the public during normal business hours in order to discuss or resolve complaints and disputes which arise during the course of real estate transactions in which the broker-in-charge or property manager-in-charge or an associated licensee is involved;

(6) ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts;

(7) ensure that backup copies are maintained for computerized real estate trust accounts. Backup copies must be maintained on a data storage medium which is separate from the medium which contains the source documents;

(8) establish and maintain a written office policy in accordance with Section 40-57-137(B).

(B)(1) A broker-in-charge or property manager-in-charge, when taking possession of funds belonging to another in connection with a real estate transaction, shall establish and maintain control of and responsibility for an active real estate trust account so designated in the company name for which the respective broker-in-charge's or property manager-in-charge's license is issued; however, the brokers-in-charge or property managers-in-charge of a real estate company with multiple offices may utilize one central trust account.

(2) All monies received by a property manager-in-charge as agent for his principal in a real estate transaction must be deposited in a separate real estate trust account so designated within forty-eight hours of receipt, excluding Saturdays, Sundays, and bank holidays; except that rent monies received by a licensee who also is directly employed by the owner of rental property may be placed in an operating or other similar account, but otherwise must be properly accounted for as provided for in this section.

(3) All monies received by a property manager-in-charge in connection with a real estate rental including, but not limited to, security deposits, pet deposits, damage deposits, and advance rentals (except earned rental proceeds) shall remain in the trust account until the lease or rental transaction expires or is terminated, at which time the monies must be disbursed in accordance with the contract which directs the property manager-in-charge to hold the monies, and a full accounting must be made to the landlord or tenant as appropriate. Earned rental proceeds must be disbursed to the landlord within a reasonable time after clearance of the deposit by the bank.

(4) All monies received by a broker-in-charge as agent for a principal in a real estate sales or exchange transaction must be deposited as follows in a separate real estate trust account so designated:

(a) cash monies or certified funds must be deposited within forty-eight hours of receipt, excluding Saturday, Sunday, and bank holidays;

(b) checks must be deposited within forty-eight hours, excluding Saturday, Sunday, and bank holidays, after acceptance of an offer by the parties to the transaction;

(c) all monies received by a broker-in-charge in connection with a real estate sales or exchange transaction and deposited in the real estate trust account shall remain in the trust account until consummation or termination of the transaction, at which time the monies must be disbursed in accordance with the contract which directs the broker-in-charge to hold the monies, and a full accounting must be made to the principal.

(5) If a dispute arises between buyer and seller concerning the entitlement to and disposition of an earnest money deposit, 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:

(a) a written agreement which directs the disposition of monies and is signed by all parties claiming an interest in the trust monies. The agreement must be separate from the contract which directs the broker-in-charge or property manager-in-charge to hold the monies;

(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;

(c) order of a court of competent jurisdiction;

(d) voluntary mediation.

(6) All trust accounts maintained by brokers-in-charge or property managers-in-charge must be located in an insured financial institution authorized to conduct business in South Carolina.

(7) A broker-in-charge or property manager-in-charge, when required by this chapter to establish and maintain a real estate trust account, also shall maintain, in his designated principal place of business, a recordkeeping system consisting of:

(a) a journal or an accounting system which records the chronological sequence in which funds are received and disbursed for real estate sales. For funds received, the journal or accounting system must include the date of receipt, the name of the party from whom the money was received, the name of the principal, identification of the property, the date of deposit, the depository, the payee, and the check numbers, dates, and amounts. A running balance must be maintained for each entry of a receipt or disbursement. The journal or accounting system must provide a means of reconciling the accounts;

(b) a journal or an accounting system containing, for property management, the same information as stated in subitem (a) except that the required running balance may be determined at the time of reconciliation;

(c) a separate record for each tenant identifying the unit, the unit owner, amount of rent, due date, security deposit, and all receipts with dates when managing property. There also must be maintained an owner's ledger for all properties owned by each owner showing receipts and disbursements applicable to each property managed. All disbursements must be documented by bids, contracts, invoices, or other appropriate written memoranda;

(d) trust account deposit documents shall identify the broker-in-charge or property manager-in-charge and the buyer or tenant unless other appropriate written memoranda are maintained;

(e) a general ledger identifying security deposits;

(f) a monthly reconciliation of each separate account except where there has been no deposit or disbursement during that month. The reconciliation must include a written worksheet comparing the reconciled bank balance with the journal balance and with the ledger total to ensure agreement.

(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

(9) A broker-in-charge or property manager-in-charge may not commingle monies or other property of the principal with the broker-in-charge or property manager-in-charge's own money or property, except that a broker-in-charge or property manager-in-charge may maintain a clearly identified amount of his own funds in the trust account to cover bank service charges in order to avoid the closing of the account when no client's monies are on deposit.

(10) Monies received by a broker-in-charge or property manager-in-charge which must be deposited in a trust account may be deposited in an interest-bearing account. Interest earned on these monies may be retained by the broker-in-charge or property manager-in-charge only if:

(a) the depositor or owner of such monies has been informed of their right to ownership of the interest but relinquishes to the broker-in-charge or property-manager-in-charge by written agreement said right of ownership; and

(b) if such agreement is part of a preprinted form, the language must be conspicuous.

(11) Records required by this chapter must be maintained for a minimum of five years and the broker-in-charge or property manager-in-charge shall furnish a copy of the records to a representative of the department upon request. Accounting records that may be requested include, but are not limited to, journals, ledgers, folios, client subaccounts, tenant accounts, canceled checks, deposit slips, and bank statements.

(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.

(C) A licensed broker-in-charge or property manager-in-charge shall establish and maintain a specific office location which must be accessible by the public during reasonable business hours.

**Section 40-57-135 (C)(continued)**

(1) A broker-in-charge or property manager-in-charge, in addition to the principal office location, may maintain one or more branch offices under the same company name at a different location. Each branch office must be managed by a broker-in-charge or property manager-in-charge who shall comply with the requirements of subsection (A).

(2) A licensee may not conduct real estate business under any other name or at any address other than the one for which his license is issued. The broker-in-charge or property manager-in-charge shall notify the department by mail within ten days of any change of office name and/or address and enclose appropriate fees.

(3) In the event of the death or medical incapacitation of a broker-in-charge or property manager-in-charge which precludes him from carrying out duties as required in this chapter, the department may permit an associated licensee to act as broker-in-charge or property manager-in-charge for up to six months.

(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 a 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.

(7) Every broker-in-charge or property manager-in-charge shall maintain for a minimum of five years and shall furnish to the department upon request a written copy of a:

(a) lease;

(b) contract of sale;

(c) listing contract or agency agreement;

- (d) option contract;
- (e) management agreement;
- (f) residential property condition disclosure statement;
- (g) closing statement;
- (h) policy on agency representation;
- (i) fair housing policy.

(8) The department may license the same person as broker-in-charge or property manager-in-charge of more than one company or branch office if the broker-in-charge or property manager-in-charge making the request acknowledges in writing that he understands the duties and can fully assume the responsibility to ensure full compliance with this chapter by each office and the associated licensees.

(D) No licensee either directly or indirectly may buy for his own account or for a corporation or any other 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.

(1) With regard to offers to purchase real estate, a licensee shall:

- (a) upon receipt, prepare all offers in writing and promptly present them to the seller;
- (b) upon obtaining a written acceptance of an offer, promptly deliver true, executed copies to all parties;
- (c) ensure that all of the terms and conditions of the transaction are included in the offer to purchase;
- (d) ensure that changes or modifications made during negotiation are in writing and initialed and dated by both parties before proceeding with the transaction.

(2) 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.

(3) A licensee may not allow or create an unreasonable delay in the closing of a transaction or act in a manner which causes failure or termination of a transaction due solely to a dispute among participating licensees concerning the division of a commission.

**Section 40-57-135(D) (continued)**

(4) A listing or buyer's representation agreement must be in writing and must set forth all material terms of the parties' agency relationship including, but not limited to:

(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;

(b) the amount of compensation to be paid or the method to be used in calculating the amount of compensation to be paid;

(c) an explanation of how and when the agent earns his compensation;

(d) an explanation of how compensation will be divided among participating or cooperating brokers, if applicable;

(e) the amount of retainer fees, deposits, or any other money which is collected before the agent's performance of any services on behalf of the principal and an explanation of whether or not, and if so, under what conditions such monies are refundable or payable to or on behalf of the principal;

(f) the duration of the agency relationship, setting forth specific dates for the beginning and ending of the relationship;

(g) the signature of all parties;

(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.

(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.

(1) The department may permit multiple multi-unit rental property locations to be managed by one licensee.

(2) An unlicensed employee of the owner of a multi-unit rental property or an unlicensed individual who works under the supervision of a licensee is permitted to perform only the following duties:

- (a) maintenance;
- (b) clerical or administrative support;
- (c) collection of rents which are made payable to the owner or real estate company;
- (d) showing rental units to prospective tenants;
- (e) furnishing published information;
- (f) providing applications and lease forms;
- (g) receiving applications and leases for submission to the owner or the licensee for approval.

(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;
- (5) 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.

(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;

**Section 40-57-135 (G)(continued)**

- (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.

**SECTION 40-57-137.** Real estate brokerage company duties to client; applicability of common law.

(A) A real estate brokerage company that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting as set forth in this chapter. The following are the permissible agency relationships a licensee may establish:

- (1) seller agency;
- (2) buyer agency;
- (3) disclosed dual agency; or
- (4) subagency.

**Section 40-57-137 (continued)**

(B) The broker-in-charge of a real estate brokerage company shall adopt a written company policy that identifies and describes the types of real estate brokerage agency relationships in which associated licensees may engage. The written policy shall include:

- (1) the company's policy regarding cooperation with subagents or buyer agents, or both, and whether the broker offers compensation to these agents;
- (2) the scope of services provided to the company's clients;
- (3) the scope of services provided to the company's customers;
- (4) when and how associated licensees shall explain and disclose their agency relationships with any interested parties to a potential transaction; the explanation and disclosure shall always comply with the minimum requirements set forth in this chapter;
- (5) when and how an associated licensee shall explain to clients the potential for the licensee to later act as a disclosed dual agent in specific transactions, as permitted by this chapter;
- (6) the company's policy on compliance with state and federal fair housing laws.

(C) On reaching a written agreement to provide brokerage services for a seller of real estate, a seller's agent shall:

- (1) perform the terms of the written brokerage agreement made with the seller;
- (2) in accordance with subsection (A), promote the interest of the seller by performing agency duties which include:
  - (a) seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller, except that the licensee is not obligated to seek additional offers to purchase unless the brokerage agreement provides otherwise while the property is subject to a contract of sale;
  - (b) presenting in a timely manner all offers and counteroffers to and from the seller, even when the property is subject to a contract of sale;
  - (c) disclosing to the seller all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee, except as directed otherwise in this section;
  - (d) advising the seller to obtain expert advice on matters that are beyond the expertise of the licensee;
  - (e) accounting in a timely manner, as required by this chapter, for all money and property received in which the seller has or may have an interest;
- (3) exercise reasonable skill and care in discharging the licensee's agency duties;

(4) comply with all provisions of this chapter and with any regulations adopted by the department;

(5) comply with all applicable federal, state, or local laws, rules, regulations, and ordinances related to real estate brokerage, including laws which relate to fair housing and civil rights;

(6) preserve confidential information provided by the seller during the course of and following the agency relationship that might have a negative impact on the seller's real estate activity unless:

(a) the seller to whom the confidential information pertains grants consent to disclose the information; or

(b) disclosure is required by law; or

(c) disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a proceeding before the commission or before a professional association or professional standards committee.

No cause of action may arise against a licensee for disclosing confidential information in compliance with subsection (C)(6)(a), (b), or (c).

(D) A licensee acting as a seller's agent may offer alternative properties to prospective buyers. A licensee acting as a seller's agent also may list for sale competing properties.

(E) A licensee acting as a seller's agent may not offer a subagency relationship to other brokers or offer to compensate another broker who represents a buyer without the knowledge and consent of the seller client.

(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.

(G) Nothing in this chapter limits the obligation of the buyer to inspect the physical condition of the property which the buyer may purchase.

(H) On reaching a written agreement to provide brokerage services to a potential buyer of real estate, a buyer's agent shall:

- (1) perform the terms of the written brokerage agreement made with the buyer;
- (2) in accordance with subsection (A), promote the interest of the buyer by performing the buyer's agent's duties which include:
  - (a) seeking property at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the buyer, except that the licensee is not obligated to seek additional properties unless the brokerage agreement provides otherwise for a buyer once the buyer becomes a party to a contract of sale;
  - (b) presenting in a timely manner all offers and counteroffers to and from the buyer;
  - (c) disclosing to the buyer all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee, except as directed otherwise in this section. Nothing in this chapter shall limit a buyer's obligation to inspect the physical condition of the property which the buyer may purchase;
  - (d) advising the buyer to obtain expert advice on material matters that are beyond the expertise of the licensee;
  - (e) accounting in a timely manner, as required by this chapter, for all money and property received in which the buyer has or may have an interest;
- (3) exercising reasonable skill and care in discharging the buyer's agent's agency duties;
- (4) complying with all provisions of this chapter and with any regulations promulgated by the department;
- (5) complying with all applicable federal, state, or local laws, rules, regulations, and ordinances related to real estate brokerage, including laws which relate to fair housing and civil rights;
- (6) preserving confidential information provided by the buyer during the course of or following the agency relationship that might have a negative impact on the buyer's real estate activity unless:
  - (a) the buyer to whom the confidential information pertains, grants consent to disclose the information; or
  - (b) disclosure is required by law; or

**Section 40-57-137(H) (continued)**

(c) disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a proceeding before the commission or before a professional association or professional standards committee.

No cause of action may arise against a licensee for disclosing confidential information in compliance with subsections (H)(6)(a), (b), or (c).

(I) A licensee acting as a buyer's agent may offer properties which interest his buyer client to other potential buyers.

(J) A licensee acting as a buyer's agent may not offer a subagency relationship to other brokers or offer to compensate another broker who represents a seller without the knowledge and consent of the buyer client.

(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.

(L) 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.

(M) A licensee may act as a disclosed dual agent only with the prior informed and written consent of all parties. Consent is presumed to be informed if a party signs a completed copy of the agency disclosure form prescribed by the commission. The form shall specify the transaction in which a licensee shall serve as dual agent and shall state:

(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;

**Section 40-57-137(M) (continued)**

(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.

(N) A subagent is a designated broker and all associated licensees engaged by a broker of another company to act as agent for his client. A subagent owes the same duties and responsibilities to the client as the client's primary broker pursuant to subsections (C) and (H).

(O) Prospective buyers of 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 and shall receive the following:

(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) The provisions of this section which are inconsistent with applicable principles of common law shall 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.

(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

**Section 40-57-137(P) (continued)**

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

**Section 40-57-137(P) (continued)**

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.

(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.

**SECTION 40-57-139. Duties of licensee respecting disclosures.**

(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.

**Section 40-57-139 (continued)**

(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.”

**SECTION 40-57-140.** Effect of termination, expiration, completion or performance of agency agreements; accounting and confidentiality.

(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."

**SECTION 40-57-145.** Grounds for denial of issuance of license or for disciplinary action.

(A) In addition to Section 40-1-110, the commission may deny issuance of a license to an applicant or may take disciplinary action against a licensee who:

- (1) makes a substantial misrepresentation involving a real estate transaction;
- (2) makes false promises of a character likely to influence, persuade, or induce;
- (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;
- (4) in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public;
- (5) represents or attempts to represent a real estate broker other than his broker-in-charge or property manager-in-charge without the express knowledge and written consent of the employing broker-in-charge or property manager-in-charge;
- (6) guarantees or authorizes and permits any associated licensee to guarantee future profits from the resale of real estate;
- (7) 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 governmental agency or any other reason;
- (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;
- (9) fails to report to the department in writing by certified mail, within ten days, notice of conviction of a crime provided for in item (8);

**Section 40-57-145 (continued)**

(10) fails, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others;

(11) pays a commission or compensation to an unlicensed individual for activities requiring a license under this chapter. Notwithstanding this section, a licensee may not pay or offer to pay a referral fee or finder's fee to an unlicensed individual that is not a party in the real estate transaction;

(12) 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;

(13) fails to disclose in accordance with Section 40-57-139 the party or parties for whom the licensee will be acting as an agent in a real estate transaction;

(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;

(15) represents more than one party in a real estate transaction without the full written knowledge and consent of all parties the licensee represents as provided in Section 40-57-137(M);

(16) acts in the dual capacity of agent and undisclosed principal in a real estate transaction;

(17) 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;

(18) issues a check in connection with his real estate business which is returned for insufficient funds or closed account;

(19) fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction;

(20) violates any provision of this chapter or a regulation promulgated under this chapter;

(21) violates a rule or order of the commission.

(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.

(B) If after an investigation, charges of a violation are brought against a licensee, the broker-in-charge or property manager-in-charge must be notified of the charges.

**SECTION 40-57-150.** Investigation of violations of law; surrender of license.

(A) Investigations must be conducted in accordance with Section 40-1-80.

(B) A restraining order must be obtained in accordance with Section 40-1-100.

(C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

(2) A hearing on the charges must be at the time and place designated by the commission and must be conducted in accordance with the Administrative Procedures Act.

(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.

(4) The department shall maintain a public docket or other permanent record in which must be recorded all orders, consent orders, or stipulated settlements.

(D) A licensee may voluntarily surrender his license in accordance with Section 40-1-150.

(E)(1) The commission may impose disciplinary action in accordance with Section 40-1-120.

(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.

(3) Nothing in this section prevents a licensee from voluntarily entering into a consent order with the commission wherein violations are not contested and sanctions are accepted.

**SECTION 40-57-170.** Notice of hearing; due diligence; continuance.

(A) Service of a notice provided for by law upon a nonresident licensed under this chapter or upon a resident who, having been licensed, subsequently becomes a nonresident or after due diligence cannot be found at his usual abode or place of business in this State, may be made by leaving with the Director of the Department of Labor, Licensing and Regulation a copy of the notice, and accompanying documents. A copy of the notice, any accompanying documents, and a certified copy of the service on the director must be mailed to the licensee at his last known address, return receipt requested. The director shall keep a record of the day of the service of the notice and the return

receipt must be attached to and made part of the return of service of the notice by the commission.

(B) A continuance may be given in a hearing under this chapter for which notice is given pursuant to this section so as to afford the licensee a reasonable opportunity to appear and be heard.

**SECTION 40-57-180.** Powers and duties of department and commission.

(A) The department may not be involved in the resolution of disputes between licensees over the payment or division of commission.

(B) A resident licensee may pay a part of his commission on a cooperative basis to a licensee of another state or jurisdiction if that licensee does not conduct in this State any of the negotiations for which a fee, compensation, or commission is paid.

(C) The department may conduct periodic inspections of the offices of licensees in order to assist with and to ensure compliance with this chapter.

(D) It is the responsibility of a licensee to keep on file with the department a current mailing address.

(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.

(G) The commission shall establish and publish standards relevant to the approval and conduct of education required by this chapter.

(1) The department shall review, approve, and regulate education courses required by this chapter and providers and instructors of these courses including, but not limited to,

accredited colleges, universities, private business entities, organizations, schools, associations, and institutions.

(2) The department may deny, reprimand, fine, suspend, or revoke the approval of an education provider or instructor if the department finds that the education provider or instructor has violated or failed to satisfy the provisions of this chapter or the regulations and standards promulgated pursuant to this chapter.

(3) Application by providers seeking approval to offer and conduct educational instruction or application by instructors must be made on a form prescribed by the department and accompanied by applicable fees not less than sixty days before a course offering and must be approved by the department before the commencement of any instruction.

(4) If an application for provider, instructor, or course is not approved, the reason must be detailed and the applicant must be given thirty days to respond.

(5) Upon approval, certificates must be issued to providers, courses, and instructors to be renewed biennially.

(6) Approved courses must be taught by approved instructors who are qualified and have demonstrated knowledge of the subject matter to be taught as well as the ability to teach.

(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.

**SECTION 40-57-190.** Costs of investigation and prosecution of violations.

Payment and collection of costs associated with investigations and prosecution of violations under this chapter must comply with Section 40-1-170.

**SECTION 40-57-200.** Imposition of costs; collection.

Imposition and collection of all costs and fines imposed pursuant to this chapter must comply with Section 40-1-180.

**SECTION 40-57-210.** Applicability of law of privileged communications.

The provisions of Section 40-1-190 pertaining to privileged communications, whether written or oral, made by or on behalf of a person apply.

**SECTION 40-57-220.** Penalties for violations of law; acting without license; failure to renew or register license.

(A) It is unlawful for a person to act as a real estate broker, real estate salesman, or property manager or to advertise or assume to act as such without first having obtained a license issued by the Real Estate Commission. A person violating this subsection is guilty

of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(B) A real estate broker, salesman, or property manager who fails to renew or register his license annually and continues to engage in such business is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

**SECTION 40-57-230.** Civil actions.

A civil action may be brought for violations of this chapter as provided for violations of Title 40, Chapter 1, Article 1 in accordance with Section 40-1-210.

**SECTION 40-57-240.** Persons, agencies and instrumentalities not subject to law respecting real estate brokers, salesmen and property managers.

This chapter does not apply to:

(1) the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner's legal interest;

(2) an attorney at law acting within the scope of his duties involved in the legal representation of his client/owner;

(3) agencies and instrumentalities of the state or federal government and their employees acting within the scope of their official duties;

(4) foresters registered under Chapter 27, Title 48, if the sale of any land is merely incidental to the sale of timber on the land;

(5) court-appointed receivers and trustees while acting within the scope of their appointment.

**SECTION 40-57-250.** Severability of provisions of law.

If a provision of this chapter or the application of a provision of this chapter to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

## INDEX

accounting, 19  
accounting system, 13  
activities requiring a license, 30  
activity requiring a real estate license, 19  
adequately supervise, 11  
Administrative Procedures Act, 31  
advertise, 15  
advertises, 3  
advertising, 29  
age, 11  
agency, 17, 20  
agency disclosure form, 27  
agency duties, 19  
agency relationship, 17  
agency relationships, 20  
another state, 7  
apply for a license, 7  
approve all forms, 11  
Associated licensee, 2  
associated licensees, 3, 20  
attorney, 34  
auction, 3, 15, 28  
available, 11  
backup copies, 12  
bad faith, 29  
bank statements, 14  
biennially, 10  
branch offices, 15  
break a contract, 30  
broker, 11, 20, 29, 31  
Broker, 2  
Broker-in-charge, 3  
broker-in-charge license, 8  
broker's license, 7  
buyer agency, 19  
buyer agents, 20  
buyer client, 23, 26  
buyer's agent, 23  
buyer's agent, 22  
buyer's representation agreement, 17  
canceled, 9  
canceled checks, 14  
cash monies, 12, 14  
change in residency, 10  
change of office name and/or address, 15  
changes, 16  
civil action, 34  
civil rights, 21, 22  
classification of license, 8  
Client, 3  
client subaccounts, 14  
clients, 20  
close relative, 16  
closing statement, 16  
commercial property, 18, 28  
commingle, 14  
commission, 2, 19  
Commission, 2, 3, 4  
common law, 19, 25, 27  
company policy, 25  
compensation, 2, 14, 17, 19, 20, 27  
compensation to an unlicensed, 30  
complete records, 12  
confidential, 28  
confidential information, 21, 22, 27  
confidentiality, 19  
consent order, 31  
consultant, 3  
continuing education, 10  
contract of sale, 15  
conviction of a crime, 29  
corporation, 14, 16  
Costs of investigation, 33  
counteroffers, 20, 22  
court, 34  
credit report, 6, 8  
current mailing address, 32  
Customer, 3  
customers, 20, 24  
death, 32  
death or medical incapacitation, 15  
definite expiration date, 17  
Department, 2, 3  
deposit money, 30  
deposit slips, 14  
designated, 17, 26  
designated agency, 17, 26  
designated agency agreement, 26  
designated agents, 25  
diligence, 19  
disciplinary action, 29, 31  
disclosed dual agent, 20, 23  
disclosure, 19  
disease, 32  
dispute, 13, 16  
disputes between licensees, 32

dual agency, 17, 19  
 dual agent, 24, 26  
 dual set of contracts, 29  
 Duties of broker-in-charge, 11  
 duties to client, 19  
 Earned rental proceeds, 12  
 earnest money, 13  
 Educational requirements, 7  
 Effect of termination, 28  
 eight hours, 10  
 electronic means, 28  
 employees, 34  
 examination, 6  
 excess hours, 11  
 exclusive agency, 17  
 exclusive right, 17  
 expert advice, 20  
 expiration date, 18  
 fails to disclose, 30  
 fair housing, 20, 21, 22, 29  
 fair housing laws, 20, 29  
 fair housing policy, 16  
 false information, 29  
 false promises, 29  
 fees, 19  
 felony, 29  
 fine, 31  
 five hundred dollars, 34  
 five years, 14, 15  
 folios, 14  
 foresters, 34  
 forty-eight hours, 12  
 franchise, 15  
 fraud, 25, 29  
 future listing agreement, 18  
 general ledger, 14  
 government, 34  
 Grounds for denial, 29  
 guarantee future profits, 29  
 home inspector, 25  
 imprisoned, 34  
 inactive, 8, 10  
 inactive status, 9  
 inconsistent with the agency  
     relationship, 30  
 initialed and dated, 16  
 inspection, 23  
 insufficient funds, 30  
 interest-bearing, 14  
 interpleader, 13  
 Interstate Land Sales Practices Act, 11  
 Investigation of violations, 31  
 journal, 13  
 journals, 14  
 lapsed, 9  
 lease, 15  
 leases, 18  
 ledgers,, 14  
 license, 10, 19  
 license by reciprocity, 9  
 License fees, 5  
 licensed under a broker-in-charge, 8  
 licensed under a property manager-in-  
     charge, 8  
 licensee, 2, 19  
 Licensee, 3  
 licensee becomes disassociated, 8  
 licensure after revocation, 8  
 listing, 2, 15, 17  
 listing agreement, 15, 27  
 loyalty, 19  
 management agreement, 16, 18  
 material defect, 21  
 material defects, 23, 25  
 material facts, 25, 30  
 meaningful explanation, 27  
 mediation, 13  
 ministerial acts, 23  
 misdemeanor, 34  
 misrepresentation, 29  
 moisture, 23  
 mold, 21, 23, 25  
 monies, 12, 30  
 motivation, 24  
 multiple listing service, 15  
 multi-unit rental, 17  
 name of the company, 15  
 nonresident, 10, 31  
 nonresident broker or salesman, 11  
 nonresident licensee, 9  
 not subject to law, 34  
 obedience, 19  
 occupant, 32  
 offers, 16  
 Office, 3  
 office location, 14  
 office policy, 12, 17  
 open house, 19

option contract, 16  
owner of rental property, 12  
passing grade, 7  
Payor, 30  
personal rental transaction, 15  
personal transaction, 15  
personal trust account, 15  
policy on agency, 16  
Powers and duties, 5, 32  
prepare all offers in writing, 16  
price or price range, 17  
principal, 3, 17  
promptly deliver, 16  
property condition disclosure, 16  
Property manager, 3  
property manager-in-charge, 2, 8, 12, 13,  
14, 31  
Property manager-in-charge, 3  
property manager's license, 7  
psychological impact, 32  
purpose, 2  
Qualifications for licensure, 6  
reactivate, 9  
Real estate, 4  
reasonable care, 19  
reciprocal, 9  
Reciprocity, 9  
reconciliation, 14  
reconciling the accounts, 13  
referral, 3  
regular contact, 11  
reinstatement penalty, 5  
renew, 9, 34  
renewal of license, 10  
rental property, 17  
retainer fees, 17  
revocation, 8  
running balance, 13  
salesman, 11  
Salesman, 4  
salesman's license, 7  
scribe, 24  
security deposits, 14  
seller agency, 19  
seller's agent, 21  
separate broker-in-charge, 24  
separate listing, 18  
services to a customer, 24  
Severability, 34  
sex offender, 32  
sixty days, 10  
sixty-five years, 11  
solicitation, 28  
stigmas, 32  
subagency, 19, 21  
subagent, 24  
subagents, 20  
substantive contact, 28  
tenant, 13, 18  
tenant accounts, 14  
test provider, 7  
trade name, 15  
true position, 16  
trust account, 12  
Trust account, 4  
trust accounts, 3, 11, 13  
trust funds, 11  
underlined capital letters, 15  
undisclosed principal, 30  
unlicensed employee, 18  
Vacation Time Sharing Plans Act, 11  
virus, 32  
voluntarily surrender, 31  
written consent, 23, 26  
written management agreement, 18

Title 40 – Professions and Occupations

CHAPTER 1. ARTICLE 1.

BOARD REGULATION OF PROFESSIONS AND OCCUPATIONS

**SECTION 40–1–10.** Extent of regulation.

(A) The right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public.

(B) No statute or regulation may be imposed under this article upon a profession or occupation except for the exclusive purpose of protecting the public interest when the:

- (1) unregulated practice of the profession or occupation can harm the public
- (2) practice of the profession has inherent qualities that distinguish it from ordinary work or labor;
- (3) practice of the profession requires specialized skill or training and the public needs and will benefit by assurances of initial and continuing professional and occupational ability; and
- (4) public is not effectively protected by other means.

**SECTION 40–1–20.** Definitions.

As used in this title unless the context requires a different meaning:

- (3) “Board” or “Commission” means the group of individuals charged by law with the responsibility of licensing or otherwise regulating an occupation or profession within the State. Except as otherwise indicated, “board” is used in this article to refer to both boards and commissions;
- (4) “Department” means the Department of Labor, Licensing and Regulation;
- (5) “Director” means the Director of the Department of Labor, Licensing and Regulation or the director’s official designee;

(6) "Licensee" means a person granted an authorization to practice pursuant to this article and refers to a person holding a license, permit, certification, or registration granted pursuant to this article;

**SECTION 40-1-30. Authorization to practice.**

It is unlawful for a person to engage in a profession or occupation regulated by a board or commission administered by the Department of Labor, Licensing and Regulation without holding a valid authorization to practice as required by statute or regulation.

An authorization to practice issued pursuant to this title is valid for up to two years and is renewable on renewal dates as established by the Director of Labor, Licensing and Regulation with the consent of each applicable regulatory board.

**SECTION 40-1-40. Purpose of Division;**

(A) The purpose of the Division of Professional and Occupational Licensing, South Carolina Department of Labor, Licensing and Regulation, is to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners.

The Real Estate Commission is one of thirty seven boards.

(D) The Department of Labor, Licensing and Regulation is a member of the Governor's executive cabinet and must be headed by a director who must be appointed by the Governor with the advice and consent of the Senate,

**SECTION 40-1-50. Authority of Department; record of board proceedings; roster of licensees; fee structures.**

(H) The department shall revoke the authorization to practice of a person found to be in violation of the Family Independence Act as it relates to child support enforcement requirements.

**SECTION 40-1-70. Powers and duties of boards.**

The **powers and duties of regulatory boards** include, but are not limited to:

- (1) **determining the eligibility** of applicants for examination and licensure;
- (2) **examining applicants** for licensure including, but not limited to:
  - (a) prescribing the subjects, character, and manner of licensing examinations;
  - (b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;
- (3) **establishing criteria** for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;
- (4) **adopting a code of professional ethics** appropriate to the profession or occupation which it licenses or regulates;
- (5) **evaluating and approving continuing education course hours and programs**;
- (6) **conducting hearings** on alleged violations of this article and regulations promulgated under this article;
- (7) **resolving consumer complaints**, where appropriate and possible;
- (8) **disciplining persons** licensed under this article in a manner provided for in this article;
- (9) **promulgating regulations** which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1-23-30.

**SECTION 40-1-75. Continuing education exemption for persons serving on active military duty.**

A person whose profession or occupation is regulated by this title is **exempt** from completing continuing education requirements for his profession or occupation **while serving on active military duty.**

**SECTION 40-1-80. Investigations.**

(A) If the director has reason to believe that a person has violated a provision of this article or a regulation promulgated under this article or the licensing act or regulation of a board or that a licensee has become unfit to practice the profession or occupation or if a person files a written complaint with the board or the director charging a person with the violation of a provision of this article or a regulation promulgated under this article, the director may initiate an investigation.

(B) In conducting the investigation, the director may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the director, the director may apply to an administrative law judge for an order requiring the person to comply.

**SECTION 40-1-120. Sanctions.**

(A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take pursuant to its respective licensing act, the board may:

- (1) issue a public reprimand;
- (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;
- (3) place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs;
- (4) permanently revoke the license.

(B) A decision by a board to discipline a licensee as authorized under this section must be by a majority vote of the total membership of the board serving at the time the vote is taken.

(C) A final order of a board disciplining a licensee under this section is public information.

(D) Upon a determination by a board that discipline is not appropriate, the board may issue a nondisciplinary letter of caution.

(E) A board may establish a procedure to allow a licensee who has been issued a public reprimand to petition the board for expungement of the reprimand from the licensee's record.

**SECTION 40-1-140. Effect of prior criminal convictions.**

A person **may not be refused** an authorization to practice, pursue, or engage in a regulated profession or occupation **solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought.** However, a board may refuse an authorization to practice if, based upon all information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation.

**SECTION 40-1-150. Voluntary surrender of authorization to practice.**

**A licensee who is under investigation for a violation provided for in Section 40-1-110 or the licensing act of the applicable board for which disciplinary action may be taken may voluntarily surrender authorization to practice to the board.** The voluntary surrender invalidates the authorization to practice at the time of its relinquishment, and no person whose authorization to practice is surrendered voluntarily may practice the profession or occupation unless the board, by a majority vote, reinstates the license. A person practicing a regulated profession or occupation during the period of voluntary surrender is considered an illegal practitioner and is subject to the penalties provided by this article. The surrender of an authorization to practice may not be considered an admission of guilt in a proceeding under this article and does not preclude the board from taking disciplinary action against the licensee as provided for in this article or the board's licensing act including, but not

limited to, imposing conditions that must be met before the board reinstates the license.

**SECTION 40-1-160. Appeal.**

A person aggrieved by a final action of a board may appeal the decision to the Administrative Law Judge Division in accordance with the Administrative Procedures Act and the rules of the Administrative Law Judge Division. Service of a petition requesting a review does not stay the board's decision pending completion of the appellate process.

**SECTION 40-1-180. Failure to pay costs or fines; remittance of funds collected.**

(A) All costs and fines imposed pursuant to this article and the respective boards' licensing acts are due and payable immediately upon imposition or at the time indicated by final order of the board. Unless the costs and fines are paid within sixty days after the order becomes final, the order becomes a judgment and may be filed and executed upon in the same manner as a judgment in the court of common pleas, and the board may collect costs and attorneys' fees incurred in executing the judgment. Interest at the legal rate accrues on the amount due from the date imposed until the date paid.

**SECTION 40-1-200. Unlawful practice.**

A person who practices or offers to practice a regulated profession or occupation in this State in violation of this article or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars.

**SECTION 40-1-210. Civil proceedings before administrative law judge.**

The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Judge Division, in the name of the State, for injunctive relief against a person violating this article, a regulation promulgated under this article, or an order of the board. For each violation the administrative law judge may impose a fine of no more than ten thousand dollars.