

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2017-002386

Karen F. Wagner, as Property
Manager of Windy Hill MHP
LLC,

Respondent,

v.

Chris Holcombe

Appellant.

[INITIAL] BRIEF OF APPELLANT

Chris Holcombe
138 Brookstone Dr.
Easley, South Carolina 29642
(864) 442-9895
Attorney for Appellant

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SC Court of Appeals

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CASES

none

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S.C. General Assembly Bill 290, Vulnerable Adult and Senior Citizen Protection Act	
U.S Department of House and Urban Development, Disability Rights in Housing	
U.S Department of House and Urban Development, Reasonable Accommodations Under The Fair Housing Act	
South Carolina Department of Labor, Licensing and Regulation	

OTHER AUTHORITIES

none

STATEMENT OF ISSUES ON APPEAL

1. ALL THE LAWS IN REGARDS TO THE ISSUE ARE UNKNOWN TO EVERYONE THAT I SPEAK WITH.
2. THIS WHOLE PROCESS IS REALLY AFFECTING MY HEALTH BECAUSE OF ME HAVING THE DISABILITIES THAT I HAVE.

STATEMENT OF THE CASE

The property manager for Windy Hill MHP LLC has been trying to evict me, since March of 2015. The letter was dated for March 15, 2015; I was in the hospital at that time from a severe auto accident that I was involved in on March 8, 2015.

The property manager of Windy Hill MHP LLC took me to magistrate court on August 31, 2016 to have me evicted from the park; I have live at Windy Hill since June of '99. I was unable to find an attorney to represent me for the magistrate court trial. I appealed the case to Anderson County Civil court where I was able to find an attorney to assist me with the case from the SC Legal Services.

There was a mentioning of the Fair Housing Act and the rules related. There was question on what were necessary accommodations. The attorney from the SC Legal Services mentioned what was being requested to be able to stay till the end and be the last to have to move out.

There was talk about the property that I own. It was discussed about the work that needed to be done to the property before I can move on it. It was discussed about the financial part of having to move and being able to afford the cost of having the septic put in and the home moved.

There was the conversation about not just simply being able to up and move anywhere because of my disability. Being able to simply move is just not possible because of my home being custom to me for me to live in. It was mentioned how important it was for me to be able to stay in my home because of it being setup specifically for me.

It was mentioned that I was a bad neighbor, but the attorney of Windy Hill MHP LLC mentioned he didn't think I was a bad neighbor. The attorney for Windy Hill MHP LLC feels like they do not

have to make accommodations because of the lease has been terminated. It was also mentioned that two years was outrageous for the length of time for an eviction.

I did not completely understand the ruling from the civil case because the judge said he was not making a ruling at that time, but he did make the comment about likely in 60 days there will be a someone with a crane moving my home if there's not something concrete accomplished towards getting out.

FACTS

Medical Documentation included
Images Included

ARGUMENTS

- I. The Hud laws state that changes should be made to prevent an eviction or financial burden.
- II. I strongly feel as if I was not fully represented in the civil court case because there was not any defense from the attorney from the SC Legal Services. The attorney from SC Legal Services was not able to answer many questions about my well-being. There was not any mentioning of my full medical conditions. Along with being a spinal cord patient, I am also a traumatic brain injury patient also. With my traumatic brain injury, this has caused me to do nothing but cry over all this mess that has been going on, even with the medication my Dr has prescribed to me. Having physical and mental disabilities I am considered a vulnerable adult by law. I also have issues with Hypertension, Anxiety, and Depression. Because of the stress from all this of this for the last 3 years, my Dr. has had to put me on an antidepressant. I have had to go to the ER on two different occasions because there were symptoms of a heart attacked but it was ruled out and determined that it was stress causing the issues. I was sent to a Cardiologist to be evaluated and the doctor had me to wear a heart monitor for a week to check to make sure the symptoms were false or

inaccurate. The findings or results were the same as the other results, stress from everything related to this case for the last three years.

- III. I understand that the property manager of Windy Hill MHP LLC is trying to make me move my home. With the major modifications that have been made, is not movable. The major modifications include cutting down in the floor to put a roll in handicap shower. All the door frames have been opened up to 34-36" to be able to get through the door jams. With these major modifications my home has become unmovable because it is out of its original engineered design. All the moving companies have informed me that the home is subject to collapse when they start moving it because of it being outside of its original design and if something happens; their insurance will not cover it and they do not want to be responsible
- IV. The property manager of Windy Hill MHP LLC called me on several occasions. On 2 different phone calls she referred to me as "Trailer Trash" or "Trailer Park Trash". One of those conversations she informed me that she was tired of me leaving tire marks in the yard. Being confined to my wheelchair, I can't help that my chair is leaving tire marks or a path in the yard.
- At the Magistrate Court hearing, the property manager of Windy Hill MHP LLC denied making that those comments. I am asking the court to reach out to my cell phone carrier, AT&T, to request of the phone records from the number she used to be able to obtain that information to prove that I am not being dishonest. The number that she called from was 864-363-3915.

On one of the conversations we had, I ask her if she could widen my driveway because my van takes up and requires the whole driveway to get in and out of my van and so my son would not have to park his truck in the grass. She informed that that would cost too much. Since this time, she has added gravel places next to some of the driveways.

One of the conversations we had, she informed me that if I had my son to leave that I could stay and not worry about moving because he was supposedly causing trouble or issues. The accusations made about the thinks my son may have done, I was not aware of.

My son has moved to Florida. With my son gone, this puts me in a really bad position because my son helped me with my medical needs and other things that I needed. With my son gone I have no way to be able to do anything. I am not physically able to move things or anything that require lifting.

In one of those conversations, something was said about him parking is truck in the grass. I mentioned to her that there were other people in the neighborhood doing it also; she informed me that they were here residences.

- V. The property manager of Windy Hill MHP LLC informed me that I had to get rid of my trash can that I had on my back porch to put my trash in for someone to roll to the dumpsters down at the bottom of the hill where the trash dumpsters are located at. I have had a trash can on my back porch the whole time I have lived in my home. Since I have had to get rid of the trash can to be able to put my trash into, my home has become nasty and extremely cluttered because of not being able to get the junk, clutter, and trash out of my home.

I have included some images related to the case to where I have been harassed about my son getting mud on the road or parking on the grass or in the road. These images are to prove or show that this happens all the time around the clock by neighbors throughout the whole neighborhood.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

May 15, 2018

/s/ Chris Holcombe

Chris Holcombe
138 Brookstone Dr.
Easley, South Carolina 29642
(864) 907-0863
Attorney for Appellant

cc: Ralph Gleaton

CHAPTER 21
Fair Housing Law

SECTION 31-21-10. Short title.

This chapter is known and may be cited as the South Carolina Fair Housing Law.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-20. State policy.

It is the policy of this State to provide, within constitutional limitations, for fair housing throughout the State.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-30. Definitions.

For purposes of this chapter:

- (1) "Commission" means the South Carolina Human Affairs Commission.
- (2) "Commissioner" means the Commissioner of the South Carolina Human Affairs Commission.
- (3) "Covered multi-family dwellings" means:
 - (a) buildings consisting of four or more units if the buildings have one or more elevators; and
 - (b) ground floor units in other buildings consisting of four or more units.
- (4) "Discriminatory housing practice" means an act that is unlawful under this chapter.
- (5) "Dwelling" means any building or structure, or portion of any building or structure, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on it of any such building or structure, or portion of it.
- (6)(a) "Familial status" means one or more individuals who have not attained the age of eighteen years and are domiciled with:
 - (i) a parent or another person having legal custody of the individual; or
 - (ii) the designee of the parent or other person having the custody, with the written permission of the parent or other person.
 - (b) The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.
- (7) "Handicap" means, with respect to a person:
 - (a) a physical or mental impairment which substantially limits one or more of the person's major life activities;
 - (b) a record of having such an impairment; or
 - (c) being regarded as having an impairment.

The term "handicap" excludes current, illegal use of or addiction to a controlled substance as defined by law.
- (8) "Housing for older persons" means housing:
 - (a) provided under any state or federal program that the commissioner determines is designed specifically and operated to assist elderly persons, as defined in the state or federal program; or
 - (b) intended for, and solely occupied by persons sixty-two years of age or older; or
 - (c) intended and operated for occupancy by at least one person fifty-five years of age or older for each unit. In determining whether housing qualifies as housing intended and operated for occupancy by at least one person fifty-five years of age or older, the commissioner shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least eighty percent of the dwellings are occupied by at least one person fifty-five years of age or older for each unit; and

(iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(d) that does not fail to meet the requirements for housing for older persons by reason of:

(i) persons residing in this housing as of the date of enactment of this chapter who do not meet the requirements of subitem (b) or (c); or

(ii) unoccupied units, provided that these units are reserved for occupancy by persons who meet the new requirements of subitem (b) or (c).

(9) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(10) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-40. Discrimination in relation to sale or rental of property.

It is unlawful:

(1) to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin;

(2) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, familial status, or national origin;

(3) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination;

(4) to represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when the dwelling is available;

(5) for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin;

(6) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) that buyer or renter;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that buyer or renter;

(7) to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of:

(a) that person;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that person.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-50. Discrimination in relation to membership or participation in multiple listing service, real estate brokers' organization, or related service, organization, or facility.

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of the access, membership, or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-60. Discrimination in relation to residential real estate-related transactions.

(A) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of the transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(B) As used in this section, "residential real estate-related transaction" means any of the following:

(1) the making or purchasing of loans or providing other financial assistance:

- (a) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
- (b) secured by residential real estate;

(2) the selling, brokering, or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-70. Application and exceptions.

(A) Nothing in Section 31-21-40 or 31-21-60 applies to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(B) Nothing in Section 31-21-40 or 31-21-60 applies to any single-family house sold or rented by an owner when:

(1) the private individual owner does not own more than three single-family houses at any one time; and

(2) in the sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house before the sale, the exemption granted by this subsection applies only with respect to one sale within a twenty-four month period; and

(3) a bona fide private individual owner does not own an interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or a right to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time.

After the effective date of this chapter, the sale or rental of a single-family house is excepted from the application of this subsection only if the house is sold or rented:

(a) without the use in any manner of the sales or rental facilities or the sales or rental services of a real estate broker, agent, or salesman, or of the facilities or services of a person in the business of selling or renting dwellings, or of an employee or agent of a broker, agent, salesman, or person; and

(b) without publication posting or mailing, after notice, of an advertisement or written notice in violation of this chapter. Nothing in this subsection prohibits the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer this title.

(C) For the purposes of this section, a person is considered to be in the business of selling or renting dwellings if he:

(1) has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in it;

(2) has, within the preceding twelve months, participated as agent, other than in the sale of his personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in it; or

(3) is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(D) Nothing in this chapter prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to those persons, unless membership in the religion is restricted because of race, color, or national origin. Nothing in this chapter prohibits a private club not in fact open to the public, which as an incident to its primary purpose provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(E) It is not unlawful under Section 31-21-40(1) or (2) for any person to deny or limit the rental of housing to persons who pose a real and present threat of substantial harm to themselves, to others, or to the housing itself.

(F) Nothing in this chapter prohibits conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by law.

(G) For purposes of Section 31-21-40(6), discrimination includes:

(1) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is thirty months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:

(a) the public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;

(b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(c) all premises within these dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in the bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.

(H) Compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of Section 31-21-70(G)(3)(c).

(1)(a) If a unit of local government has incorporated into its laws the requirements in (G)(3) of this section, compliance with these laws is considered to satisfy the requirements of that section.

(b) A unit of local government may review and approve newly constructed covered multi-family dwellings for the purpose of making determinations as to whether the design and construction requirements of (G)(3) of this section are met.

(c) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multi-family dwellings, determinations as to whether the design and construction of these dwellings are consistent with (G)(3) of this section, and shall provide technical assistance to units of local government and other persons to implement the requirements of (G)(3) of this section.

(d) Nothing in this chapter may be construed to require the commission to review or approve the plans, designs, or construction of all covered multi-family dwellings, to determine whether the design and construction of these dwellings are consistent with the requirements of (G)(3) of this section.

(I)(1) Nothing in subsection (H) may be construed to affect the authority and responsibility of the commissioner to receive and process complaints or otherwise engage in enforcement activities under this chapter.

(2) Determinations by the unit of local government under subsection (H)(1)(a) or (b) are not conclusive in enforcement proceedings under this chapter.

(J) Nothing in this chapter may be construed to invalidate or limit any law of a political subdivision of the State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

(K) Nothing in this chapter requires that a dwelling be made available to an individual whose occupancy would constitute a direct threat to the health or safety of other individuals or whose occupancy would result in substantial physical damage to the property of others.

(L) Nothing in this chapter limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Owners and managers of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit so long as the standards do not violate local, state, or federal restrictions. No provision in this chapter regarding familial status applies to housing for older persons. Nothing in this chapter prohibits the lease application or similar document from requiring information concerning the number, ages, sex, and familial relationship of the applicants and the dwelling's intended occupants. The owner or manager may consider these factors in determining payment of utilities. The application also may require disclosure by the applicant of the conviction of any intended occupant for violating any laws pertaining to the illegal manufacture or distribution of a controlled substance as defined by law.

(M) The provisions of Section 31-21-40 with respect to discrimination based on sex do not apply to the rental or leasing of dwellings in a single-sex dormitory property.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-80. Interference with the exercise of any right under this chapter.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having aided or encouraged any other person in the exercise of, any right granted under this chapter.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-90. Administration of chapter.

(A) The commission shall administer the provisions of this chapter.

(B) The commission may delegate any of its functions, duties, and powers to its employees including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this chapter.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-100. Powers of commission.

The commission has the power to:

(1) promulgate regulations necessary for the enforcement of this chapter which may not exceed the requirements of the 1988 Fair Housing Amendments Act (PL 100-430) and any subsequent amendments to it;

(2) make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the State;

(3) publish and disseminate reports, recommendations, and information derived from the studies;

(4) cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the State which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(5) cooperate with the United States Department of Housing and Urban Development to achieve the purposes of that department and with other federal, state, and local agencies and departments;

(6) accept reimbursement pursuant to Title 42, United States Code, Section 3616 for services rendered to the United States Department of Housing and Urban Development;

(7) accept gifts or bequests, grants, or other donations, public or private;

(8) institute proceedings in a court of competent jurisdiction, for cause shown, to seek appropriate temporary or preliminary injunctive relief pending final administrative disposition of a complaint;

(9) contract with persons and organizations to perform services as it may consider reasonably necessary to effectuate the purposes of this chapter and to accept reimbursement for services rendered pursuant to the contract. However, the commission may not delegate its decision-making authority to a nongovernmental agency. This decision-making authority includes acceptance of complaints, approval of conciliation agreements, dismissal of complaints, final disposition of complaints, or other enforcement powers granted by this chapter;

(10) make contractual agreements within the scope and authority of this chapter with any agency of the federal government. An agreement with the Department of Housing and Urban Development may include provisions under which the department shall refrain from processing a charge in this State in any class specified in the agreement;

(11) administer the programs and activities relating to housing in a manner affirmatively to further the policies of this chapter.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 1.

SECTION 31-21-110. Investigations by commission; subpoenas.

(A) In conducting an investigation, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy the materials and take and record the testimony or statements of persons as are reasonably necessary for the furtherance of the investigation, provided the commission first complies with the provisions of the State Constitution relating to unreasonable searches and seizures. The commission may issue subpoenas to compel its access to or the production of the materials or the appearance of the persons and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. The commission may administer oaths. Any examination, recording, copying of materials, and the taking and recording of testimony or statements of persons as reasonably are necessary for the

furtherance of the investigation must be solely related to the complaint for which the subpoena was issued.

(B) Upon written application to the commission, a respondent is entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of the respondent and shall state that it was issued at his request.

(C) Within five days after service of a subpoena upon any person, the person may petition the commission to revoke or modify the subpoena. The commission shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(D) In case of refusal to obey a subpoena, the commission or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(E) Witnesses summoned by a subpoena under this chapter are entitled to the same witness and mileage fees as witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a party must be paid by that party or, where a party is unable to pay the fees, by the commission.

HISTORY: 1989 Act No. 72, Section 1.

SECTION 31-21-120. Complaints; process and handling; conciliation; effect of local laws; civil action.

(A) A person who claims to have been injured by a discriminatory housing practice or who believes that he may be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints must be in writing and shall contain information and be in a form required by the commission. Upon receipt of a complaint, the commission shall serve notice upon the aggrieved person of the time limits and choices of forums provided under this chapter and shall furnish a copy to the person who allegedly committed the discriminatory housing practice or is about to commit the alleged discriminatory housing practice and advise him of the procedural rights and obligations under the law. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (C), the commission shall investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. If practicable, conciliation meetings must be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of the informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. An employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor punishable by a fine of not more than two hundred dollars or imprisoned for not more than thirty days.

(B) A complaint under subsection (A) must be filed within one hundred eighty days after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him, not later than ten days after receipt of notice, and may be amended reasonably and fairly by the respondent at any time. Both complaint and answer must be verified.

(C) Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which substantially are equivalent to the rights and remedies provided in this chapter, the commission shall notify the appropriate local agency of any complaint filed under this chapter which

appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to the complaint if the local law enforcement official, within thirty days from the date the alleged offense was brought to his attention, has commenced proceedings in the matter. In no event may the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require the action.

Complaints referred to the commission by the Department of Housing and Urban Development may not be referred by the commission to a local agency.

(D) Any conciliation agreement arising out of conciliation efforts by the commission must be an agreement between the respondent and the complainant and is subject to the approval of the commission. Each conciliation agreement must be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

(E) The investigation must be completed in no more than one hundred days after receipt of the complaint. If the commission is unable to complete the investigation within one hundred days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(F) The commission shall make final administrative disposition of a complaint within one year of the date of receipt of a complaint unless it is impractical to do so. If the commission is unable to do so, it shall notify the complainant and respondent, in writing, of the reasons for not doing so.

(G) In any proceeding brought pursuant to this section, the burden of proof is on the complainant.

(H) Whenever an action filed by an individual in court pursuant to this section or Section 31-21-140 comes to trial, the commission shall terminate all efforts to obtain voluntary compliance.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 2.

SECTION 31-21-130. Investigator's report and recommendation; dismissal of or hearing on complaint; civil action; amending of complaint; subpoenas; hearing by commission; opinion and order; review; court appeals; enforcement orders.

(A) If not sooner resolved, the investigator, upon completion of his investigation, shall submit to the commissioner a statement of the facts disclosed by his investigation and recommend either that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. The commissioner, after review of the case file and the statement and recommendation of the investigator, shall issue an order either of dismissal or for a hearing, which is not subject to judicial or other further review.

(B) If the order is for dismissal, the commissioner shall mail a copy of the order to the complainant and the respondent at their last known addresses. The complainant may bring an action against the respondent in circuit court within ninety days of the date of the dismissal or within one year from the date of the violation alleged, whichever occurs later, to enforce the rights granted or protected by this chapter and to seek relief as provided for in Section 31-21-140.

(C)(1) If the order is for a hearing, the commissioner shall attach to it a notice and a copy of the complaint and require the respondent to answer the complaint at a hearing at a time and place specified in the notice and shall serve upon the respondent a copy of the order, the complaint, and the notice.

(2) Either party may elect to have the claims asserted in the complaint decided in a civil action. The commissioner's notice must be sent to all parties and inform them of their right to take civil action. An election must be made within twenty days after receipt of the notice. A party making this election shall notify the commissioner and all other parties.

If an election is made for a civil action, the commissioner shall, within thirty days from the date of election, commence and maintain a civil action pursuant to Section 31-21-140 on behalf of the aggrieved person.

(D) At any time before a hearing, a complaint may be amended by the commissioner upon the request of the investigator or of the complainant or of the respondent. Complaints may be amended during a hearing only upon a majority vote of the panel of commission members for the hearing.

(E) Upon request by any party, the commissioner shall issue appropriate subpoenas or subpoenas duces tecum to any witnesses or other custodians of documents desired to be present at the hearing, or at prehearing depositions, unless the commissioner determines that issuance of the subpoenas or subpoenas duces tecum would be unreasonable or unduly burdensome.

(F) Upon notification by any party that any party or witness has failed to permit access, failed to comply with a subpoena or subpoena duces tecum, refused to have his deposition taken, refused to answer interrogatories, or otherwise refused to allow discovery, the commission, upon notice to the party or witness, shall apply to a court of competent jurisdiction for an order requiring discovery and other good-faith compliance unless the commission determines that the discovery would be unreasonably or unduly burdensome.

(G) Upon request by the commissioner, the chairman of the commission shall designate a panel of three members of the commission to sit as the commission to hear the complaint.

(H) At any hearing held pursuant to this section, the case in support of the complaint must be presented before the panel by one or more of the commission's employees or agents or by legal representatives of the complaining party. Endeavors at conciliation by the investigator may not be received into evidence nor otherwise made known to the members of the panel.

(I) The respondent shall submit a written answer to the complaint and appear at the hearing in person or by counsel and may submit evidence. The respondent may amend his answer reasonably and fairly.

(J) The complainant must be permitted to be present and submit evidence.

(K) Proceedings under this section are subject to the provisions of Chapter 23 of Title 1 (Administrative Procedures Act) and, in the case of conflict between the provisions of this chapter and Chapter 23 of Title 1, the provisions of Chapter 23 of Title 1 shall govern. A recording of the proceedings must be made, which may be transcribed subsequently upon request and payment of a reasonable fee by the complainant or the respondent. The fee must be set by the commission or upon motion of the panel, in which case copies of the transcription must be made available to the complainant or the respondent upon request and payment of a reasonable fee to be set by the commission.

(L) If, upon all the evidence at the hearing, the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the complainant and the respondent in the name of the commission an opinion and order for appropriate relief which may include that the unlawful discriminatory practice be discontinued, actual damages, civil penalties which may not be greater than civil penalties established by the federal Fair Housing Act in Section 3612, and reasonable attorney's fees. The commission may retain jurisdiction of the case until it is satisfied of compliance by the respondent of its order.

(M) If, upon all the evidence at the hearing, the panel finds that the respondent has not engaged in any unlawful discriminatory practice, the panel shall state its findings of fact and serve upon the complainant and the respondent an opinion and order dismissing the complaint as to the respondent. A prevailing respondent may apply to the commission for an award of reasonable attorney's fees and costs.

(N) A copy of the opinion and order of the commission must be delivered in all cases to the Attorney General and to such other public officers as the commission considers proper. Copies of the opinion and order must be available to the public for inspection upon request, and copies must be made available to any person upon payment of a reasonable fee set by the commission.

(O)(1) If an application for review is made to the commission within fourteen days from the date of the order of the commission, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

(2) The order of the commission, as provided in subsection (L), if not reviewed in due time, or an order of the commission upon the review, as provided for in item (1), is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be sent by registered mail of the order, but not after that time, may appeal from the decision of the commission to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless

otherwise ordered by the administrative law judge, and after that the respondent is required to comply with the order involved in the appeal or certification until the questions at issue in it are determined fully in accordance with the provisions of this chapter.

(3) The commission may institute a proceeding for enforcement of its order of subsection (L), or its amended order of item (1) after thirty days from the date of the order, by filing a petition in the court of common pleas of the county in which the hearing occurred, or where a person against whom the order is entered resides or transacts business.

(4) If no appeal pursuant to item (2) is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Sections 3-5; 2006 Act No. 387, Section 16, eff July 1, 2006.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

Effect of Amendment

The 2006 amendment, in subsection (O), in subparagraph (2) in the second sentence substituted "Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D)" for "court of common pleas of the county in which the hearing occurred, or in which the respondent resides or has his principal office", and in the third sentence substituted "administrative law judge" for "court"; and made nonsubstantive changes throughout.

SECTION 31-21-140. Civil action; damages.

(A) A civil action must be commenced within one year after the alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before the issuance of any court order issued under the authority of this chapter and involving a bona fide purchaser, encumbrances, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this chapter are not affected. A civil action may be commenced by an aggrieved person whether or not a complaint has been filed with the commission.

(B) The court may grant as relief, as it considers appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award the plaintiff actual damages, and punitive damages, together with court costs and reasonable attorney's fees in the case of a prevailing party, if the prevailing party in the opinion of the court is not financially able to assume the attorney's fees.

HISTORY: 1989 Act No. 72, Section 1; 1990 Act No. 445, Section 6.

SECTION 31-21-150. Coordination regarding complaint filed with multiple agencies.

Before accepting any complaint under this chapter, the commission shall determine if the complainant has filed a similar complaint with the Federal Home Loan Bank Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation of the Federal Reserve System, the United States Department of Housing and Urban Development, or any other agency with authority to investigate and resolve complaints alleging a violation of this chapter. If a complaint has been filed or is filed, subsequently the commission shall coordinate efforts to resolve the complaint with that agency in order to avoid multiple investigations of the respondent.

HISTORY: 1989 Act No. 72, Section 1.

CHAPTER 35
Adult Protection

ARTICLE 1
Duties and Procedures of Investigative Entities

SECTION 43-35-5. Short title.

This chapter may be cited as the Omnibus Adult Protection Act.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

Editor's Note

The preamble to 1993 Act No. 110, eff three month after June 11, 1993, provides as follows:

"Whereas, the General Assembly finds it necessary:

- "(1) to provide a system of adult protection in South Carolina;.
 - "(2) to clarify the roles and responsibilities of agencies involved in the system;.
 - "(3) to provide a mechanism for problem resolution and interagency coordination;.
 - "(4) to address continuing needs of vulnerable adults;.
 - "(5) to uniformly define abuse, neglect, and exploitation for vulnerable adults in all settings;.
 - "(6) to clarify reporting procedures for allegations of abuse, neglect, and exploitation;.
 - "(7) to provide procedures for emergency protective custody;.
 - "(8) to define the role of the court in the adult protection system;.
 - "(9) to provide civil and criminal penalties for abuse, neglect, and exploitation;.
 - "(10) to provide services in the least restrictive setting possible.
- "Now, therefore,"

SECTION 43-35-10. Definitions.

As used in this chapter:

- (1) "Abuse" means physical abuse or psychological abuse.
- (2) "Caregiver" means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
- (3) "Exploitation" means:
 - (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;
 - (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or
 - (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.
- (4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- (5) "Investigative entity" means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

(7) "Occupational licensing board" means a health professional licensing board which is a state agency that licenses and regulates health care providers and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(8) "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

(9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

(10) "Psychological abuse" means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(11) "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

(12) "Operated facility" means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) "Contracted facility" means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2004 Act No. 301, Section 1, eff September 8, 2004; 2006 Act No. 301, Section 2, eff May 23, 2006; 2010 Act No. 223, Sections 1 to 3, eff June 7, 2010.

SECTION 43-35-13. Nonmedical remedial treatment by spiritual means is not abuse or neglect of vulnerable adult.

No vulnerable adult may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

HISTORY: 1995 Act No. 87, Section 1, eff June 12, 1995.

SECTION 43-35-15. Vulnerable Adults Investigations Unit; Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities; referral of reports.

(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty-four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.

(B) Except as otherwise provided in subsection (D), the Long Term Care Ombudsman Program shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, and exploitation to the facilities or to the entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements. The Long Term Care Ombudsman Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.

(C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for the investigation pursuant to this section. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services. The Adult Protective Services Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall refer reports of abuse, neglect, and exploitation involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 3, eff May 23, 2006; 2010 Act No. 223, Section 4, eff June 7, 2010; 2012 Act No. 189, Section 1, eff June 7, 2012.

SECTION 43-35-20. Additional powers of investigative entities.

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 4, eff May 23, 2006.

SECTION 43-35-25. Persons required to report abuse, neglect, or exploitation of adult; reporting methods.

(A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.

(B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or the investigative entity to which the report is to be made.

(D) A person required to report under this section must report the incident within twenty-four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:

- (1) the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;
- (2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in item (1); and
- (3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or

investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 5, eff May 23, 2006.

SECTION 43-35-30. Photographing of visible trauma on abused adult.

A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult who is the subject of a report. A person required to report under this chapter as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-35. Reporting deaths where abuse or neglect suspected.

(A) A person required to report or investigate cases under this chapter who has reasonable suspicion to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation pursuant to Section 43-35-520.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 5, eff June 7, 2010.

SECTION 43-35-40. Responsibilities when a report is received; initiation of investigation; reports to local law enforcement or Vulnerable Adults Investigations Unit.

Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services promptly shall:

- (1) initiate an investigation; or
- (2) review the report within two working days for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to local law enforcement or SLED must be made within one working day of completing the review.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 6, eff May 23, 2006; 2010 Act No. 223, Section 6, eff June 7, 2010.

SECTION 43-35-45. Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semiannual reevaluation; payment for services.

(A) In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.

(B) At any time during or subsequent to an investigation where a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent to provide services cannot be obtained, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult. The family court may order ex parte that the vulnerable adult be taken into emergency protective custody without the consent of the vulnerable adult or the guardian or others exercising temporary or permanent control over the vulnerable adult, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult's life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult.

(C) Within ten days following the filing of a petition pursuant to this section, the court shall appoint a guardian ad litem and an attorney for the vulnerable adult and an attorney for a lay guardian ad litem. A party may move to have the guardian ad litem relieved of his or her services if the party demonstrates that the vulnerable adult has the capacity to assist counsel in the protective services case. Within forty days of the filing of a petition, the court shall hold a hearing on the merits.

(D) Before the hearing on the merits the Adult Protective Services Program must conduct a comprehensive evaluation of the vulnerable adult. The evaluation must include, but is not limited to:

- (1) the vulnerable adult's current address and with whom the vulnerable adult is residing;
- (2) a list of all persons or agencies currently providing services to the vulnerable adult and the nature of these services;
- (3) a summary of services, if any, provided to the vulnerable adult by the Adult Protective Services Program;
- (4) if needed, a medical, psychological, social, vocational, or educational evaluation;
- (5) recommendations for protective services which would serve the best interests of the vulnerable adult; however, when these services are to be provided by another state agency, these recommendations must be developed in consultation with the other agency.

A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by this subsection must be paid by the Adult Protective Services Program which must seek reimbursement for these evaluations, where possible.

(E) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

- (1) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and
- (2) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect, or exploitation.

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) Any interested person, on behalf of the vulnerable adult, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a vulnerable adult, the Adult Protective Services Program, at least every six months, must evaluate the vulnerable adult and submit a written report to the court, and any other parties required by the court, regarding the vulnerable adult's need for continued protective services as defined in this chapter.

(I) If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable adult's financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult that have not been reimbursed at the time of the vulnerable adult's death become a claim against the estate of the vulnerable adult.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2014 Act No. 162 (S.764), Section 2, eff May 16, 2014.

Effect of Amendment

2014 Act No. 162, Section 2, rewrote subsection (C).

SECTION 43-35-50. Abrogation of privilege for certain communications.

The privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-55. Protective custody by law enforcement officer; procedure; notification of protective services program; subsequent proceedings.

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

- (1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;
- (2) the vulnerable adult or caregiver does not consent to protective custody; and
- (3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being

taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

- (1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;
- (2) the address of the place from which the vulnerable adult was removed by the officer;
- (3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;
- (4) the address of the place to which the vulnerable adult was transported by the officer;
- (5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1994 Act No. 393, Section 1, May 17, 1994.

SECTION 43-35-60. Sharing of report information by investigative entities; public confidentiality.

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-65. Notices to be displayed at facilities.

A facility as defined in Section 43-35-10 shall prominently display notices stating the duties of its personnel under this chapter and contact information, the text of which must be provided by the Long Term Care Ombudsman Program in consultation with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 7, eff May 23, 2006.

SECTION 43-35-70. Reports to occupational licensing boards.

The investigative entity shall report an alleged incident of abuse, neglect, or exploitation against a health care professional to the occupational licensing board by whom that person is licensed.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-75. Immunity of person making report or participating in investigation in good faith.

(A) A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.

(B) It is against the public policy of South Carolina to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under this chapter.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-80. Action by Attorney General against person or facility for failure to exercise reasonable care; fine.

(A) Notwithstanding any regulatory or administrative penalty that may be assessed and in addition to a private civil cause of action that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, or exploitation under this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program or the Vulnerable Adults Investigations Unit, may bring an action against a person who fails through pattern or practice to exercise reasonable care in hiring, training, or supervising facility personnel or in staffing or operating a facility, and this failure results in the commission of abuse, neglect, exploitation, or any other crime against a vulnerable adult in a facility. A person or facility which verifies good standing of the employee with the appropriate licensure or accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring.

(B) In granting relief under this section, the court may assess a civil fine of not more than thirty thousand dollars or order injunctive relief, or both, and may order other relief as the court considers appropriate.

(C) Nothing in this section may be construed to create a private cause of action against one who fails through pattern or practice to exercise reasonable care as provided for in subsection (A).

(D) For the purposes of this section 'person' means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(E) To the extent fines collected pursuant to this section exceed the cost of litigation, these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2006 Act No. 301, Section 8, eff May 23, 2006.

SECTION 43-35-85. Penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1999 Act No. 56, Section 1, eff June 1, 1999; 2010 Act No. 223, Section 7, eff June 7, 2010.

SECTION 43-35-90. Article not to affect authority of agencies.

This article is not intended to affect in any way the authority of any agency to act under state or federal law.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 2

Vulnerable Adult Guardian ad Litem Program

SECTION 43-35-200. Vulnerable Adult Guardian ad Litem Program.

(A) There is created the Vulnerable Adult Guardian ad Litem Program in the Office on Aging to serve as a statewide system to recruit, train, and supervise volunteers to serve as court-appointed guardians ad litem for vulnerable adults in abuse, neglect, and exploitation proceedings within the family court, pursuant to Section 43-35-45(C).

(B) The Vulnerable Adult Guardian ad Litem Program shall develop policies and procedures to administer the program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-210. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article, "guardian ad litem" means an individual appointed by the family court pursuant to Section 43-35-45 to advocate for the best interests of a vulnerable adult.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-220. Duties and responsibilities of guardian ad litem; assessments.

(A) The duties and responsibilities of a guardian ad litem include, but are not limited to:

(1) representing the best interests of the vulnerable adult by advocating for the welfare and rights of a vulnerable adult involved in an abuse, neglect, or exploitation proceeding;

(2) conducting an independent, balanced, and impartial assessment of the facts and the needs of the vulnerable adult relevant to his or her situation;

(3) maintaining accurate, written case records, including case notes, which are a guardian ad litem's work product and not subject to subpoena;

(4) providing the family court, and all parties, with written reports including, but not limited to, a comprehensive final report regarding the best interests of the vulnerable adult. The final report must be consistent with the rules of evidence and the rules of the court, and must include, but is not limited to, evaluation and assessment of the issues brought before the court, the wishes of the vulnerable adult, and recommendations for the case plan and the disposition of the case; and

(5) attending all court hearings to protect and promote the best interests of the vulnerable adult until formally relieved of the responsibility by the family court. The guardian ad litem is authorized through

counsel to introduce, examine, and cross-examine witnesses in any proceeding involving the vulnerable adult, participate in the proceedings to any degree necessary to represent the vulnerable adult adequately, participate on a multidisciplinary evaluation team concerning the vulnerable adult, and make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the vulnerable adult.

(B) The assessment conducted by the guardian ad litem pursuant to subsection (A) must include, but is not limited to:

(1) obtaining and reviewing relevant documents including, but not limited to, the vulnerable adult's medical records; records from the place of residence if the vulnerable adult is living in a facility or other institution; records related to assets and debts of the vulnerable adult in cases of alleged exploitation; and records from the Department of Social Services, Department of Mental Health, Department of Disabilities and Special Needs, or other public entities providing services to the vulnerable adult;

(2) meeting with and observing the vulnerable adult on at least one occasion;

(3) visiting the home setting if appropriate;

(4) interviewing family, caregivers, medical providers, law enforcement, and others with knowledge relevant to the case;

(5) exploring available resources within the family and community to meet the needs of the vulnerable adult;

(6) obtaining the criminal history of a party if determined necessary; and

(7) determining the wishes of the vulnerable adult and informing the court of these wishes.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-230. Appointment of guardian ad litem; continuing legal education.

(A) A guardian ad litem may be either an attorney or a layperson. To be appointed as a guardian ad litem pursuant to Section 43-35-45(C) an individual:

(1) must be twenty-one years of age or older;

(2) shall possess a high school diploma or its equivalent;

(3) shall have completed the minimum hours of continuing education for initial qualification as required by the Vulnerable Adult Guardian ad Litem Program; and

(4) shall have observed two child protective services or adult protective services custody merit hearings before serving as a guardian ad litem. A lay guardian ad litem shall retain a certificate showing that observation of these hearings has been completed. This certificate, which must be on a form approved by court administration, must state the names and dates of the cases and the judges involved and must be attested to by the presiding judge.

(B) An attorney guardian ad litem annually shall complete a minimum of six hours of family or elder law continuing legal education credits; however, this requirement may be waived by the court.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-240. Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings; criminal background checks.

(A) An individual may not be appointed as a guardian ad litem for a vulnerable adult in an abuse, neglect, or exploitation proceeding who:

(1) has been convicted of a crime enumerated in Chapter 3, Title 16, Offenses Against the Person; in Chapter 15, Title 16, Offenses Against Morality and Decency; in Article 3, Chapter 53, Title 44, Narcotics and Controlled Substances; in Section 43-35-85, Omnibus Adult Protection Act; in Chapter 25, Title 16, Criminal Domestic Violence; or Section 16-17-490, Contributing to the Delinquency of a Minor; or

(2) is or has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect, the Sex Offender Registry, or listed as "not in good standing" on the Nurse Aide Registry.

(B) A criminal background check must be conducted for each volunteer guardian ad litem as required by the Vulnerable Adult Guardian ad Litem Program.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-250. Charge of guardian ad litem; petition for removal.

(A) A guardian ad litem is charged in general with representing the vulnerable adult's best interests. After appointment by the family court in a case involving an abused, neglected, or exploited vulnerable adult, the parties to the action and the court shall notify the guardian ad litem of all court hearings and proceedings. The obligation of the guardian ad litem to the court is a continuing obligation and continues until formally relieved by the court.

(B) The Vulnerable Adult Guardian ad Litem Program may intervene in a vulnerable adult abuse, neglect, or exploitation proceeding in order to petition the court to relieve the guardian ad litem from appointment for the following reasons:

- (1) incapacity;
- (2) conflict of interest;
- (3) misconduct;
- (4) persistent neglect of duties;
- (5) incompetence; or

(6) knowing and wilful violation of the Vulnerable Adult Guardian ad Litem Program policies and procedures that affect the health, safety, or welfare of the vulnerable adult.

(C) The court shall determine what is in the best interest of the vulnerable adult when ruling on a petition for removal of the guardian ad litem.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-260. Access to information.

The Department of Social Services shall make available to the guardian ad litem all reports made and information collected relating to the vulnerable adult. Appropriate medical and dental care providers shall provide a guardian ad litem access to information upon request of the guardian ad litem and upon proof of appointment as the guardian ad litem for the vulnerable adult. Records must be made available to the guardian ad litem by any agency or any individual providing services to the vulnerable adult and financial records of the vulnerable adult including, but not limited to, state and federal tax records, banking and other financial institution records, and public benefits records.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-270. Confidentiality of reports and information.

(A) All reports and information collected pursuant to this article maintained by the Vulnerable Adult Guardian ad Litem Program or by a guardian ad litem are confidential. These records must be maintained and destroyed in accordance with program policy.

(B) The Director of the Vulnerable Adult Guardian ad Litem Program, or the director's designee, may disclose to the media information contained in the vulnerable adult protective services records, if disclosure is limited to discussion of the program's activities in handling the case. The program may incorporate into its discussion of the handling of the case any information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, and other public judicial proceedings. For the purposes of this subsection, information is considered placed in the public domain if it has been reported in the news media, is contained in public records of a law enforcement agency, is contained in public records of the court, or has been the subject of testimony in a public judicial proceeding.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-280. Civil liability.

After participating in the Vulnerable Adult Guardian ad Litem Program training, an individual who is appointed to serve as a guardian ad litem and who serves without compensation is not liable for any civil damages for any personal injury as a result of any act or omission by the guardian ad litem in the discharge of the duties and responsibilities of a guardian ad litem if the guardian ad litem acts in good faith and is not guilty of gross negligence.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

SECTION 43-35-290. Funding.

The General Assembly shall provide the funds necessary for the Vulnerable Adult Guardian ad Litem Program to carry out the provisions of this article.

HISTORY: 2014 Act No. 162 (S.764), Section 1, eff May 16, 2014.

ARTICLE 3

Adult Protection Coordinating Council

SECTION 43-35-310. Council created; membership; filling vacancies.

(A) There is created the Adult Protection Coordinating Council under the auspices of the South Carolina Department of Health and Human Services and is comprised of:

(1) one member from the institutional care service provision system who is a consumer or a family member of a consumer of that system and one member from the home and community-based service provision system who is a consumer or a family member of a consumer of that system, both of whom must be appointed by the council for terms of two years; and

(2) these members who shall serve ex officio:

- (a) Attorney General or a designee;
- (b) Office on Aging, Executive Director, or a designee;
- (c) Criminal Justice Academy, Executive Director, or a designee;
- (d) South Carolina Department of Health and Environmental Control, Commissioner, or a designee;
- (e) State Department of Mental Health, Director, or a designee;
- (f) South Carolina Department of Disabilities and Special Needs, Director, or a designee;
- (g) Adult Protective Services Program, Director, or a designee;
- (h) South Carolina Department of Health and Human Services, Executive Director, or a designee;
- (i) Police Chiefs' Association, President, or a designee;
- (j) South Carolina Commission on Prosecution Coordination, Executive Director, or a designee;
- (k) Protection and Advocacy for People with Disabilities, Inc., Executive Director, or a designee;
- (l) South Carolina Sheriff's Association, Executive Director, or a designee;
- (m) South Carolina Law Enforcement Division, Chief, or a designee;
- (n) Long Term Care Ombudsman or a designee;
- (o) South Carolina Medical Association, Executive Director, or a designee;
- (p) South Carolina Health Care Association, Executive Director, or a designee;
- (q) South Carolina Home Care Association, Executive Director, or a designee;
- (r) South Carolina Department of Labor, Licensing and Regulation, Director, or a designee;
- (s) executive director or president of a provider association for home and community-based services selected by the members of the council for terms of two years, or a designee;
- (t) South Carolina Court Administration, Executive Director, or a designee;

(u) executive director or president of a residential care facility organization selected by the members of council for terms of two years, or a designee.

(B) Vacancies on the council must be filled in the same manner as the initial appointment.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 1, eff June 18, 2012.

SECTION 43-35-320. Responsibilities of council.

The Adult Protection Coordinating Council shall coordinate the planning and implementation efforts of the entities involved in the adult protection system. Members shall facilitate problem resolution and develop action plans to overcome problems identified within the system. The council shall develop methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation. The council shall remain abreast of new trends in adult protection from national clearinghouses and other appropriate entities. The Adult Protection Coordinating Council has no authority to direct or require implementing action from any member or entity.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-330. Duties of council.

(A) Duties of the council are subject to the appropriation of funding and allocation of personnel sufficient to carry out the functions of the council. Staffing for the council must be provided by the South Carolina Department of Health and Human Services.

(B) Duties of the council are to:

(1) provide and promote coordination and communication among groups and associations which may be affected by the council's actions and recommended changes in the system;

(2) identify and promote training on critical issues in adult protection, facilitate arrangements for continuing education seminars and credits, when appropriate, and determine and target problem areas for training based on analysis of the data;

(3) coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation;

(4) assist with problem resolution and facilitate interagency coordination of efforts to address unmet needs and gaps in the system;

(5) promote and enhance public awareness;

(6) promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families; and

(7) annually prepare a report of the council's activities and accomplishments for the calendar year and distribute the report to council members, the Chairman of the Medical Affairs Committee of the Senate, the Chairman of the Medical, Military and Municipal Affairs Committee of the House of Representatives, directors or chairs of member agencies or entities who have a designee serving on the council, and other interested parties as well as publishing the report on the department's website.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 2012 Act No. 239, Section 2, eff June 18, 2012.

SECTION 43-35-340. Officers; terms of office; quorum.

The chair of the council must be elected by a majority of the council membership for one two-year term. Other officers may be elected as needed in the same manner as the chair. A majority of the membership of the council constitutes a quorum for official business to be conducted.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

SECTION 43-35-350. Meetings.

Meetings of the council must be held at least quarterly at the call of the chair or may be called by a petition of two-thirds of the council membership.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993.

ARTICLE 5

Vulnerable Adult Fatalities

SECTION 43-35-500. Definitions.

In addition to the definitions contained in Section 43-35-10, for purposes of this article:

- (1) "Committee" means the Vulnerable Adult Fatalities Review Committee.
- (2) "Meeting" means both in-person meetings and meetings through telephone conferencing.
- (3) "Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.
- (4) "Provider of medical care" means a licensed health care practitioner who provides, or a licensed health care facility through which is provided, medical evaluation or treatment, including dental and mental health evaluation or treatment.
- (5) "SLED" means the South Carolina Law Enforcement Division.
- (6) "Unit" means the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.
- (7) "Working day" means Monday through Friday, excluding official state holidays.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-510. Policy of State regarding health and safety of vulnerable adults.

It is the policy of this State that:

- (1) Every vulnerable adult is entitled to live in safety and in health.
- (2) Responding to deaths of vulnerable adults is a state and a community responsibility.
- (3) When a vulnerable adult dies, the response by the State and the community to the death must include an accurate and complete determination of the cause of death, the provision of services to surviving family members, and the development and implementation of measures to prevent future deaths from similar causes and may include court action, including prosecution of persons who may be responsible for the death and family court proceedings to protect other vulnerable adults in the care of the responsible person.
- (4) Professionals from disparate disciplines and agencies that have responsibilities for vulnerable adults and expertise that can promote safety and well-being of vulnerable adults should share their expertise and knowledge toward the goals of determining the causes of deaths of vulnerable adults, planning and providing services to nonoffending family members, and preventing future vulnerable adult deaths.
- (5) A greater understanding of the incidence and causes of deaths of vulnerable adults is necessary if the State is to prevent future vulnerable adult deaths.
- (6) Multidisciplinary and multiagency reviews of vulnerable adult deaths can assist the State in the investigation of vulnerable adult deaths, in the development of a greater understanding of the incidence and causes of vulnerable adult deaths and the methods for preventing such deaths, and in identifying gaps in services to vulnerable adults and families.
- (7) Access to information regarding vulnerable adults and their families is necessary to achieve the mandates and purposes of this article.
- (8) Competent investigative services must be sensitive to the needs of South Carolina's vulnerable adults and their families and not be unnecessarily intrusive and should be achieved through training, awareness, and technical assistance.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-520. Investigations of deaths in facilities operated by the Department of Mental Health or the Department of Disabilities and Special Needs; death by natural causes in a veterans' nursing home.

The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23-3-810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44-7-130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43-35-35(A). In the event that a coroner rules that the death of an individual in a veterans' nursing home under the authority of the Department of Mental Health results from natural causes, the State Law Enforcement Division is not required to conduct an investigation regarding the individual's death.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006; 2010 Act No. 223, Section 8, eff June 7, 2010; 2012 Act No. 128, Section 2, eff March 13, 2012.

SECTION 43-35-530. Conduct of investigations.

Upon receipt of a report of a vulnerable adult death, as required by Section 17-5-555 or Section 43-35-35, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall:

(1) investigate and gather all information on the vulnerable adult fatality pursuant to Section 43-35-520. The coroner or medical examiner immediately must request an autopsy if the unit determines that an autopsy is necessary. The autopsy must be performed by a pathologist with forensic training as soon as possible. The forensic pathologist must inform the unit of the findings within forty-eight hours of completion of the autopsy. If the autopsy reveals the cause of death to be pathological or an unavoidable accident, the case must be closed by the unit. If the autopsy reveals physical or sexual trauma, suspicious markings, or other findings that are questionable or yields no conclusion to the cause of death, the unit immediately must begin an investigation;

(2) request assistance of any other local, county, or state agency to aid in the investigation;

(3) upon receipt of additional investigative information, reopen a case for another coroner's inquest;

(4) upon receipt of the notification required by item (1), review agency records for information regarding the deceased vulnerable adult or family. Information available to the department pursuant to Section 43-35-570 and information that is public under Chapter 4, Title 30, the Freedom of Information Act, must be available as needed to the county coroner or medical examiner, the Long Term Care Ombudsman Program, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, and the Adult Protective Services Program of the Department of Social Services;

(5) report the activities and findings related to vulnerable adult deaths to the Vulnerable Adults Fatalities Review Committee; and

(6) develop a protocol for vulnerable adult death investigations.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-540. Access to medical information.

Upon request of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and as necessary to carry out the unit's duties, the unit immediately must be provided:

(1) by a provider of medical care, access to information and records regarding a vulnerable adult whose death is being investigated by the unit or reviewed by the committee;

(2) access to all information and records maintained by any state, county, or local government agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the vulnerable adult or family.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-550. Subpoena of medical information.

When necessary in the discharge of the duties of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and upon application of the unit, the clerks of court shall issue a subpoena or subpoena duces tecum to any state, county, or local agency, board, or commission or to any representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the unit's duties. Failure to obey a subpoena or subpoena duces tecum issued pursuant to this section may be punished as contempt.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-560. Vulnerable Adults Fatalities Review Committee; members; terms; meetings; administrative support.

(A) There is created a multidisciplinary Vulnerable Adults Fatalities Review Committee composed of:

- (1) the Director of the South Carolina Department of Social Services;
- (2) the Commissioner of the South Carolina Department of Health and Environmental Control;
- (3) the Executive Director of the South Carolina Criminal Justice Academy;
- (4) the Chief of the South Carolina Law Enforcement Division;
- (5) the Director of the South Carolina Department of Alcohol and Other Drug Abuse Services;
- (6) the Director of the South Carolina Department of Mental Health;
- (7) the Director of the South Carolina Department of Disabilities and Special Needs;
- (8) the Director of the Office on Aging;
- (9) the Executive Director of Protection and Advocacy for People with Disabilities, Inc.;
- (10) two representatives from two county boards of disabilities and special needs established pursuant to Section 44-20-375;
- (11) a county coroner or medical examiner;
- (12) an attorney with experience in prosecuting crimes against vulnerable adults;
- (13) a physician with experience in treating vulnerable adults, appointed from recommendations submitted by the South Carolina Medical Association;
- (14) a solicitor;
- (15) a forensic pathologist; and
- (16) two members of the public at large, one of whom must represent a private nonprofit community residential care facility and one of whom must represent a public for profit community residential care facility, both of which must provide services to vulnerable adults.

(B) Those members enumerated in items (1) through (10) shall serve ex officio and may appoint a designee, who has administrative or program responsibilities for vulnerable adults, to serve in their place from their particular departments or agencies. The remaining members, including the coroner or medical examiner and solicitor, who shall serve ex officio, must be appointed by the Governor for terms of four years and until their successors are appointed and qualify.

(C) A chairman and vice chairman of the committee must be elected from among the members by a majority vote of the membership for a term of two years.

(D) Meetings of the committee must be held at least quarterly. A majority of the committee constitutes a quorum.

(E) Each ex officio member shall provide sufficient staff and administrative support to carry out the responsibilities of this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-570. Purpose of Vulnerable Adult Fatalities Review Committee.

(A) The purpose of the Vulnerable Adult Fatalities Review Committee is to decrease the incidence of preventable vulnerable adult deaths by:

- (1) developing an understanding of the causes and incidences of vulnerable adult deaths;
- (2) developing plans for and implementing changes within the agencies represented on the committee which will prevent vulnerable adult deaths; and
- (3) advising the Governor and the General Assembly on statutory, policy, and practice changes that will prevent vulnerable adult deaths.

(B) To achieve its purpose, the committee shall:

(1) meet with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division no later than one month after the unit receives notification by the county coroner or medical examiner pursuant to Section 17-5-555 or Section 43-35-35 to review the investigation of the death;

(2) undertake annual statistical studies of the incidence and causes of vulnerable adult fatalities in this State. The studies shall include an analysis of community and public and private agency involvement with the decedents and their families before and subsequent to the deaths;

(3) consider training, including cross-agency training, consultation, technical assistance needs, and service gaps;

(4) educate the public regarding the incidences and causes of vulnerable adult deaths, the public role in preventing these deaths, and specific steps the public can undertake to prevent vulnerable adult deaths. The committee shall enlist the support of civic, philanthropic, and public service organizations in performing the committee's educational duties;

(5) develop and implement policies and procedures for its own governance and operation;

(6) submit to the Governor and the General Assembly an annual written report and any other reports prepared by the committee including, but not limited to, the committee's findings and recommendations for changes to any statute, regulation, policy, or procedure that the committee determines is needed to decrease the incidence of preventable vulnerable adult deaths. Annual reports must be made available to the public.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-580. Meetings discussing individual cases closed; disclosure of information identifying vulnerable adult or family member.

(A) Meetings of the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division and of the Vulnerable Adult Fatalities Review Committee are closed to the public and are not subject to Chapter 4, Title 30, the Freedom of Information Act, when the unit and committee are discussing individual cases of vulnerable adult deaths.

(B) Except as provided in subsection (C), meetings of the committee are open to the public and subject to the Freedom of Information Act when the committee is not discussing individual cases of vulnerable adult deaths.

(C) Information identifying a deceased vulnerable adult or a family member, guardian, or caretaker of a deceased vulnerable adult, or an alleged or suspected perpetrator of abuse or neglect upon a vulnerable adult may not be disclosed during a public meeting and information regarding the involvement of any agency with the deceased vulnerable adult or family may not be disclosed during a public meeting.

(D) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-590. Confidential and public information.

(A) All information and records acquired by the unit and the committee in the exercise of their duties and responsibilities pursuant to this article are confidential, exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, and only may be disclosed as necessary to carry out the unit's and committee's purposes and responsibilities.

(B) Statistical compilations of data that do not contain information that would permit the identification of a person to be ascertained are public records.

(C) Reports of the unit and the committee that do not contain information that would permit the identification of a person to be ascertained are public information.

(D) Except as necessary to carry out the unit's and committee's duties and responsibilities, unit personnel and members of the committee and persons attending meetings may not disclose what transpired at a meeting that is not public under Section 43-35-580 and may not disclose information, the disclosure of which is prohibited by this section.

(E) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of the meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or unit or because it is maintained by the committee or unit. Nothing in this subsection may be construed to prevent a person from testifying to information obtained independently of the committee or which is public information.

(F) Information, documents, and records of the unit and of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the unit or committee or because they are maintained by the unit or the committee.

(G) A person who knowingly violates a provision of this section 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.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

SECTION 43-35-595. Promulgation of regulations.

The South Carolina Law Enforcement Division may promulgate regulations if necessary to carry out its responsibilities under this article.

HISTORY: 2006 Act No. 301, Section 9, eff May 23, 2006.

CHAPTER 57
Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers

ARTICLE 1
General Provisions

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

Unless otherwise provided in this chapter, the provisions of Article 1, Chapter 1 apply to real estate brokers, salespersons, and property managers. The provisions of this chapter control when they conflict with the provisions of Article 1, Chapter 1.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-10. South Carolina Real Estate Commission created; purpose.

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.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, reenacted the section with no change.

SECTION 40-57-20. Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers.

It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1957 (50) 56, 220; 1958 (50) 1870; 1962 Code Section 56-1545; 1967 (55) 652; 1986 Act No. 353, Section 2; 1991 Act No. 12, Section 4; 1994 Act No. 385, Section 2.

Effect of Amendment

2016 Act No. 170, Section 1, substituted "salesperson" for "salesman", inserted "or provide services" and "an active," and substituted "commission" for "department".

SECTION 40-57-30. Definitions.

For purposes of this chapter:

(1) "Agent" means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's "associated licensees" are its subagents.

(2) "Associated licensee" means a licensee affiliated with and under the supervision of a broker-in-charge or property manager-in-charge.

(3) "Broker" means an associated licensee who has met the experience and education requirements and has passed the examination for a broker license and who, for a fee, salary, commission, referral fee, 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 to the real estate;

(b) auctions or offers to auction real estate in accordance with Section 40-6-250;

(c) for a fee or valuable consideration solicits a referral;
(d) offers services as a real estate consultant, counselor, or transaction manager;
(e) offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or

(f) advertises or otherwise represents to the public as being engaged in any of the foregoing activities.

(4) "Broker-in-charge" means a broker designated to have responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for a real estate trust account.

(5) "Buyer agency" means a form of agency in which a real estate brokerage firm represents the buyer in an agency capacity as defined in this chapter.

(6) "Client" means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.

(7) "Commission" means the South Carolina Real Estate Commission and its members, who are charged by law with the responsibility of licensing or otherwise regulating the practice of real estate in the State of South Carolina.

(8) "Conversion" means to use trust funds for a purpose other than the purpose for which they are held. Conversion is a breach of trust and is a crime as provided by law.

(9) "Customer" means a buyer, seller, landlord, or tenant who uses the services of a real estate licensee but does not established an agency relationship through a written agency agreement with the licensee's real estate brokerage firm.

(10) "Department" means the Department of Labor, Licensing and Regulation.

(11) "Designated agency" means a form of agency in which two clients represented by a real estate brokerage firm in the same transaction may be given almost equivalent treatment as a single agency.

(12) "Dual agency" means a form of agency in which a real estate brokerage firm with two clients in the same transaction gives limited agency services.

(13) "Email" means a system for sending and receiving a message electronically over a computer network and a message sent or received by the system.

(14) "Licensee" means an individual currently licensed under this chapter.

(15) "Limited function referral office" means a brokerage where the office policy allows only the placement of referrals through the broker-in-charge.

(16) "Material adverse fact" means:

(a) a condition or occurrence that is generally recognized as:

(i) significantly and adversely affecting the value of the real estate;

(ii) significantly reducing the structural integrity of improvements to real estate; or

(iii) presenting a significant health risk to occupants of the real estate; or

(b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction.

(17) "Ministerial act" means an act performed by a licensee not involving an exercise of discretion or judgment of a licensee on behalf of a person who is not a client and that assists the nonclient to consummate a real estate transaction.

(18) "Office" means the office location where a broker-in-charge or a property manager-in-charge is licensed to conduct real estate business.

(19) "Personal trust account" means an escrow account or demand deposit bank account properly designated and titled to include the words "trust" or "escrow" that is established and maintained by a licensee to safeguard funds belonging to parties to a real estate transaction when the transaction involves the licensee's personal real estate and the real estate is not managed or listed through a real estate brokerage firm.

(20) "Property manager" means an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;

(b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or

(c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

(21) "Property manager-in-charge" means a property manager who is designated as having the responsibility over the actions of associated licensees and also the responsibility and control over and liability for real estate trust accounts.

(22) "Real estate" means land, buildings, and other appurtenances, including all interests in land, whether corporeal, incorporeal, freehold, or nonfreehold, whether the real estate is within or outside of the boundaries of this State.

(23) "Real estate brokerage" means the aspect of the real estate business that involves activities relative to property management or a real estate sale, exchange, purchase, lease.

(24) "Real estate brokerage firm" means a real estate company engaged in the business of real estate brokerage.

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

(26) "Salesperson" means an associated licensee who:

(a) meets experience and education requirements;

(b) passes an examination for a salesperson license; and

(c) engages in or participates in an activity enumerated in item (3) for a fee, salary, commission, or other valuable consideration, or with the intent or expectation of receiving compensation.

(27) "Seller agency" means a form of agency in which a real estate brokerage firm represents the seller in an agency capacity as defined in this chapter.

(28) "Subagent" means an agent of an agent. An "associated licensee" is a subagent of the real estate brokerage firm if the firm is an agent of a buyer, seller, landlord, or tenant.

(29) "Substantive contact" means contact in which a discussion or dialogue between the consumer and the associated licensee moves from casual introductory talk to a meaningful conversation regarding the selling or buying motives or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer's bargaining position.

(30) "Team" means two or more associated licensees working together as a single unit within an office established with the commission and supervised by a broker-in-charge.

(31) "Trust account" means an escrow account or properly designated demand deposit bank account that is:

(a) properly designated and titled to include the word "trust" or "escrow"; and

(b) 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.

(32) "Trust funds" means funds received on behalf of another person by a licensee in the course of performing a real estate activity.

(33) "Transaction broker" means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.
Editor's Note

Prior Laws: 1962 Code Section 56-1545.1:1; 1967 (55) 652; 1986 Act No. 353, Section 1; 1991 Act No. 12, Section 3; 1976 Code Section 40-57-10.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

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

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

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

(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 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) A commission member serves a term of four years and until his successor is elected or appointed and qualifies. 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 discharging of the duties of his office, a member's election or appointment must be certified by the Secretary of State, and the member shall, in writing, take 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) The term of a member commences on the date on which his 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.

HISTORY: 1997 Act No. 24, Section 1; 2012 Act No. 279, Section 10, eff June 26, 2012; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1960 (51) 1727; 1962 Code Section 56-1545.4; 1972 (57) 2649; 1978 Act No. 534, Section 2; 1994 Act No. 38; 1976 Code Section 40-57-50.

2012 Act No. 279, Section 33, provides as follows:

"Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy."

Effect of Amendment

The 2012 amendment substituted "seven" for "Six" throughout subsection (A)(1); substituted "the nine" for "The eight" in subsection (A)(3); and, made other, nonsubstantive, changes.

2016 Act No. 170, Section 1, reenacted the section with nonsubstantive changes.

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

The commission annually shall elect from its total membership a chair, vice chair, and other officers the commission determines necessary at the first meeting in the fiscal year of the State. 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.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, inserted "at the first meeting in the fiscal year of the State", and made gender neutral changes.

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

(A) The commission shall administer and enforce this chapter and regulations promulgated under this chapter. In addition to powers contained in Section 40-1-70, the powers and duties include, but are not limited to:

(1) determining the standards for the qualifications and eligibility of applicants for licensure, the qualifications of education providers and instructors, and the conditions for license renewal;

(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, safety, and welfare of the public; and

(4) establishing a fee schedule.

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

(C) The commission staff shall conduct periodic inspections of the offices of licensees to assist with and ensure compliance with this chapter.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Section 27; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-65. Annual report.

The commission shall submit an annual report in accordance with established guidelines to the department and the Chairs of the Senate Labor, Commerce and Industry Committee and House Labor, Commerce and Industry Committee.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-70. Application and license fees; allocation of fees; annual report.

(A) Fees relevant to the licensure and regulation of real estate brokers, salespersons, and property managers must be established in accordance with Section 40-1-50(D) and promulgated by regulation prior to implementation.

(B) Application and license fees must be paid to the commission in advance and must accompany an examination application or a license application. An application fee is nonrefundable.

(C)(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 is 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 the:

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

(c) dissemination of the results of the research.

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

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Section 26; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, in (A), substituted "Fees relevant" for "All fees relevant"; deleted former (B), related to reinstatement penalty, and redesignated former (C) and (D) as (B) and (C); in (B) substituted "commission" for "department"; in (C)(1), substituted "is established" for "must be established"; and made nonsubstantive and gender neutral changes throughout.

SECTION 40-57-80. Reserved.

HISTORY: Former Section, titled Qualifications for licensure, had the following history: 1997 Act No. 24, Section 1. Reserved by 2016 Act No. 170, Section 1, eff January 1, 2017. See now, Code 1976 Section 40-57-310.

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 commission and must be accompanied by all applicable fees.

HISTORY: 1997 Act No. 24, Section 1; 1999 Act No. 18, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1962 Code Section 56-1545.9; 1972 (57) 2649; 1976 Act No. 519; 1981 Act No. 136, Section 1; 1986 Act No. 353, Section 6; 1991 Act No. 12, Section 7; 1994 Act No. 385, Section 6; 1976 Code Section 40-57-100.

Effect of Amendment

2016 Act No. 170, Section 1, substituted "commission" for "department".

SECTION 40-57-100. Reserved.

HISTORY: Former Section, titled Educational requirements conditional to application for licensure, had the following history: 1956 (49) 2046; 1962 Code Section 56-1545.9; 1972 (57) 2649; 1976 Act No. 519; 1981 Act No. 136, Section 1; 1986 Act No. 353, Section 6; 1991 Act No. 12, Section 7; 1994 Act No. 385, Section 6; 1976 Code Section 40-57-100; 1997 Act No. 24, Section 1; 1999 Act No. 18, Section 1. Reserved by 2016 Act No. 170, Section 1, eff January 1, 2017. See now, Code 1976 Section 40-57-320.

SECTION 40-57-110. Issuance and classification of license; inactive status; renewal; lapse.

(A) The commission shall issue licenses in the classifications of broker, broker-in-charge, or salesperson, to individuals who qualify under and comply with the requirements of this chapter; provided the commission may deny a license to an applicant it finds to have engaged in misconduct as provided in Section 40-57-710 or otherwise. 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 commission prescribes and is not transferable.

(B) A licensee may place a license on inactive status by informing the commission 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.

(C) A license only may be renewed in accordance with procedures established by the commission pursuant to Section 40-1-50(D). A licensee is responsible for renewing his license whether or not he receives notice.

(D) A license that is not renewed before its expiration date lapses.

(E) A license that has lapsed and is not reinstated by the last day of the sixth month following expiration is canceled.

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1957 (50) 555; 1962 Code Sections 56-1545.11, 56-1545.15; 1967 (55) 652; 1986 Act No. 353, Section 8; 1994 Act No. 385, Section 9; 1976 Code Sections 40-57-120, 40-57-160.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section, deleting former (B) through (F) and redesignating former (G) through (J) as (B) through (E).

SECTION 40-57-115. Criminal background checks required for initial applicants.

Section effective until May 19, 2020. See, also, Section 40-57-115 effective May 19, 2020.

In addition to other requirements established by law and for the purpose of determining an applicant's eligibility for licensure as a salesperson, broker, broker-in-charge, property manager, and property manager-in-charge, the commission shall require initial applicants to submit to a state criminal records check, by a source approved by the commission, and a national criminal records check. Costs of conducting a criminal records check must be borne by the applicant. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.

HISTORY: 2014 Act No. 258 (S.75), Section 1, eff June 9, 2014; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-115. Criminal background checks required for initial applicants and licensure renewals.

Section effective May 19, 2020. See, also, Section 40-57-115 effective until May 19, 2020.

In addition to other requirements established by law and for the purpose of determining an applicant's eligibility for licensure as a salesman, broker, broker-in-charge, property manager, and property manager-in-charge, the commission shall require initial applicants and applicants for licensure renewal to submit to a state fingerprint-based criminal records check, to be conducted by the State Law Enforcement Division (SLED), and a national criminal records check, supported by fingerprints, by the FBI. Costs of conducting a criminal records check must be borne by the applicant. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.

HISTORY: 2014 Act No. 258 (S.75), Section 1, eff June 9, 2014; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017; 2017 Act No. 60 (H.3041), Section 1, eff May 19, 2020.

Effect of Amendment

2016 Act No. 170, Section 1, substituted "salesperson" for "salesman".

2017 Act No. 60, Section 1, amended the section, requiring background checks for licensure renewals and requiring the background checks to be fingerprint-based.

SECTION 40-57-120. Nonresident licensees; change in residency; referral fees by resident licensees.

(A) The commission may recognize nonresident real estate licenses on active status from other jurisdictions only if the other jurisdiction recognizes South Carolina real estate licenses on active status. An applicant from another jurisdiction successfully shall complete the state portion of the applicable examination before license recognition will be acknowledged. The commission may enter into reciprocal

agreements with real estate regulatory authorities of other jurisdictions that 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) A nonresident licensee, acknowledged by the commission, 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 residence. A nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against him 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.

(C)(1) A resident licensee who becomes a nonresident must notify the commission in writing, within thirty 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 thirty 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 timely notify the commission of a change in residency and compliance to comply with the requirements of this subsection are violations of this chapter subject to penalties provided in Section 40-57-710.

(D) 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.

(E) A resident licensee may pay a part of his commission as a referral fee on a cooperative basis to a brokerage of another state or jurisdiction if that brokerage's license does not conduct, in this State, a real estate brokerage service for which a fee, compensation, or commission is paid.

HISTORY: 1997 Act No. 24, Section 1; 1999 Act No. 18, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017; 2017 Act No. 77 (H.3861), Section 1, eff May 19, 2017.

Editor's Note

Prior Laws: 1957 (50) 193; 1960 (51) 1727; 1962 Code Section 56-1545.13; 1972 (57) 2649; 1988 Act No. 609, Section 2; 1994 Act No. 385, Section 10; 1976 Code Section 40-57-140.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section, deleting former (A) and (B), relating to reciprocity, redesignating former (C) through (F) as (A) through (D), and adding (G).

2017 Act No. 77, Section 1, in (A), added the third sentence, providing that the commission may enter into reciprocal agreements with real estate regulatory authorities of other jurisdictions.

SECTION 40-57-135. Duties of broker-in-charge and property manager-in-charge; associated licensees; office locations; policies and recordkeeping; management agreements; unlicensed employees.

(A) A broker-in-charge or property manager-in-charge shall:

(1) adequately supervise employees or associated licensees to ensure their compliance with this chapter;

(2) review and approve all forms of listing agreements, agency agreements, offers, sale contracts, purchase contracts, leases, options, contract addenda, or other contractual or disclosure documents routinely used by the real estate brokerage firm;

(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, Chapter 1, Title 40, the Interstate Land Sales Practices Act, or the Vacation Time Sharing Plans Act;

(4) be available to the public during business hours in order to discuss or resolve complaints and disputes that 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;

(5) establish and maintain a written office policy in accordance with Section 40-57-510(B) and make that policy readily accessible to associated licensees;

(6) ensure that all associated licensees have an active real estate license;

(7) establish and maintain control of and responsibility for an active trust account when in possession of trust funds belonging to others resulting from a real estate transaction; and

(8) notify the commission by mail within ten days of any change of office name, address, email address, or telephone number.

(B) An associated licensee may not receive compensation from an activity requiring a real estate license from an entity or person other than the one for which the license is issued. An associated licensee may form a business entity allowing the licensee's broker-in-charge or property manager-in-charge to pay fees or commissions to that entity if the principals in that entity hold an active real estate license.

(C)(1) 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, investigators, and inspectors during reasonable business hours.

(2) A broker-in-charge or property manager-in-charge may maintain one or more offices at different locations. Each office must be managed by a broker-in-charge or property manager-in-charge who is licensed for that real estate brokerage firm's location. The same person may request to be licensed as broker-in-charge or property manager-in-charge of more than one office if the broker-in-charge or property manager-in-charge making the request acknowledges in writing that the applicant understands the duties and can fully assume the responsibility to ensure compliance with this chapter.

(3) A licensee may not conduct real estate business under another name or at an address other than the one for which his license is issued.

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

(D)(1) A broker-in-charge or property manager-in-charge shall for a minimum of five years maintain and furnish to the commission upon request a written copy, when applicable, of a:

- (a) lease;
- (b) contract of sale and any addenda;
- (c) listing contract or buyer agency agreement;
- (d) transaction broker agreement;
- (e) option contract;
- (f) property management agreement; and
- (g) residential property disclosure form.

(2) These records may be maintained electronically as long as a backup copy is stored in a separate, off-site location including, but not limited to, electronic and Internet, cloud-based storage systems.

(E)(1) 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 between the property owner and the real estate brokerage firm with whom the licensee is associated.

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

(3) If a real estate brokerage firm operates under a trade or franchise name, the identity of the franchisee or holder of the trade name clearly must be revealed.

(F)(1) A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate at first substantive contact with a consumer and in advertising or marketing in any media. A licensee also shall disclose his licensed status in bold underlined

capital letters on the first page of a contract for the purchase, sale, exchange, rental, or lease of real property.

(2) Trust funds received in a licensee's personal rental or transaction must be deposited in the licensee's personal trust account and may not be deposited in the real estate brokerage firm's trust account unless the real property is managed, listed, or owned by the real estate brokerage firm.

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

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

(1) upon receipt, prepare all offers in writing and promptly present them to the seller;

(2) upon obtaining a written acceptance of an offer, promptly deliver true, executed copies to all parties;

(3) ensure that all of the terms and conditions of the transaction are included in the offer to purchase; and

(4) ensure that changes or modifications made during negotiation are in writing and initialed and dated by both parties before proceeding with the transaction.

(I)(1) A licensee shall properly complete an agency agreement, transaction broker agreement, offer, and counteroffer.

(2) 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 client including, but not limited to, an explanation of the office policy regarding dual agency, designated agency, and transaction brokerage if offered by the real estate brokerage firm;

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

(c) an explanation of how and when compensation is earned;

(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 collected before the agent's performance of a service on behalf of the client and an explanation of conditions, if any, in which such monies are refundable or payable to or on behalf of the client;

(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 agreement or buyer's representation agreement clearly must state that it terminates on the definite expiration date unless a written extension is signed;

(i) a listing agreement or buyer's representation agreement clearly must state, if applicable, that it is either an "exclusive agency" listing or buyer's representation agreement or "exclusive right to represent" listing contract or "exclusive right to represent" buyer's representation contract;

(j) a listing agreement or buyer's representation agreement must clearly specify an exception or variation in an amount of commission to be paid and circumstances that 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 an adequate property description of the type of property of interest to the buyer and a price or price range for property of interest to the buyer. A listing agreement must have a legal description of the listed property or a description sufficient to identify the listed property and state the price of the listed property.

(3) If there are no clients involved in the transaction, a real estate brokerage firm acting as a transaction broker shall complete a compensation agreement to be signed by the agent and the

compensating party. This agreement must contain the amount of the compensation and identify the party responsible for payment.

(4) The broker-in-charge shall ensure that associated licensees prepare all offers and counteroffers in writing, have them dated and signed by the offerors, and promptly present them to the offerees or the offerees' representative and ensure that:

(a) changes or modifications made during negotiations are in writing and initialed and dated by both parties before proceeding with the transaction;

(b) all of the terms and conditions of the transaction are included in the offer to purchase; and

(c) if associated licensees obtain a written acceptance of an offer or counteroffer, true, executed copies will be promptly delivered to all parties.

(5) If an offer is rejected without counter, an offer rejection form, promulgated by the commission, signed by the licensee affirming presentation of the offer must be provided to the offeror by the licensee, whether the agent of the buyer, the seller, or if acting as a transaction broker.

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

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

(a) purchases made directly or indirectly by the licensee;

(b) purchases made for the licensee's own account or for a corporation or another business in which the licensee holds an interest or purchases made for a close relative; and

(c) real estate for which the licensee has been approached by the seller or prospective buyer to act as agent.

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

(J) A real estate brokerage firm shall manage residential and commercial property under a written management agreement that shall set forth, at a minimum:

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

(2) the property identification;

(3) the method of compensation to the licensee;

(4) that a management agreement may not contain an 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 cause or no cause with thirty days' notice after the original definite expiration date;

(5) compensation for a future lease renewal by tenants, and if included, the contract must contain a clause in underlined capital letters on the first page providing for such future compensation; and

(6) terms and conditions of tenant rental or lease arrangements. However, a 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, in which case a separate listing agreement is required.

(K) 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 broker-in-charge or a property manager-in-charge may not:

(1) discuss, negotiate, or explain a contract, listing agreement, buyer agency agreement, lease, agreement, property management agreement, or other real estate document;

- (2) vary or deviate from the rental price or other terms and conditions previously established by the owner or licensee when supplying relevant information concerning the rental of property;
 - (3) approve applications or leases or settle or arrange the terms and conditions of a lease;
 - (4) indicate to the public that the unlicensed individual is in a position of authority which has the managerial responsibility of the rental property;
 - (5) conduct or host an open house or manage an on-site sales or leasing office;
 - (6) show real property for sale other than vacant units in a multifamily building;
 - (7) answer questions regarding company listings, title, financing, and closing issues, except for information that is otherwise publicly available;
 - (8) be paid solely on the basis of real estate activity including, but not limited to, a percentage of commission or an amount based on the listing or sales compensation or commission;
 - (9) negotiate or agree to compensation or commission including, but not limited to, commission splits, management fees, or referral fees on behalf of a licensee; or
 - (10) engage in an activity requiring a real estate license as required and defined by this chapter.
- (L) A licensee is not required to maintain records of communications that are not designated to be retained or to create a permanent record such as text messages, instant messaging system-formatted messages, voicemail, voice recordings, or social media posts.

HISTORY: 1997 Act No. 24, Section 1; 2000 Act No. 285, Sections 1 to 3; 2004 Act No. 218, Sections 1 to 12; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-136. Trust accounts; disputes; records.

(A)(1) A broker-in-charge or a property manager-in-charge, when taking possession of trust funds, shall establish and maintain control of and responsibility for an active real estate trust account which must be a demand deposit account designated and titled to include the word "trust" or the word "escrow" in the name of the real estate brokerage firm for which the respective broker-in-charge's or property manager-in-charge's license is issued; provided, however, that one central trust account may be used by real estate brokerage firms with multiple offices managed by:

- (a) one broker-in-charge or one property manager-in-charge; and
- (b) separate brokers-in-charge or separate property managers-in-charge.

(2) A broker-in-charge and a property manager-in-charge shall maintain records which reflect the transactions in his office.

(3) A trust account maintained by a broker-in-charge or property manager-in-charge must be a demand deposit account located in an insured financial institution authorized to conduct business in South Carolina.

(4) A broker-in-charge or property manager-in-charge shall instruct employees and associated licensees on the proper handling of trust funds.

(5) A check or statement issued in connection with a real estate trust account must reflect the title and designation of the account as provided in item (1).

(B)(1) A broker-in-charge or property manager-in-charge shall ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts.

(2) A broker-in-charge or property manager-in-charge shall ensure that backup copies are maintained for computerized real estate trust accounts. A backup copy must be maintained on a data storage medium that is stored in a separate off-site location.

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

(4) Trust funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for the broker-in-charge or property manager-in-charge must be delivered to the broker-in-charge or property manager-in-charge no later than the following business day.

(5) A broker-in-charge or property manager-in-charge who disburses trust funds contrary to the terms of the contract or fails to disburse trust funds not in dispute is considered to have demonstrated incompetence to act as a broker-in-charge or property manager-in-charge.

(C)(1)(a) Except as provided in subitem (b), trust funds received by a broker-in-charge or property manager-in-charge in a real estate rental or lease transaction must be deposited as follows in a real estate trust account as follows:

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

(ii) checks must be deposited within forty-eight hours after a lease or rental agreement is signed by the parties to the transaction, excluding Saturday, Sunday, and bank holidays.

(b) Rent received by a licensee who is directly employed by the owner of rental property may be deposited in an operating or other similar account, but otherwise must be properly accounted for as provided in this section. However, an advance rental deposit is a trust fund and must be treated as such.

(2) Trust funds received by a broker-in-charge or property manager-in-charge in connection with a real estate rental or lease including, but not limited to, security deposits, pet deposits, damage deposits, and advance rentals, except earned rental proceeds, and deposited in the trust account must remain in the trust account until the lease or rental transaction expires or is terminated, at which time undisputed trust funds must be disbursed pursuant to the contract which directs the broker-in-charge or property manager-in-charge to hold the trust funds, 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.

(D)(1)(a) Trust funds received by a broker-in-charge in a real estate sales or exchange transaction must be deposited as follows in a separate real estate trust account:

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

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

(b) Trust funds 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 undisputed trust funds must be disbursed in accordance with the contract which directs the broker-in-charge to hold the trust funds, and a full accounting must be made to the parties.

(2) A broker-in-charge or property manager-in-charge who disburses trust funds from a designated trust account under the following circumstances is considered to have properly fulfilled the duty to the account:

(a) upon rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;

(b) upon the withdrawal of an offer not yet accepted by the offeree; or

(c) at the closing of the transaction.

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

(1) a written agreement which:

(a) directs the disposition of monies signed by all parties claiming an interest in the trust monies, and

(b) must be separate from the contract which directs the broker-in-charge or property manager-in-charge to hold the monies;

(2) filing an interpleader action in a court of competent jurisdiction;

(3) an order of a court of competent jurisdiction; or

(4) voluntary mediation.

(F)(1) 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 commission 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.

(2) Brokers-in-charge or property managers-in-charge, when required by this chapter to establish and maintain a real estate trust account, also shall maintain, in their designated principal place of business, a recordkeeping system consisting of:

(a) a journal or an accounting system that 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. An owner's ledger also must be maintained for all properties owned by each owner showing receipts and disbursements applicable to each property managed. A disbursement must be documented by a bid, contract, invoice, or other appropriate written memoranda;

(d) a trust account deposit document must identify 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 when no deposit or disbursement is made 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.

(G) Trust funds 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 trust funds may be retained by the broker-in-charge or property manager-in-charge if:

(1) the depositors or owners of the trust funds have been informed of their right to ownership of the interest but relinquish the right of ownership to the broker-in-charge or property manager-in-charge by written agreement; and

(2) the agreement, if part of a preprinted form, uses conspicuous language.

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-240. Applicability of chapter.

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 a 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; or

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

HISTORY: 1997 Act No. 24, Section 1; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, in (2), substituted "a client/owner" for "his client/owner", and in (4) added "or" at the end.

ARTICLE 3

Real Estate Brokers, Brokers-in-Charge, and Salespersons

SECTION 40-57-310. Qualifications for licensure.

To be eligible for licensure as a real estate broker, broker-in-charge, or salesperson, an applicant must:

(1) attain the age of twenty-one if applying for a license as a broker or broker-in-charge;

(2) attain the age of eighteen if applying for a license as a salesperson;

(3) provide a physical address at which the licensee can be contacted in the course of an investigation.

A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;

(4) graduate from high school or hold a certificate of equivalency recognized by the State Department of Education;

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

(6) submit to criminal background check as provided in Section 40-57-115 for initial application; and

(7) pass the applicable examination.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-80; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-320. Conditions for license application; education; examination; fees.

(A) As a condition for and before applying to the commission for licensure, an applicant for a salesperson, broker, or broker-in-charge license shall provide proof to the commission of having met the following educational requirements, in addition to the other requirements of this chapter:

(1) for a salesperson license:

(a) completion of sixty hours of classroom instruction in fundamentals of real estate principles and practices and thirty hours of classroom instruction in advanced real estate principles within five years before the application, provided an applicant may take the license examination before completing the required thirty hours of advanced instruction; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real estate from an accredited college or university, or completion of another course of study approved by the commission; and

(2) for a broker license:

(a) completion of one hundred fifty hours of commission-approved real estate classroom instruction, ninety of which may be the hours required for a salesperson license, to include completion of the thirty hour Unit III A Broker Management and of the thirty hour Unit III B Brokerage Principles courses in advanced real estate principles and practices and three years active salesperson licensure within the past five years; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real estate from an accredited college or university.

(B)(1) As a condition of licensure, an applicant shall submit to an examination which must be conducted by the commission or a designated test provider at a time and place specified by the commission.

(2) The applicant must receive a passing grade on the examination, in accordance with a cut-score determination or a raw-score determination established by the commission.

(3) An applicant who applies to take the examination is granted a twelve-month eligibility period to complete successfully all portions of the examination. An applicant who fails to complete successfully the examination may reapply to become eligible for the examination if applicable qualifying courses were completed fewer than five years before applying for the examination.

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

(5) An applicant who is denied licensure by the commission may not reapply for licensure for a period of twenty-four months from the date of denial unless he prevails in appealing the denial pursuant to the Administrative Procedures Act.

(6) A nonresident individual who, at the time of application, holds an active 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 he makes his application only is required to pass the state portion of the examination to qualify for licensure.

(C) The commission or test provider may 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.

HISTORY: 1956 (49) 2046; 1962 Code Section 56-1545.9; 1972 (57) 2649; 1976 Act No. 519; 1981 Act No. 136, Section 1; 1986 Act No. 353, Section 6; 1991 Act No. 12, Section 7; 1994 Act No. 385, Section 6; 1997 Act No. 24, Section 1; 1999 Act No. 18, Section 1; formerly 1976 Code Section 40-57-100; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-330. Broker-in-charge license requirements; active broker or salesperson must be licensed under broker-in-charge.

(A) A broker-in-charge license may not 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.

(B) An individual holding an active broker or salesperson license must be licensed under a broker-in-charge who is licensed by the commission 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, he immediately shall notify the commission by completion of the proper form. The licensee must furnish a new business address to the commission, the authorization of the new broker-in-charge, and proof of notification to the former broker-in-charge.

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-340. Conditions for license renewal; continuing education; exemptions.

Section effective until May 19, 2020. See, also, Section 40-57-340 effective May 19, 2020.

(A) As a condition of active license renewal:

(1) A broker or salesperson shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses. The ten hours must include a minimum of four hours of instruction in mandated topics.

(2) A broker-in-charge shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses approved by the commission. The ten hours must include a minimum of

four hours of instruction in mandated topics for a broker or salesperson license and four hours of continuing education must be in advanced real estate topics designed for brokers-in-charge.

(3) A license must be renewed biennially coinciding with the licensees' continuing education deadline. Approximately one-half of the licensees must renew in even-numbered years and the remainder in odd-numbered years.

(B) Exempt from the biennial continuing education required by subsection (A) are a:

(1) salesperson who successfully completes a post-licensing course or takes a broker course is exempt for the renewal period during which the course was taken;

(2) licensee while on inactive status;

(3) nonresident broker or salesperson who has successfully satisfied the continuing education requirements in their jurisdiction of residence may be exempt with approval of the commission; or

(4) broker or salesperson with a minimum of twenty-five years of licensure may apply to be granted an experience-based partial continuing education waiver, and upon granting of the waiver, is required to complete only the mandatory four hour core course biennially to maintain active licensure. A broker-in-charge who has been granted a partial continuing education waiver is required to take the four hour core course and the mandated four hour broker-in-charge course biennially. A licensee who previously has been granted a full continuing education waiver by the commission is exempt from the continuing education requirements of this chapter.

(C) A broker or salesperson who takes 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 salesperson who fails to complete the continuing education requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of completion of required continuing education and payment of applicable fees.

(E) In accordance with regulations, providers electronically shall transmit to the commission student continuing education and qualifying course records. The commission shall maintain an accurate and secure database of student records.

(F) A prelicensing and continuing education course is eligible for distance learning. Certification by the Association of Real Estate License Law Officials (ARELLO) or its subsidiary, the International Distance Education Certification Center (IDECC), is required.

(G) The commission shall qualify for continuing education credit designation and certification programs of nationally recognized real estate organizations and associations. The commission may qualify for continuing education credit other than courses currently approved for continuing credit including, but not limited to, courses offered by the South Carolina Bar Association, South Carolina Forestry Board, and the South Carolina Appraisers Board.

(H) Notwithstanding another provision of law, the commission shall qualify for continuing education credit courses that are related to real estate technology, professional development, and business ethics.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-130; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-340. Conditions for license renewal; background checks; continuing education; exemptions.

Section effective May 19, 2020. See, also, Section 40-57-340 effective until May 19, 2020.

(A) As a condition of active license renewal:

(1) A broker or salesperson shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115 and shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses. The ten hours must include a minimum of four hours of instruction in mandated topics.

(2) A broker-in-charge shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115 and shall provide proof of satisfactory

completion biennially of ten hours of continuing education in courses approved by the commission. The ten hours must include a minimum of four hours of instruction in mandated topics for a broker or salesperson license and four hours of continuing education must be in advanced real estate topics designed for brokers-in-charge.

(3) A license must be renewed biennially coinciding with the licensees' continuing education deadline. Approximately one-half of the licensees must renew in even-numbered years and the remainder in odd-numbered years.

(B) Exempt from the biennial continuing education required by subsection (A) are a:

(1) salesperson who successfully completes a post-licensing course or takes a broker course is exempt for the renewal period during which the course was taken;

(2) licensee while on inactive status;

(3) nonresident broker or salesperson who has successfully satisfied the continuing education requirements in their jurisdiction of residence may be exempt with approval of the commission; or

(4) broker or salesperson with a minimum of twenty-five years of licensure may apply to be granted an experience-based partial continuing education waiver, and upon granting of the waiver, is required to complete only the mandatory four hour core course biennially to maintain active licensure. A broker-in-charge who has been granted a partial continuing education waiver is required to take the four hour core course and the mandated four hour broker-in-charge course biennially. A licensee who previously has been granted a full continuing education waiver by the commission is exempt from the continuing education requirements of this chapter.

(C) A broker or salesperson who takes 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 salesperson who fails to submit to criminal background check requirements of this section or complete the continuing education requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of completion of required continuing education and payment of applicable fees or submission to a criminal background check and payment of applicable fees, whichever remedies the deficiency that caused the licensee to be placed on inactive status.

(E) In accordance with regulations, providers electronically shall transmit to the commission student continuing education and qualifying course records. The commission shall maintain an accurate and secure database of student records.

(F) A prelicensing and continuing education course is eligible for distance learning. Certification by the Association of Real Estate License Law Officials (ARELLO) or its subsidiary, the International Distance Education Certification Center (IDECC), is required.

(G) The commission shall qualify for continuing education credit designation and certification programs of nationally recognized real estate organizations and associations. The commission may qualify for continuing education credit other than courses currently approved for continuing credit including, but not limited to, courses offered by the South Carolina Bar Association, South Carolina Forestry Board, and the South Carolina Appraisers Board.

(H) Notwithstanding another provision of law, the commission shall qualify for continuing education credit courses that are related to real estate technology, professional development, and business ethics.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-130; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017; 2017 Act No. 60 (H.3041), Section 2, eff May 19, 2020.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

2017 Act No. 60, Section 2, in (A)(1) and (A)(2), inserted "submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115 and shall"; and in (D), inserted "submit to criminal background check requirements of this section or" and "or submission to a criminal background check and payment of applicable fees, whichever remedies the deficiency that caused the licensee to be placed on inactive status".

SECTION 40-57-350. Real estate brokerage firm duties to client; agency relationship; applicability of common law.

(A) A real estate brokerage firm 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 brokerage relationships a real estate brokerage firm may establish:

- (1) seller agency;
- (2) buyer agency;
- (3) disclosed dual agency;
- (4) designated agency; or
- (5) transaction brokerage.

(B) The broker-in-charge of a real estate brokerage firm shall adopt a written company policy that identifies and describes the types of real estate brokerage relationships in which associated licensees may engage, including teams and limited function referral offices. The written policy must include:

(1) the real estate brokerage firm's policy regarding cooperation with transaction brokers, or both buyer agents, and transaction brokers, and whether the broker offers compensation to these licensees;

(2) the scope of services provided to the real estate brokerage firm's clients;

(3) the scope of services provided to the real estate brokerage firm's customers;

(4) when and how associated licensees shall explain and disclose their brokerage relationships with an interested party 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 the potential for the licensee to later act as a disclosed dual agent, designated agent, or transaction broker in specific transactions, as permitted by this chapter; and

(6) the real estate brokerage firm's policy on compliance with state and federal fair housing laws.

(C)(1) On reaching a written agency agreement to provide brokerage services for a seller of real estate, a seller's agent shall:

(a) perform the terms of the written brokerage agreement made with the seller;

(b) pursuant to subsection (A), promote the interest of the seller by performing agency duties which include:

(i) 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 real estate brokerage firm 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;

(ii) presenting in a timely manner all written offers and counteroffers to and from the seller, even when the property is subject to a contract of sale;

(iii) disclosing to the seller all material adverse facts concerning the transaction which are actually known to the seller's agent except as directed otherwise in this section;

(iv) advising the seller to obtain expert advice on matters that are beyond the expertise of the licensee; and

(v) 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;

(c) exercise reasonable skill and care in discharging the licensee's agency duties;

(d) comply with all provisions of this chapter and with regulations adopted by the commission;

(e) 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;

(f) 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:

(i) the seller to whom the confidential information pertains grants written consent to disclose the information;

- (ii) disclosure is required by law; or
- (iii) disclosure is necessary to defend the licensee against an accusation of wrongful conduct; or
- (iv) the information becomes public from a source other than the broker.

(2) No cause of action may arise against a licensee for disclosing confidential information in compliance with item (1)(f).

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

- (a) perform the terms of the written brokerage agreement made with the buyer;
- (b) in accordance with subsection (A), promote the interest of the buyer by performing the buyer's agent's duties which include:

- (i) seeking the type of 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;

- (ii) presenting in a timely manner all written offers and counteroffers to and from the buyer;

- (iii) disclosing to the buyer all material adverse facts concerning the transaction which are actually known to the licensee except as directed otherwise in this section. Nothing in this chapter may limit a buyer's obligation to inspect the physical condition of the property which the buyer may purchase;

- (iv) advising the buyer to obtain expert advice on material matters that are beyond the expertise of the licensee; and

- (v) 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;

- (c) exercising reasonable skill and care in discharging the buyer's agent's agency duties;

- (d) complying with all provisions of this chapter and with regulations promulgated by the commission;

- (e) 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;

- (f) 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:

- (i) the buyer to whom the confidential information pertains, grants written consent to disclose the information;

- (ii) disclosure is required by law;

- (iii) 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; or

- (iv) the information becomes public from a source other than the licensee.

(2) No cause of action may arise against a licensee for disclosing confidential information in compliance with item (1)(f).

(F) A licensee acting as a buyer's agent may offer properties which interest his buyer client to other potential buyers. However, if the licensee has two competing buyer clients in a single real estate transaction, the agent will give written notice to each buyer client that neither will receive the confidential information of the other.

(G)(1) A licensee shall treat all parties honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee. A licensee is not obligated to discover latent defects or to advise parties on matters outside the scope of the licensee's real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a licensee who has truthfully disclosed to a buyer a known material defect.

(2) No cause of action may be brought against a real estate brokerage firm or licensee by a party for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood

destroying organism control expert, termite inspector, mortgage broker, home inspector, or other home inspection expert, or other similar reports.

(3) A licensee, the real estate brokerage firm, and the broker-in-charge are not liable to a party for providing the party with false or misleading information if that information was provided to the licensee by the client or customer and the licensee did not know the information was false or incomplete.

(H) Nothing in this chapter limits the obligation of the buyer to inspect the physical condition of the property.

(I)(1) A real estate brokerage firm 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 a dual agency agreement, promulgated by the commission. At the latest, the form 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, and must name the parties to the dual agency consent agreement, and must state that:

(a) in acting as a dual agent, the real estate brokerage firm represents clients whose interests may be adverse and that agency duties are limited;

(b) the associated licensees of the real estate brokerage firm 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 the offered price;

(iii) any 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) that the clients may choose to consent to the disclosed dual agency or may reject it; and

(d) that the clients have read and understood the dual agency agreement and acknowledge that their consent to dual agency is voluntary.

(2) A broker-in-charge and associated licensees in one office of a real estate brokerage firm may conduct business with a client of another office of the real estate brokerage firm 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 associated licensees.

(J)(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. A company policy adopted to fulfill the requirements of this subsection must contain provisions reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter.

(2) A broker-in-charge may personally, or through the broker's duly authorized real estate licensed representative, specifically designate one or more associated licensees who will be acting as agent of the buyer client or seller client to the exclusion of all other associated licensees. Buyers and sellers shall give informed 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 associated licensees under this section.

(3) If a buyer client of a real estate brokerage firm wants to view a property that was personally listed by the broker-in-charge, the real estate brokerage firm shall act as a dual agent with the written consent of the buyer and seller, as required by subsection (I). If a seller client of a real estate brokerage firm wants to sell a property to a buyer client of the real estate brokerage firm that is personally represented by the broker-in-charge, the real estate brokerage firm shall act as a dual agent with the written consent of the buyer and seller, as required by subsection (I).

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

(5) In a transaction where both buyer and seller are represented by designated agents, the broker-in-charge shall act as a dual agent pursuant to subsection (I). 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 the licensed representative appointed by the broker-in-charge, 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 brokerage firm wants to view and make an offer to purchase a property owned by a seller client being represented by the same associated licensee, the real estate brokerage firm must act as a dual agent with the written consent of the buyer and seller, as required by subsection (I).

(8) If a broker-in-charge appoints different associated licensees as designated agents in accordance with subsection (J)(1), the broker-in-charge, all remaining affiliated licensees, and the real estate brokerage firm must be considered to be dual agents.

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

(10) The designation of one or more of a broker-in-charge's associated licensees as designated agents does not permit the disclosure by the broker-in-charge or associated licensees of 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 associated 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's and associated licensee's compliance with this subsection.

(K) 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.

(L)(1) A real estate brokerage firm may offer transaction brokerage to potential buyers and sellers. A transaction broker may be a single agent of a party in a transaction, giving the other party customer service or the transaction broker may facilitate the transaction without representing either party.

(2) Licensees operating as transaction brokers are required to disclose to buyers and sellers their role and duties in offering customer services to the consumer that shall include the following:

- (a) honesty and fair dealing;
- (b) accounting for all funds;
- (c) using skill, care and diligence in the transaction;
- (d) disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;
- (e) promptly presenting all written offers and counteroffers;
- (f) limited confidentiality, unless waived in writing by a party. This limited confidentiality prohibits disclosing:

(i) information concerning a buyer's motivation to buy or the buyer's willingness to make a higher offer than the price submitted in a written offer;

(ii) factors motivating a seller to sell or the seller's willingness to accept an offer less than the list price;

(iii) that a seller or buyer will agree to financing terms other than those offered; and

(iv) information requested by a party to remain confidential, except information required by law to be disclosed;

(g) additional duties that are entered into by separate agreement.

(3) Prospective buyers and sellers who do not choose to establish an agency relationship with a real estate brokerage firm but who use the services of the firm are considered customers. A licensee may offer the following services to a customer as a single agent or as a transaction broker including, but not limited to:

(a) identifying and showing property for sale, lease, or exchange;

(b) providing real estate statistics and information on property;

(c) providing preprinted real estate forms, contracts, leases, and related exhibits and addenda;

(d) acting as a scribe in the preparation of real estate forms, contracts, leases, and related exhibits and addenda;

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

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

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

(a) timely present all written offers to and from the parties involving the sale, lease, and exchange of property, even when the property is subject to a contract of sale;

(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 brokerage relationships in real estate transactions;

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

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

(f) keep information confidential as requested in writing by the customer; and

(g) disclose known material facts regarding the property or the transaction.

(M) 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.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Sections 13 to 17; formerly 1976 Code Section 40-57-137; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-360. Broker-in-charge responsible for team supervision.

(A) The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage.

(B) The team may act as disclosed dual agents only and with the prior informed and written consent of all parties and as addressed in the broker-in-charge's written office policy.

(C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge.

(D) Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.

(E) No team may imply that the team is a separate entity from the brokerage firm of its employment. Team names may not include the terms “realty”, “real estate”, “realtors”, or similar terms suggesting a brokerage.

(F) The team, and any and all team members, must display and promote that they are directly connected to the brokerage firm under which the team works. The brokerage firm name under which the team works is to be displayed prominently and visibly in a meaningful and conspicuous way on all methods of advertising.

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

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-370. Duty of licensee to provide disclosure of brokerage relationships; exceptions.

(A) A licensee shall provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

(1) a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;

(2) Disclosure of Brokerage Relationships form prescribed by the commission.

(B) An “Acknowledgement of Receipt of the Disclosure of Brokerage Relationships” form must be included in an agency agreement and in a sales contract. In addition, each sales contract must require the buyer and the seller to acknowledge whether they received customer or client service in that real estate transaction.

(C) At the time of first substantive contact, it is presumed that the potential buyer or seller is to be a customer of the real estate brokerage firm and that the real estate brokerage firm will be acting as a transaction broker as defined by this chapter and that the real estate brokerage firm shall offer services to a customer as defined by Section 40-57-350(L) only until the potential buyer or seller signs an agency representation agreement.

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

(E) For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a real estate brokerage firm and its associated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its associated 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 real estate brokerage firm may 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 real estate brokerage firm’s specified duties, as provided in this chapter, and, in the case of a client, as specified in the agency agreement.

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

(G) The brokerage relationship disclosure requirements of this section do not apply if the:

(1) transaction is regarding the rental or lease of property; or

(2) communication from the licensee is a solicitation of business.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Section 18; formerly 1976 Code Section 40-57-139; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-380. Effect of termination, expiration, completion or performance of agency agreements; accounting and confidentiality.

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 Section 40-57-350(C)(1)(f) and Section 40-57-350(E)(1)(f) unless the:

(a) client permits the disclosure by written agreement;

(b) disclosure is required by law;

(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; or

(d) the information becomes public from a source other than the broker.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Section 19; formerly 1976 Code Section 40-57-140; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

ARTICLE 5

Property Managers

SECTION 40-57-510. Manager or property manager-in-charge license.

(A) To be eligible for licensure as a property manager or property manager-in-charge, an applicant must:

(1) attain the age of twenty-one if applying for a property manager-in-charge;

(2) attain the age of eighteen if applying for a license as a property manager;

(3) provide a physical address at which the licensee can be contacted in the course of an investigation. A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;

(4) graduate from high school or hold a certificate of equivalency that is recognized by the South Carolina Department of Education;

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

(6) submit to criminal background check as provided in Section 40-57-115 for initial application; and

(7) pass the applicable examination.

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

(C) As a condition for and before applying to the commission for licensure, an applicant for a property manager or property manager-in-charge license shall provide proof to the commission of having met the following educational requirements, in addition to the other requirements of this chapter:

(1) for a property manager license:

(a) completion of thirty hours of classroom instruction in property management principles and practices; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real estate or housing from an accredited college or university, or completion of another course of study approved by the commission; and

(2) for a property manager-in-charge license:

(a) an active property manager license; and

(b) completion of seven hours of instruction in property management accounting and record keeping approved by the commission.

(D) The commission shall issue licenses in the classifications of property manager or property manager-in-charge to individuals who qualify under and comply with the requirements of this chapter. An individual may not be licensed in more than one classification at the same time. The license must be in the form and size as the commission prescribes and is not transferable.

(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 commission 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, the licensee immediately shall notify the commission by completion of the proper form. The licensee must furnish a new business address to the commission, the authorization of the new broker-in-charge or new property manager-in-charge, and proof of notification to the former broker-in-charge or property manager-in-charge.

Text of (F) effective May 19, 2020.

(F) As a condition for and before applying to the commission for licensure renewal, a property manager or property manager-in-charge shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115.

Text of (G) effective May 19, 2020.

(G) A property manager or property manager-in-charge who fails to submit to criminal background check requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of submission to a criminal background check.

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017; 2017 Act No. 60 (H.3041), Section 4, eff May 19, 2020.

Effect of Amendment

2017 Act No. 60, Section 4, added (F) and (G), relating to the requirement of a criminal background check upon every third licensure renewal and consequences for failing to submit to the requirement.

SECTION 40-57-520. Management of residential multiunit rental locations.

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

(B) The commission may permit multiple multiunit rental property locations to be managed by one licensee.

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

- (1) maintenance;
- (2) clerical or administrative support;
- (3) collection of rents that are made payable to the owner or real estate company;
- (4) showing rental units to prospective tenants;
- (5) furnishing published information;
- (6) providing applications and lease forms; and
- (7) receiving applications and leases for submission to the owner or the licensee for approval.

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

ARTICLE 7
Misconduct and Redress

SECTION 40-57-710. Grounds for denial of issuance of license or for disciplinary action against licensee.

(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 on an application for a real estate license;
- (2) makes a substantial misrepresentation involving a real estate transaction;
- (3) makes false promises likely to influence, persuade, or induce;
- (4) pursues a continued and flagrant course of misrepresentation or makes false and misleading promises through any medium of advertising or otherwise;
- (5) in the practice of real estate, demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public;
- (6) represents a real estate broker other than the broker-in-charge or property manager-in-charge with whom they are licensed;
- (7) guarantees or authorizes and permits an associated licensee to guarantee future profits from the resale of real estate;
- (8) makes a dual set of contracts, written or otherwise, by stating a sales price other than the actual sales price;
- (9) is convicted of violating the federal and state fair housing laws, forgery, embezzlement, breach of trust, larceny, obtaining money or property under false pretense, extortion, fraud, conspiracy to defraud, or has been convicted of a felony sex-related, felony drug-related, felony real estate-related, felony financial, or felony violent offense, or pleading guilty or nolo contendere to such an offense in a court of competent jurisdiction of this State, another state, or a federal court;
- (10) fails to report to the commission in writing by certified mail, within ten days, notice of conviction of a crime provided in item (9);
- (11) fails, within a reasonable time, to account for or to remit trust funds coming into his possession which belong to others;
- (12) 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 who is not a party in the real estate sales or rental transaction;
- (13) violates a provision of law relating to the freedom of a buyer or seller to choose an attorney, insurance agent, title insurance agent, or another service provider to facilitate the real estate transaction;
- (14) fails to disclose in accordance with Section 40-57-370 the party or parties for whom the licensee will be acting as an agent in a real estate transaction, if any;
- (15) 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 disclosure to all parties;
- (16) represents more than one party in a real estate transaction without the full written knowledge and consent of all parties;
- (17) acts as an undisclosed principal in a real estate transaction;
- (18) 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;
- (19) issues a check in connection with his real estate business which is returned for insufficient funds or closed account;
- (20) fails to disclose in accordance with Section 40-57-350 a known material fact concerning a real estate transaction;
- (21) violates a provision of this chapter or a regulation promulgated under this chapter;
- (22) violates a rule or order of the commission;

- (23) knowingly gives false information to an investigator or inspector;
 - (24) engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their clients;
 - (25) fails to make all records required to be maintained under this chapter available to the commission for inspection and copying by the commission upon request of an investigator of the commission, fails to appear for an interview with an investigator of the commission without due cause, or provides false information upon direct inquiry by the investigator or inspector;
 - (26) fails to promptly submit all offers and counteroffers in a real estate sales transaction;
 - (27) fails to provide current contact information to the commission; or
 - (28) allows or creates 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.
- Text of (A)(29) effective May 19, 2020.
- (29) fails to disclose civil judgments brought on grounds of fraud, misrepresentation, or deceit.
- (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.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Sections 20, 21; 2006 Act No. 352, Section 1; 2014 Act No. 258 (S.75), Section 3, eff June 9, 2014; formerly 1976 Code Section 40-57-145; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017; 2017 Act No. 60 (H.3041), Section 3, eff May 19, 2020.

Code Commissioner's Note

At the direction of the Code Commissioner, the reference in (A)(20) to Section 40-57-530 was changed to Section 40-57-350 to correct a typographical error.

Editor's Note

Prior Laws: 1956 (49) 2046; 1969 (56) 762; 1972 (57) 2649; 1962 Code Section 56-1545.16; 1983 Act No. 94 Section 2; 1986 Act No. 353, Section 11; 1991 Act No. 12, Section 10; 1993 Act No. 181, Section 931; 1994 Act No. 385, Section 13; 1994 Act No. 451, Sections 2, 3; 1976 Code Section 40-57-170.

Effect of Amendment

2014 Act No. 258, Section 3, rewrote subsection (A)(8).

2016 Act No. 170, Section 1, rewrote the section.

2017 Act No. 60, Section 3, in (A), added (29), relating to failure to disclose civil judgments brought on grounds of fraud, misrepresentation, or deceit.

SECTION 40-57-720. Investigations; restraining orders; surrender of license; disciplinary action; report to be posted.

(A) An investigation must be conducted in accordance with Section 40-1-80 and must be performed by investigators who have completed one hundred hours of training in programs that are approved by the commission and provide instruction on real estate principles, state statutory and regulatory law, and investigative techniques.

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

(C)(1) The department shall conclude its investigation within one hundred fifty days from receipt of the complaint or seek a waiver of this period from the commission upon a showing of due diligence and extenuating circumstances.

(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, the commission may impose a fine of not less than five hundred or more than five thousand dollars for each violation and as provided in Section 40-1-120. The commission may recover the costs of the investigation and the prosecution as provided 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.

(F) The department annually shall post a report that provides the data for the number of complaints received, the number of investigations initiated, the average length of investigations, and the number of investigations that exceeded one hundred fifty days.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Sections 22 and 23; 2014 Act No. 258 (S.75), Section 2, eff June 9, 2014; formerly 1976 Code Section 40-57-150; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws: 1956 (49) 2046; 1962 Code Section 56-1545.17; 1983 Act No. 94 Section 3; 1986 Act No. 353, Section 12; 1994 Act No. 385, Section 14; 1976 Code Section 40-57-180.

Effect of Amendment

2014 Act No. 258, Section 2, rewrote subsection (A); added subsection (C)(2), and redesignated the subsections accordingly; and added subsection (F).

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-730. Licensure after revocation.

After revocation of a license, a person may not reapply for three years from the date of revocation. A person seeking licensure after revocation shall:

(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 that apply to individuals applying for a license who have never been licensed.

HISTORY: 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

SECTION 40-57-740. Actions against owners and agents; education standards; education providers or instructors.

(A) No cause of action may arise against an owner of real estate or licensed real estate agent of a 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 another 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) any off-site condition or hazard that does not directly impact the property being transferred; or

(4) any psychological impact that has no material impact on the physical condition of the property being transferred.

(B) Nothing in subsection (A) 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.

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

(D) The commission may deny, reprimand, fine, suspend, or revoke the approval of an education provider or instructor if the commission 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.

(E) An application by a provider who seeks approval to offer and conduct educational instruction or an application by an instructor must be made on a form prescribed by the commission and accompanied by applicable fees not less than sixty days before a course offering and must be approved by the department before it may commence instruction.

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

(G) If the commission approves an application, a certificate must be issued by the commission to a provider or an instructor and for an approved course to be renewed biennially.

(H) An approved course must be taught by an approved instructor who is qualified and has demonstrated knowledge of the subject matter to be taught as well as the ability to teach.

(I) Approved instructors shall attend instructor development workshops sponsored by the commission 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.

HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Sections 24, 25; 2005 Act No. 141, Section 10; 2008 Act No. 412, Section 3; formerly 1976 Code Section 40-57-180; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-750. 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.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-190; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, reenacted this section with no changes.

SECTION 40-57-760. Imposition of costs; collection.

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

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-200; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, reenacted this section with no changes.

SECTION 40-57-770. Confidentiality and privileged communications.

An investigation conducted pursuant to this chapter is confidential. Related communications are privileged as provided in Section 40-1-190.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-210; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-780. Failure to renew or register license; penalties.

A real estate broker, salesperson, or property manager who fails to renew or register a license and continues to engage in the business permitted pursuant to the license 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.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-220; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Editor's Note

Prior Laws:1956 (49) 2046; 1962 Code Section 56-1545.23; 1986 Act No. 353, Section 13; 1991 Act No. 12, Section 11; 1976 Code Section 40-57-240.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

SECTION 40-57-790. Civil actions.

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

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-230; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, substituted "Article 1, Chapter 1," for "Title 40, Chapter 1, Article 1".

SECTION 40-57-800. Service of notice; 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 providing a copy of the notice, and accompanying documents. A copy of the notice, accompanying documentation, and a certified copy of the service on the administrator must be mailed to the licensee at his last known address, return receipt requested. The administrator 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.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-170; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, in (A), substituted "providing" for "leaving with the Director of the Department of Labor, Licensing and Regulation", substituted "accompanying documentation" for any accompanying documents", and twice substituted "administrator" for "director".

SECTION 40-57-810. Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase,

and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

HISTORY: 1997 Act No. 24, Section 1; formerly 1976 Code Section 40-57-250; 2016 Act No. 170 (S.1013), Section 1, eff January 1, 2017.

Effect of Amendment

2016 Act No. 170, Section 1, rewrote the section.

South Carolina General Assembly
121st Session, 2015-2016

S. 290

STATUS INFORMATION

General Bill

Sponsors: Senator Alexander

Document Path: I:\s-res\tca\019vuln.ls.tca.docx

Introduced in the Senate on January 13, 2015

Currently residing in the Senate Committee on **General**

Summary: Vulnerable Adult and Senior Citizen Protection Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/13/2015	Senate	Introduced and read first time (Senate Journal-page 171)
1/13/2015	Senate	Referred to Committee on Judiciary (Senate Journal-page 171)
3/24/2015	Senate	Recalled from Committee on Judiciary (Senate Journal-page 5)
3/24/2015	Senate	Committed to Committee on General (Senate Journal-page 5)

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VERSIONS OF THIS BILL

[1/13/2015](#)

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A BILL

TO AMEND ARTICLE 1, CHAPTER 35, TITLE 43 OF THE 1976 CODE, RELATING TO THE PROTECTION OF VULNERABLE ADULTS FROM ABUSE, NEGLECT, OR EXPLOITATION, SO AS TO DEFINE A SENIOR CITIZEN AS A PERSON SIXTY YEARS OR OLDER AND TO EXTEND APPLICATION OF THE PROTECTIONS OF THE ARTICLE TO SENIOR CITIZENS; TO ADD HUMAN TRAFFICKING AS A CRIME SUBJECT TO FINES AND IMPRISONMENT; TO CHANGE EXISTING CRIMINAL PENALTIES; TO CREATE DUTIES RELATED TO DISCHARGING VULNERABLE ADULTS AND SENIOR CITIZENS FROM CERTAIN SETTINGS; TO CREATE AN AFFIRMATIVE DEFENSE TO COMMITTING OFFENSES PROVIDED FOR IN THE ARTICLE; AND FOR OTHER PURPOSES.

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

Whereas, South Carolina’s senior citizens are valued members of our community who deserve to live with respect and dignity; and

Whereas, the population of the State’s citizens age sixty and older has increased from nearly 915,000 in 2010 to a projected 1,200,000 in 2020, an increase of approximately thirty percent; and

Whereas, it is widely recognized that, in general, senior citizens are at a greater risk of harm from abuse, neglect, and exploitation, than are younger adults; and

Whereas, while the Omnibus Adult Protection Act of 2006 protects senior citizens who live in long-term care facilities or who are

1 disabled from abuse, neglect, and exploitation, the statute does not
2 protect the many seniors who are able to live independently; and

3
4 Whereas, in addition to abuse, neglect, and exploitation, human
5 trafficking of senior citizens is a growing problem, whether
6 through deprivation of food and medication by a caregiver or
7 placement in or transfer to a facility with unsafe and unsanitary
8 conditions; and

9
10 Whereas, the abuse, neglect, exploitation, and human trafficking of
11 senior citizens can occur in long-term care facilities, in the privacy
12 of a senior's home, and elsewhere in the community. Now,
13 therefore,

14
15 Be it enacted by the General Assembly of the State of South
16 Carolina:

17
18 SECTION 1. Article 1, Chapter 35, Title 43 of the 1976 Code is
19 amended to read:

20
21 "Article 1

22
23 Duties and Procedures of Investigative Entities

24
25 Section 43-35-5. This chapter may be cited as the ~~Omnibus~~
26 Vulnerable Adult and Senior Citizen Protection Act.

27
28 Section 43-35-10. As used in this chapter:

29 (1) 'Abuse' means physical abuse or psychological abuse.

30 (2) 'Adult Protective Services Program' means the Adult
31 Protective Services Program of the Department of Social Services.

32 (3) 'Caregiver' means a person who provides care to a
33 vulnerable adult or senior citizen, with or without compensation,
34 on a temporary, ~~or~~ permanent, ~~or~~ full or part-time basis and
35 includes, but is not limited to, a relative, household member, day
36 care personnel, adult foster home sponsor, and personnel of a
37 public or private institution or facility.

38 (4) 'Contracted facility' means those public and private
39 facilities contracted for operation by the Department of Mental
40 Health or the Department of Disabilities and Special Needs.

41 (5) 'Deception' means taking or failing to take an action
42 pursuant to which a person knowingly:

43 (a) creates or confirms a false impression;

1 (b) fails to correct a false impression created or confirmed
2 pursuant to subitem (a);

3 (c) fails to correct a false impression created by another
4 person when under a duty to correct the false impression;

5 (d) prevents another person from acquiring information
6 pertinent to the disposition of property;

7 (e) sells or otherwise transfers or encumbers property
8 without disclosing a lien, adverse claim, or other legal impediment
9 to the enjoyment of the property interest sold or transferred,
10 whether or not the impediment is valid or is a matter of official
11 record; or

12 (f) promises performance when the person does not intend
13 to perform the promise or knows that the promise will not be
14 performed.

15 . (3)(6) 'Exploitation' means:

16 (a) ~~causing or requiring~~ to cause or require a vulnerable
17 adult or senior citizen to engage in activity or labor which that is
18 improper, unlawful, or against the reasonable and rational wishes
19 of the vulnerable adult or senior citizen. ~~Exploitation does not~~
20 ~~include requiring a vulnerable adult to participate in which does~~
21 ~~not include~~ an activity or labor which that is a part of a written
22 plan of care or which is prescribed or authorized by a licensed
23 physician attending the patient;

24 (b) the use of deception, intimidation, undue influence,
25 force, or threat of force to obtain or exert an improper, unlawful, or
26 unauthorized control over or use of the funds, assets, property,
27 power of attorney, guardianship, or conservatorship of a vulnerable
28 adult or senior citizen by a person, including a person who stands
29 in a position of trust or confidence to the vulnerable adult or senior
30 citizen, for the profit or advantage of that person or another person;
31 or with the intent to deprive the vulnerable adult or senior citizen
32 of those funds, assets, or property;

33 (c) the breach of a fiduciary duty owed to a vulnerable adult
34 or senior citizen by a guardian, conservator, or agent pursuant to a
35 power of attorney for the profit or advantage of the person or
36 another person or which results in an unauthorized appropriation,
37 sale, or transfer of the vulnerable adult's or senior citizen's
38 property;

39 (e)(d) ~~causing to cause~~ a vulnerable adult or senior citizen to
40 purchase goods or services for the profit or advantage of the seller
41 or another person through:

42 (i) undue influence;

43 (ii) harassment;

1 (iii) duress;
2 (iv) force;
3 (v) coercion; or
4 (vi) swindling by overreaching, cheating, or defrauding the
5 vulnerable adult or senior citizen through cunning arts or devices
6 that delude the vulnerable adult or senior citizen and cause him to
7 lose money or other property.

8 (7) 'Extortion' means to obtain unlawfully money, property, or
9 any other thing of value, either tangible or intangible, through the
10 use or threat of force, misuse of authority, threat of criminal
11 prosecution, threat of destruction of reputation or social standing,
12 or through other coercive means.

13 (4)(8) 'Facility' means a nursing care facility, community
14 residential care facility, a psychiatric hospital, or any residential
15 program operated or contracted for operation by the Department of
16 Mental Health or the Department of Disabilities and Special
17 Needs.

18 (9) 'Great bodily injury' means bodily injury that creates a
19 substantial risk of death or that causes serious, permanent
20 disfigurement, or protracted loss or impairment of the function of a
21 bodily member or organ.

22 (10) 'Human trafficking' means knowingly transporting,
23 soliciting, extorting, recruiting, harboring, providing, enticing,
24 maintaining, housing, or obtaining a vulnerable adult or senior
25 citizen for the purpose of exploitation of that person.

26 (11) 'Intimidation' means a threat to a vulnerable adult or senior
27 citizen of physical or psychological harm or of deprivation of food,
28 nutrition, prescribed medication, shelter, property, or medical care
29 or treatment.

30 (5)(12) 'Investigative entity' means the Long Term Care
31 Ombudsman Program, the Adult Protective Services Program in
32 the Department of Social Services, the Vulnerable Adults
33 Investigations Unit of the South Carolina Law Enforcement
34 Division, or the Medicaid Fraud Control Unit of the Office of the
35 Attorney General.

36 (13) 'Long Term Care Ombudsman Program' means the Long
37 Term Care Ombudsman Program of the Office on Aging.

38 (6)(14) 'Neglect' means the failure ~~or omission~~ of a caregiver to
39 provide the care, goods, or services necessary to maintain the
40 health or safety of a vulnerable adult or senior citizen including,
41 but not limited to, food, clothing, medicine, shelter, supervision,
42 and medical services and the failure ~~or omission~~ has caused, or
43 presents a substantial risk of causing, physical or mental injury to

1 the vulnerable adult or senior citizen. Noncompliance with
2 regulatory standards alone does not constitute neglect. Neglect
3 includes the inability of a vulnerable adult or senior citizen, in the
4 absence of a caretaker, to provide for his ~~or her~~ own health or
5 safety ~~which~~ that produces or could reasonably be expected to
6 produce serious physical or psychological harm or substantial risk
7 of death.

8 (7)(15) 'Occupational licensing board' means a health
9 professional licensing board ~~which~~ that is a state agency that
10 licenses and regulates health care providers, and includes, but is
11 not limited to, the Board of Long Term Health Care
12 Administrators, State Board of Nursing for South Carolina, State
13 Board of Medical Examiners, State Board of Social Work
14 Examiners, and the State Board of Dentistry.

15 (16) 'Operated facility' means a facility directly operated by the
16 Department of Mental Health or the Department of Disabilities and
17 Special Needs.

18 (17) 'Person' means a human being, except as otherwise defined
19 pursuant to this chapter.

20 (8)(18) 'Physical abuse': ~~means intentionally inflicting or~~
21 ~~allowing to be inflicted~~

22 (a) means acting or failing to act in an intentional and wilful
23 manner in order to cause physical injury on to a vulnerable adult or
24 senior citizen by an act or failure to act. Physical abuse includes,
25 but is not limited to, or acting in a reckless manner that results in
26 physical injury to a vulnerable adult or senior citizen, including by:

27 (i) slapping, hitting, kicking, biting, choking, pinching,
28 burning;

29 (ii) actual or attempted sexual battery as defined in
30 pursuant to Section 16-3-651;

31 (iii) use of medication outside the standards of reasonable
32 medical practice for the purpose of controlling behavior; and;

33 (iv) unreasonable confinement. Physical abuse also
34 includes the; or

35 (v) use of a restrictive or physically intrusive procedure to
36 control behavior for the purpose of punishment, except that a
37 therapeutic unless the procedure is a therapeutic procedure
38 prescribed by a licensed physician or other qualified professional
39 or that is part of a written plan of care by a licensed physician or
40 other qualified professional is not considered physical abuse.
41 Physical abuse; and

42 (b) does not include mean altercations or acts of assault
43 between vulnerable adults.

1 (19) 'Position of trust and confidence' means, with respect to a
2 vulnerable adult or senior citizen, a person who:

3 (a) is a parent, spouse, adult child, or other relative by blood
4 or marriage of the vulnerable adult or senior citizen;

5 (b) is a joint tenant or tenant in common with respect to
6 property of the vulnerable adult or senior citizen;

7 (c) owes a legal or fiduciary duty to the vulnerable adult or
8 senior citizen including, but not limited to, a court-appointed or
9 voluntary guardian, trustee, attorney, or conservator;

10 (d) is a caregiver of the vulnerable adult or senior citizen; or

11 (e) is another person who has been entrusted with or has
12 assumed responsibility for the use or management of a vulnerable
13 adult's or senior citizen's funds, assets, or property.

14 ~~(9)~~(20) 'Protective services' means those services whose
15 objective is to protect a vulnerable adult or senior citizen from
16 harm caused by the vulnerable adult or senior citizen or by another
17 person. ~~These services include including,~~ but are not limited to,
18 evaluating the need for protective services, securing and
19 coordinating existing services, arranging for living quarters,
20 obtaining financial benefits to which a vulnerable adult is entitled,
21 and securing medical services, supplies, and legal services.

22 ~~(10)~~(21) 'Psychological abuse' means deliberately subjecting a
23 vulnerable adult or senior citizen to threats or harassment or other
24 forms of intimidating behavior causing fear, humiliation,
25 degradation, agitation, confusion, or other forms of serious
26 emotional distress.

27 (22) 'Senior citizen' means a person sixty years of age or older
28 who is not a vulnerable adult as defined pursuant to this article.

29 (23) 'Undue influence' means domination, coercion,
30 manipulation, or another act of a person that prevents a vulnerable
31 adult or senior citizen from exercising free judgment and choice.

32 ~~(11)~~(24) 'Vulnerable adult' means:

33 (a) a person eighteen years of age or older who has a
34 physical or mental condition which ~~that~~ substantially impairs the
35 person from adequately providing for his or ~~her~~ own care or
36 protection. ~~This includes which includes~~ a person who is impaired
37 in the ability to adequately provide for the person's his own care or
38 protection because of the infirmities of aging including, but not
39 limited to, organic brain damage, advanced age, and physical,
40 mental, or emotional dysfunction; or

41 (b) A a resident of a facility is ~~a vulnerable adult~~.

1 (25) 'Vulnerable Adults Investigations Unit' means the
2 Vulnerable Adults Investigations Unit of the South Carolina Law
3 Enforcement Division.

4 (12) ~~'Operated facility'~~ means those facilities directly operated
5 by the Department of Mental Health or the Department of
6 Disabilities and Special Needs.

7 (13) ~~'Contracted facility'~~ means those public and private
8 facilities contracted for operation by the Department of Mental
9 Health or the Department of Disabilities and Special Needs.

10
11 Section 43-35-13. No vulnerable adult or senior citizen may be
12 considered to be abused or neglected for the sole reason that, in
13 lieu of medical treatment, the vulnerable adult or senior citizen is
14 being furnished nonmedical remedial treatment by spiritual means
15 through prayer alone which the vulnerable adult has practiced
16 freely in accordance with his religion.

17
18 Section 43-35-15. (A) The Vulnerable Adults Investigations
19 Unit of the South Carolina Law Enforcement Division shall
20 receive and coordinate the referral of all reports of alleged abuse,
21 neglect, or exploitation or human trafficking of vulnerable adults
22 in facilities operated or contracted for operation by the Department
23 of Mental Health or the Department of Disabilities and Special
24 Needs. The unit shall establish a toll free number, which must be
25 operated twenty-four hours a day, seven days a week, to receive
26 the reports. The unit shall investigate or refer to appropriate law
27 enforcement those reports in which there is reasonable suspicion of
28 criminal conduct. The unit also shall investigate vulnerable adult
29 fatalities as provided for ~~in~~ pursuant to Article 5, Chapter 35, Title
30 43. The unit shall refer those reports in which there is no
31 reasonable suspicion of criminal conduct to the appropriate
32 investigative entity for investigation. Upon conclusion of a
33 criminal investigation of abuse, neglect, or exploitation, or human
34 trafficking of a vulnerable adult, the unit or other law enforcement
35 shall refer the case to the appropriate prosecutor when further
36 action is necessary. The South Carolina Law Enforcement Division
37 may develop policies, procedures, and ~~memorandum~~ memoranda
38 of agreement with other agencies to be used in fulfilling the
39 requirements of this article. ~~However, the South Carolina Law~~
40 ~~Enforcement Division must~~ but may not delegate its responsibility
41 to investigate criminal reports of alleged abuse, neglect, and
42 exploitation, and human trafficking to the agencies, facilities, or
43 entities that operate or contract for the operation of the facilities.

1 Nothing in this subsection precludes the Department of Mental
2 Health, the Department of Disabilities and Special Needs, or their
3 contractors from performing administrative responsibilities in
4 compliance with applicable state and federal requirements.

5 (B) Except as otherwise provided in subsection (D), the Long
6 Term Care Ombudsman Program of the Office on Aging shall
7 investigate or cause to be investigated noncriminal reports of
8 alleged abuse, neglect, and exploitation, and human trafficking of
9 vulnerable adults occurring in facilities. The Long Term Care
10 Ombudsman Program may develop policies, procedures, and
11 memoranda of agreement to be used in reporting these incidents
12 and in furthering its investigations. The Long Term Care
13 Ombudsman Program must not delegate its responsibility to
14 investigate noncriminal reports of alleged abuse, neglect, and
15 exploitation, and human trafficking to the facilities or to the
16 entities that operate or contract for the operation of the facilities.
17 Nothing in this subsection precludes the Department of Mental
18 Health, the Department of Disabilities and Special Needs, or their
19 contractors from performing administrative responsibilities in
20 compliance with applicable state and federal requirements. The
21 Long Term Care Ombudsman Program shall refer reports of abuse,
22 neglect, and exploitation, and human trafficking to the Vulnerable
23 Adults Investigations Unit ~~of the South Carolina Law Enforcement~~
24 ~~Division~~ if there is reasonable suspicion of criminal conduct.

25 (C) The Adult Protective Services Program in the Department
26 of Social Services shall investigate or cause to be investigated
27 noncriminal reports of alleged abuse, neglect, and exploitation, and
28 human trafficking of senior citizens and of vulnerable adults
29 occurring in all settings other than those facilities for which the
30 Long Term Care Ombudsman Program is responsible for the
31 ~~investigation~~ investigating pursuant to this section. The Adult
32 Protective Services Program may promulgate regulations and
33 develop policies, procedures, and memoranda of agreement to be
34 used in reporting these incidents, in furthering its investigations,
35 and in providing protective services. The Adult Protective Services
36 Program shall refer reports of abuse, neglect, and exploitation, and
37 human trafficking to the Vulnerable Adults Investigations Unit ~~of~~
38 ~~the South Carolina Law Enforcement Division~~ if there is
39 reasonable suspicion of criminal conduct.

40 (D) Notwithstanding another provision of law, the Vulnerable
41 Adults Investigations Unit ~~of the South Carolina Law Enforcement~~
42 ~~Division~~ shall refer reports of abuse, neglect, and exploitation, and
43 human trafficking involving residents committed to the

1 Department of Mental Health pursuant to Chapter 48, Title 44 in
2 which there is no reasonable suspicion of criminal conduct to the
3 Department of Mental Health Client Advocacy Program for
4 investigation.

5

6 Section 43-35-20. In addition to all other powers and duties
7 that provided to an investigative entity ~~is given in~~ pursuant to this
8 article, the investigative entity may:

9 (1) have access to facilities or other locations at which the
10 vulnerable adult or senior citizen resides or at which the alleged
11 abuse, neglect, exploitation, or human trafficking occurred, for the
12 purpose of conducting investigations, as otherwise permitted by
13 law;

14 (2) request and receive written statements, documents, exhibits,
15 and other items pertinent to an investigation including, but not
16 limited to, hospital records of a vulnerable adult ~~which~~ or senior
17 citizen that the hospital is authorized to release upon written
18 request of the investigative entity without obtaining patient
19 authorization;

20 (3) issue, through its director, administrative subpoenas for the
21 purpose of gathering information and documents;

22 (4) institute proceedings in a court of competent jurisdiction to
23 seek relief necessary to carry out the provisions of this chapter;

24 (5) require all persons, including family members ~~or other~~
25 caregivers of a vulnerable adult or senior citizen and facility staff
26 members, to cooperate with the investigative entity in carrying out
27 its duties ~~under~~ pursuant to this chapter including, but not limited
28 to, conducting investigations and providing protective services;

29 (6) require all officials, agencies, departments, and political
30 subdivisions of the State to assist and cooperate within their
31 jurisdictional power with the court and the investigative entity in
32 furthering the purposes of this chapter;

33 (7) conduct studies and compile data regarding abuse, neglect,
34 and exploitation, and human trafficking; and

35 (8) issue reports and recommendations.

36

37 Section 43-35-25. (A) A physician, nurse, dentist, optometrist,
38 medical examiner, coroner, other medical, mental health or allied
39 health professional, Christian Science practitioner, religious healer,
40 school teacher, counselor, psychologist, mental health or
41 intellectual disability specialist, social or public assistance worker,
42 caregiver, staff or volunteer of an adult day care center or of a
43 facility, or law enforcement officer ~~having~~ who, in good faith, has

1 reason to believe that a vulnerable adult or senior citizen has been
2 or is likely to be abused, neglected, ~~or exploited, or a victim of~~
3 human trafficking shall report the incident in accordance with this
4 section. Any other person who has actual knowledge that a
5 vulnerable adult or senior citizen has been abused, neglected, ~~or~~
6 exploited, or a victim of human trafficking shall report the incident
7 ~~in accordance with~~ pursuant to this section.

8 (B) Except as provided in subsection (A), any other person
9 who, in good faith, has reason to believe that a vulnerable adult or
10 senior citizen has been or may be abused, neglected, ~~or exploited,~~
11 or a victim of human trafficking may report the incident.

12 (C) A person required to report pursuant to this section is
13 personally responsible for making the report; however, a state
14 agency may make a report on behalf of an agency employee if the
15 procedure the agency uses for reporting has been approved in
16 writing by the Vulnerable Adults Investigations Unit ~~of the South~~
17 ~~Carolina Law Enforcement Division~~ or the investigative entity to
18 which the report is to be made.

19 (D) A person required to report ~~under~~ pursuant to this section
20 ~~must~~ shall report the incident within twenty-four hours or the next
21 working day. A report must be made in writing or orally by
22 telephone or otherwise to:

23 (1) the Vulnerable Adults Investigations Unit ~~of the South~~
24 ~~Carolina Law Enforcement Division~~ for incidents occurring in
25 facilities operated or contracted for operation by the Department of
26 Mental Health or the Department of Disabilities and Special
27 Needs;

28 (2) the Long Term Care Ombudsman Program for incidents
29 occurring in facilities, except those facilities provided for in item
30 (1); and

31 (3) the Adult Protective Services Program for incidents
32 occurring in all other settings.

33 (E) If the Vulnerable Adults Investigations Unit ~~of the South~~
34 ~~Carolina Law Enforcement Division~~ or an investigative entity
35 receives a report that is not within its investigative jurisdiction, the
36 unit or investigative entity shall forward the report to the
37 appropriate unit or investigative entity not later than the next
38 working day.

39 (F) No facility may develop policies or procedures that
40 interfere with the reporting requirements of this section.

41 (G) Provided the mandatory reporting requirements of this
42 section are met, nothing in this section precludes a person also
43 from reporting directly to law enforcement, and in cases of an

1 emergency, serious injury, or suspected sexual assault law
2 enforcement must be contacted immediately.

3
4 Section 43-35-30. A person required to report pursuant to this
5 article or a person investigating a report may take or cause to be
6 taken color photographs of the trauma visible on the vulnerable
7 adult or senior citizen who is the subject of a report. A person
8 required to report ~~under~~ pursuant to this chapter article as a
9 member of the staff of a medical facility, public or private
10 institution, school, facility, or agency immediately shall notify the
11 person in charge or the designated agent of the person in charge
12 who shall take or cause to be taken color photographs of visible
13 trauma. The investigative entity or law enforcement, if indicated,
14 may cause to be performed a radiological examination or medical
15 examination of the vulnerable adult or senior citizen without
16 consent. All photographs, x-rays, and results of medical
17 examinations and tests must be provided to law enforcement or to
18 the investigative entity upon request.

19
20 Section 43-35-35. (A) A person required to report or
21 investigate cases ~~under~~ pursuant to this chapter article who has
22 reasonable suspicion to believe that a vulnerable adult or senior
23 citizen died as a result of abuse or neglect shall report the death
24 and suspected cause of death to the coroner or medical examiner.
25 The coroner or medical examiner shall conduct an investigation
26 and may conduct or order an autopsy. The coroner or medical
27 examiner ~~must~~ shall report the investigative findings to the
28 Vulnerable Adults Investigations Unit of the South Carolina Law
29 Enforcement Division.

30 (B) All deaths involving a vulnerable adult in a facility
31 operated or contracted for operation by the Department of Mental
32 Health, the Department of Disabilities and Special Needs, or their
33 contractors must be referred to the Vulnerable Adults
34 Investigations Unit of the South Carolina Law Enforcement
35 Division for investigation pursuant to Section 43-35-520.

36
37 Section 43-35-40. Upon receiving a report, the Long Term
38 Care Ombudsman or Adult Protective Services Program promptly
39 shall:

- 40 (1) initiate an investigation; or
41 (2) review the report within two working days for the
42 purpose of reporting those cases that indicate reasonable suspicion
43 of criminal conduct to local law enforcement or to the Vulnerable

1 Adults Investigations Unit of the South Carolina Law Enforcement
2 Division (SLED). A report to local law enforcement or SLED the
3 Vulnerable Adults Investigations Unit must be made within one
4 working day of completing the review.

5
6 Section 43-35-45. (A) In investigating a report, if the
7 investigative entity is unable to obtain consent ~~cannot be obtained~~
8 for access to the vulnerable adult or senior citizen or the premises,
9 the investigative entity may seek a warrant from the family court to
10 enter and inspect and photograph the premises and the condition of
11 the vulnerable adult or senior citizen. The court shall issue a
12 warrant upon a showing of probable cause that the vulnerable adult
13 or senior citizen has been abused, neglected, ~~or~~ exploited, or is a
14 victim of human trafficking or is at risk of abuse, neglect, ~~or~~
15 exploitation, or human trafficking.

16 (B) At any time during or subsequent to an investigation ~~where~~
17 when a vulnerable adult or senior citizen is at substantial risk to be
18 or has been abused, neglected, ~~or~~ exploited, or a victim of human
19 trafficking and the investigative entity is unable to obtain consent
20 to provide services ~~cannot be obtained~~, the Adult Protective
21 Services Program may petition the family court for an order to
22 provide protective services. In those cases requiring emergency
23 protective services or emergency removal of the vulnerable adult
24 or senior citizen from the place the vulnerable adult or senior
25 citizen is located or residing, the Adult Protective Services
26 Program may seek ex parte relief. The court may expedite the ex
27 parte proceeding to any extent necessary to protect the vulnerable
28 adult or senior citizen. The family court may order ex parte that the
29 vulnerable adult or senior citizen be taken into emergency
30 protective custody without the consent of the vulnerable adult or
31 senior citizen or of the guardian or others exercising temporary or
32 permanent control over the vulnerable adult or senior citizen, if the
33 court determines there is probable cause to believe that by reason
34 of abuse or neglect there exists an imminent danger to the
35 vulnerable adult adult's or senior citizen's life or physical safety.
36 The court also may order emergency services or other relief as
37 necessary to protect the vulnerable adult or senior citizen.

38 (C) Within ten days ~~following the~~ after filing of a petition
39 pursuant to this section, the court ~~must~~ shall appoint a guardian ad
40 litem and an attorney for the vulnerable adult, ~~and~~ or senior
41 citizen. Within forty days ~~of~~ after filing the petition ~~being filed~~,
42 the court shall hold a hearing on the merits.

1 (D)(1) Before the hearing on the merits the Adult Protective
2 Services Program ~~must~~ shall conduct a comprehensive evaluation
3 of the vulnerable adult or senior citizen. The evaluation must
4 include, but is not limited to:

5 (1)(a) the vulnerable adult ~~adult's or senior citizen's~~
6 current address and with whom the vulnerable adult or senior
7 citizen is residing;

8 (2)(b) a list of all persons or agencies currently providing
9 services to the vulnerable adult or senior citizen and the nature of
10 these services;

11 (3)(c) a summary of services, if any, provided to the
12 vulnerable adult or senior citizen by the Adult Protective Services
13 Program;

14 (4)(d) if needed, a medical, psychological, social,
15 vocational, or educational evaluation; and

16 (5)(e) recommendations for protective services ~~which that~~
17 would serve the best interests of the vulnerable adult or senior
18 citizen; however, when these services are to be provided by
19 another state agency, ~~these the Adult Protective Services Program~~
20 shall develop the related recommendations ~~must be developed in~~
21 consultation with the other agency.

22 (2) A copy of the evaluation must be provided to the court,
23 the guardian ad litem, and the attorney at least five working days
24 before the hearing on the merits. Reasonable expenses incurred for
25 evaluations required by pursuant to this subsection must be paid by
26 the Adult Protective Services Program, which ~~must~~ shall seek
27 reimbursement for these evaluations, where possible.

28 (E) At the hearing on the merits, the court may order the Adult
29 Protective Services Program to provide protective services if ~~it~~ the
30 court finds that:

31 (1) the vulnerable adult or senior citizen is at substantial risk
32 of being or has been abused, neglected, ~~or exploited, or a victim of~~
33 human trafficking, and the vulnerable adult or senior citizen is
34 unable to protect herself or himself; and

35 (2) protective services are necessary to protect the
36 vulnerable adult or senior citizen from the substantial risk of or
37 from abuse, neglect, ~~or exploitation, or human trafficking~~.

38 (F) Protective services ordered pursuant to this section must be
39 provided in the least restrictive setting available and appropriate
40 for the vulnerable adult or senior citizen and noninstitutional
41 placement must be used whenever possible. Subsequently, if
42 commitment to a treatment facility is required, the Adult Protective
43 Services Program may initiate commitment proceedings.

1 (G) ~~Any~~ An interested person, on behalf of the vulnerable adult
2 or senior citizen, may file a motion for review of the court order
3 issued pursuant to this section.

4 (H) Following a court order from the merits hearing to provide
5 protective services to a vulnerable adult or senior citizen, the Adult
6 Protective Services Program, at least every six months, ~~must~~ shall
7 evaluate the vulnerable adult or senior citizen and submit a written
8 report to the court, and to any other parties as required by the
9 court, regarding the vulnerable adult ~~adult's~~ adult's or senior citizen's
10 need for continued protective services ~~as defined in~~ pursuant to
11 this chapter.

12 (I) If the court determines that the vulnerable adult or senior
13 citizen is financially capable of paying for services ordered
14 pursuant to this section, ~~then the court may order~~ payment by or
15 from the financial resources of the vulnerable adult or senior
16 citizen may be ordered.

17 (J) In an action for exploitation or in which payment for
18 protective services is in issue, upon its own motion or a motion of
19 any party, the court may order that the vulnerable adult ~~adult's~~ adult's or
20 senior citizen's financial records be made available on a certain
21 day and time for inspection by the parties.

22 (K) Expenses incurred by the Adult Protective Services
23 Program on behalf of a vulnerable adult or senior citizen that have
24 not been reimbursed ~~at the time of~~ before the vulnerable adult's or
25 senior citizen's death become a claim against the estate of the
26 vulnerable adult or senior citizen.

27 (L) Payments for which a vulnerable adult is responsible or for
28 which the Adult Protective Services Program is to be reimbursed
29 only include payments to third parties and do not include personnel
30 or operating expenses of the Adult Protective Services Program.

31
32 Section 43-35-50. The privileged quality of communication
33 between husband and wife or between a professional person and
34 the person's patient or client, except that between attorney and
35 client or priest and penitent, are abrogated and do not constitute
36 grounds for failing to report or for the exclusion of evidence in any
37 civil or criminal proceeding resulting from a report made pursuant
38 to this chapter.

39
40 Section 43-45-55. (A) A law enforcement officer may take a
41 vulnerable adult or senior citizen in a life-threatening situation into
42 protective custody if:

1 (1) there is probable cause to believe that by reason of abuse,
2 neglect, ~~or exploitation, or human trafficking~~ there exists an
3 imminent danger to the vulnerable adult adult's or senior citizen's
4 life or physical safety;

5 (2) the vulnerable adult or senior citizen, or the vulnerable
6 adult's or senior citizen's caregiver, does not consent to protective
7 custody; and

8 (3) there is not time to apply for a court order.

9 (B) When a law enforcement officer takes protective custody of
10 a vulnerable adult or senior citizen, the officer ~~must~~ shall transport
11 the vulnerable adult or senior citizen to a place of safety ~~which that~~
12 must not be a facility for the detention of criminal offenders or of
13 persons accused of crimes. The Adult Protective Services Program
14 has custody of the vulnerable adult or senior citizen pending the
15 family court hearing to determine if there is probable cause for
16 protective custody.

17 (C) A vulnerable adult or senior citizen who is taken into
18 protective custody by a law enforcement officer, may not be
19 considered to have been arrested.

20 (D) When a law enforcement officer takes protective custody of
21 a vulnerable adult or senior citizen ~~under pursuant to~~ this section,
22 the law enforcement officer ~~must~~ immediately shall notify the
23 Adult Protective Services Program and the Department of Social
24 Services office in the county ~~where in which~~ the vulnerable adult
25 or senior citizen was situated at the time of being taken into
26 protective custody. This notification must be made in writing or
27 orally by telephone or otherwise and must include the following
28 information:

29 (1) the name of the vulnerable adult or senior citizen, if
30 known, or a physical description of the vulnerable adult or senior
31 citizen, if the name is unknown;

32 (2) the address of the place from which the vulnerable adult
33 or senior citizen was removed by the officer;

34 (3) the name and the address, if known, of any person who
35 was exercising temporary or permanent custody of or control over
36 or who was the caregiver of the vulnerable adult or senior citizen
37 at the time the vulnerable adult or senior citizen was taken into
38 protective custody;

39 (4) the address of the place to which the vulnerable adult or
40 senior citizen was transported by the officer; and

41 (5) a description of the facts and circumstances resulting in
42 the officer taking the vulnerable adult or senior citizen into
43 protective custody.

1 (E) The Department of Social Services is responsible for filing
2 a petition for protective custody within one business day of
3 receiving the notification required by pursuant to subsection (D).

4 (F) The family court shall hold a hearing to determine whether
5 there is probable cause for the protective custody within
6 seventy-two hours of the Department of Social Services filing the
7 petition, excluding Saturdays, Sundays, and legal holidays.

8 (G) Upon receiving notification that a vulnerable adult or senior
9 citizen has been taken into protective custody the Adult Protective
10 Services Program shall commence an investigation. After the
11 hearing required by pursuant to subsection (F), the Adult
12 Protective Services Program may initiate or cause to be initiated a
13 petition for services pursuant to Section 43-35-45.

14
15 Section 43-35-60. Unless otherwise prohibited by law, a state
16 agency, an investigative entity, and law enforcement may share
17 information related to an investigation conducted as a result of a
18 report made under pursuant to this chapter. Information in these
19 investigative records must not be disclosed publicly.

20
21 Section 43-35-65. A facility, as defined in Section 43-35-10,
22 shall prominently display notices stating the duties of its personnel
23 under pursuant to this chapter and contact information, the text of
24 which must be provided by the Long Term Care Ombudsman
25 Program in consultation with the Vulnerable Adults Investigations
26 Unit of the South Carolina Law Enforcement Division.

27
28 Section 43-35-70. The investigative entity shall report an
29 alleged incident of abuse, neglect, or exploitation, or human
30 trafficking against a health care professional to the occupational
31 licensing board by whom that person is licensed.

32
33 Section 43-35-75. (A) A person who acting in good faith
34 reports pursuant to this chapter or who participates in an
35 investigation or judicial proceeding resulting from a report is
36 immune from civil and criminal liability which that may otherwise
37 result by reason of this action the report or participation in the
38 investigation or judicial proceeding, unless the person acts
39 recklessly, with a malicious purpose or otherwise in bad faith. In a
40 civil or criminal proceeding good faith is a rebuttable presumption.

41 (B) It is against the public policy of ~~South Carolina~~ the State to
42 change an employee's status solely because the employee reports

1 or cooperates with an investigation or action taken ~~under~~ pursuant
2 to this chapter.

3
4 Section 43-35-80. (A) Notwithstanding any regulatory or
5 administrative penalty that may be assessed and in addition to a
6 private civil cause of action that may be brought against a person
7 or facility based on an action or failure to act that otherwise
8 constitutes abuse, neglect, ~~or exploitation, or human trafficking~~
9 ~~under pursuant to this chapter,~~ the Attorney General, upon referral
10 from the Long Term Care Ombudsman Program or the Vulnerable
11 Adults Investigations Unit, may bring an action against a person
12 ~~who or facility that fails through pattern or practice to exercise~~
13 reasonable care in hiring, training, or supervising facility personnel
14 or in staffing or operating a facility, and this failure results in the
15 commission of abuse, neglect, exploitation, human trafficking, or
16 any other crime against a vulnerable adult in a facility. There is a
17 rebuttable presumption that a person or facility which verifies has
18 acted reasonably in hiring an employee upon verifying that the
19 person or facility is in good standing of the employee with the
20 appropriate licensure ~~or~~ and accrediting entity ~~is rebuttably~~
21 ~~presumed to have acted reasonably regarding the hiring entities, as~~
22 applicable.

23 (B) In granting relief ~~under pursuant to~~ this section, the court
24 may assess a civil fine of not more than thirty thousand dollars or
25 order injunctive relief, or both, and may order other relief as the
26 court considers appropriate.

27 (C) Nothing in this section may be construed to create a private
28 cause of action against ~~one who~~ a person or facility that fails
29 through pattern or practice to exercise reasonable care ~~as provided~~
30 ~~for in pursuant to~~ subsection (A).

31 (D) For the purposes of this section 'person' means any natural
32 person, corporation, joint venture, partnership, unincorporated
33 association, or other business entity.

34 (E) To the extent fines collected pursuant to this section exceed
35 the cost of litigation, these fines must be credited to the Adult
36 Protective Services Emergency Fund and may be carried forward
37 from one fiscal year to the next.

38
39 Section 43-35-85. (A) A person required to report ~~under~~
40 pursuant to this chapter who knowingly and wilfully fails to report
41 abuse, neglect, ~~or exploitation, or human trafficking~~ is guilty of a
42 misdemeanor and, upon conviction, must be fined not more than

1 ~~twenty-five~~ two thousand five hundred dollars or imprisoned not
2 more than ~~one year~~ three years.

3 (B) Except as otherwise provided in subsections (E) and (F), a
4 person who knowingly and wilfully abuses a vulnerable adult or
5 senior citizen is guilty of a felony and, upon conviction, must be
6 imprisoned not more than five years.

7 (C) Except as otherwise provided in subsections (E) and (F), a
8 person who knowingly and wilfully neglects a vulnerable adult or
9 senior citizen is guilty of a felony and, upon conviction, must be
10 imprisoned not more than five years.

11 (D)(1) A person who knowingly and wilfully exploits property
12 of a vulnerable adult or senior citizen in an amount exceeding five
13 hundred dollars is guilty of a felony and, upon conviction, must be
14 fined:

15 (a) not more than five thousand dollars or imprisoned not
16 more than five twenty-five years, or both, if the value of the
17 property exploited exceeds two thousand five hundred dollars, and
18 may be required by the court to make restitution; or

19 (b) not more than five thousand dollars or imprisoned not
20 more than twenty years, or both, if the value of the property
21 exploited exceeds five hundred dollars but is not more than two
22 thousand five hundred dollars, and may be required by the court to
23 make restitution.

24 (2) A person who knowingly and wilfully exploits property
25 of a vulnerable adult or senior citizen in an amount not more than
26 five hundred dollars is guilty of a misdemeanor and, upon
27 conviction, must be fined not more than five thousand dollars or
28 imprisoned not more than three years, or both, and may be required
29 by the court to make restitution.

30 (E)(1) A person who knowingly and wilfully abuses or neglects
31 a vulnerable adult or senior citizen resulting in great bodily injury
32 is guilty of a felony and, upon conviction, must be imprisoned not
33 more than fifteen years.

34 (F)(2) A person who knowingly and wilfully abuses or
35 neglects a vulnerable adult or senior citizen resulting in death is
36 guilty of a felony and, upon conviction, must be imprisoned not
37 more than thirty years.

38 (3) A person who abuses or neglects a vulnerable adult or
39 senior citizen by acting recklessly and the abuse or neglect results
40 in great bodily injury is guilty of a felony and, upon conviction,
41 must be imprisoned not more than five years.

42 (4) A person who abuses or neglects a vulnerable adult or
43 senior citizen by acting recklessly and the abuse or neglect results

1 in death is guilty of a felony and, upon conviction, must be
2 imprisoned not more than ten years.

3 (F) A person who threatens, intimidates, or attempts to
4 intimidate a vulnerable adult or senior citizen who is the subject of
5 a report, a witness, or any other person cooperating with an
6 investigation conducted pursuant to this chapter is guilty of a
7 ~~misdemeanor~~ felony and, upon conviction, must be fined not more
8 than five thousand dollars or imprisoned for not more than three
9 years.

10 (H)(G) A person who wilfully and knowingly obstructs or in any
11 way impedes an investigation conducted pursuant to this chapter,
12 ~~upon conviction,~~ is guilty of a misdemeanor and, upon conviction,
13 must be fined not more than five thousand dollars or imprisoned
14 for not more than three years.

15 (H) A person who knowingly and wilfully subjects a vulnerable
16 adult or senior citizen to human trafficking is guilty of a felony
17 and, upon conviction, must be imprisoned not more than
18 twenty-five years.

19 (I) ~~As used in this section, 'great bodily injury' means bodily~~
20 ~~injury which creates a substantial risk of death or which causes~~
21 ~~serious, permanent disfigurement, or protracted loss or impairment~~
22 ~~of the function of any bodily member or organ. State prosecutors~~
23 ~~and law enforcement officers shall receive training regarding~~
24 ~~human trafficking of vulnerable adults and senior citizens as part~~
25 ~~of curricula approved by the South Carolina Supreme Court and~~
26 ~~the South Carolina Law Enforcement Division.~~

27
28 Section 43-35-87. (A) A person responsible for the final
29 discharge of a vulnerable adult or senior citizen from a hospital,
30 emergency room, or outpatient hospital clinic including, but not
31 limited to, a discharge worker or social worker, shall ask for and
32 document the address to which the vulnerable adult or senior
33 citizen is going along with the name and relationship of any person
34 transporting or accompanying the vulnerable adult or senior citizen
35 to that address.

36 (B) If a person transporting or accompanying the vulnerable
37 adult or senior citizen refuses to disclose his name, address, and
38 relationship status pursuant to subsection (A), the person who
39 discharges the vulnerable adult or senior citizen shall notify law
40 enforcement and request a welfare check to the address on record
41 for the vulnerable adult or senior citizen.

42 (C) If the person who discharges the vulnerable adult or senior
43 citizen determines that the individual who has transported or

1 accompanied the vulnerable adult or senior citizen at the time of
2 discharge pursuant to this section is not the vulnerable adult's or
3 senior citizen's spouse or relative, the person shall notify law
4 enforcement and request a welfare check to the address on record
5 for the vulnerable adult or senior citizen.

6 (D) If law enforcement determines after conducting the home
7 visit pursuant to subsection (B) or (C) that the address is incorrect,
8 law enforcement shall issue an endangered vulnerable adult
9 advisory pursuant to criteria developed by the South Carolina Law
10 Enforcement Division.

11
12 Section 43-35-90. This article is not intended to affect in any
13 way the authority of any agency to act ~~under~~ pursuant to state or
14 federal law.

15
16 Section 43-35-95. (A) A person prosecuted for committing an
17 offense pursuant to this article has an affirmative defense if, at the
18 time of committing the offense, the person acted in good faith and
19 lacked the ability to act pursuant to the requirements of this article
20 due to physical, psychological, or resource limitations.

21 (B) A person prosecuted pursuant to subsection (A) has the
22 burden of proving the affirmative defense by a preponderance of
23 the evidence.

24
25 Section 43-25-100. Nothing in this chapter limits the remedies
26 available to a vulnerable adult or senior citizen pursuant to other
27 statutes including, but not limited to, domestic violence statutes."

28
29 SECTION 2. This act takes effect upon approval by the Governor.

30 ----XX----



[Home](#) / [Program Offices](#) / [Fair Housing](#) / [Disabilities](#) / [People with Disabilities](#)

Disability Rights in Housing

Definition of Disability: Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Disability Rights in Private and Public Housing: Regardless of whether you live in private or public housing, Federal laws provide the following rights to persons with disabilities:

- **Prohibits discrimination against persons with disabilities.** It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled.

Example: A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because s/he is uncomfortable with the individual's disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

- **Requires housing providers to make reasonable accommodations for persons with disabilities.** A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything s/he can to assist, but s/he is not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.

Example: A housing provider would make a reasonable accommodation for a tenant with mobility impairment by fulfilling the tenant's request for a reserved parking space in front of the entrance to their unit, even though all parking is unreserved.

- **Requires housing providers to allow persons with disabilities to make reasonable modifications.** A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.

Examples of a reasonable modification would include allowing a person with a disability to: *install a ramp into a building, lower the entry threshold of a unit, or install grab bars in a bathroom.* [Learn More About Reasonable Accommodations](#)

Reasonable modifications are usually made at the resident's expense. However, there are resources available for helping fund building modifications. Additionally, if you live in Federally assisted housing the housing provider may be required to pay for the modification if it does not amount to an undue financial and administrative burden. For more information, see the Reasonable Accommodations section of the Section 504 Frequently Asked Questions page.

- **Requires that new covered multifamily housing be designed and constructed to be accessible.** In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:
 - Accessible Entrance on an Accessible Route
 - Accessible Public and Common-Use Areas
 - Usable Doors
 - Accessible Route Into and Through the Dwelling Unit

- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms

In covered multifamily housing without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site.

These requirements apply to most public and private housing. However, there are limited exemptions for owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

If you live in Federally assisted multifamily housing consisting of 5 or more units, 5 percent of these units (or at least one unit whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2 percent of units (or at least one unit whichever is greater) must be accessible for persons with visual or hearing disabilities. For more information, visit Section 504 Questions and Answers.

People with Disabilities in Federally Assisted Housing: Federal law makes it illegal for an otherwise qualified individual with a disability to be excluded, solely because of his or her disability, from programs receiving federal financial assistance. For more information on the rights of persons with disabilities in federally assisted housing as well as the responsibilities of housing providers who receive federal financial assistance, visit our Section 504: Disability Rights in HUD Programs site.

Zoning and Land Use: It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area. For more information, see the Joint Statement of DOJ and HUD on Group Homes, Local Land Use, and the Fair Housing Act.

State and Local Laws: Many states and localities have fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Some of these laws prohibit discrimination on additional bases, such as source of income or marital status. Some of these laws may impose more stringent design and construction standards for new multifamily housing.

The Americans with Disabilities Act: In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as offices buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.

For more information on the Americans with Disabilities Act, visit the Department of Justice ADA Home Page.

File a Complaint: To file a complaint or for information on how HUD processes housing discrimination complaints, see Fair Housing-It's Your Right.



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). Accord: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998) (holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

South Carolina Department of Labor, Licensing and Regulation

Professional Licensing Boards | Board Member Lookup

[Main Menu](#) : **Real Estate Commission** Note: All fields are not required for searching

Last / Office name:	wagner	First name:	Karen
License number:		City:	
		State Abbreviation:	
		License Type:	All

To perform a lookup verify that you are not a bot by checking the box. →

I'm not a robot

reCAPTCHA
[Privacy - Terms](#)

**If no checkbox appears above, make sure you are not in Compatibility Mode and are using an updated browser such as Google Chrome.

Your search returned: 2 record(s).

CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

Lic #	Last	First	Middle	City	Type
106969	WAGNER	KAREN		CHARLOTTE	Salesman
29869	WAGNER	KAREN	F	VALDOSTA	Property Manager

Search Tip:

You do not have to enter complete names.
For example, "J" and "Smith" will search for records
with a last name of "Smith" and a first name beginning
with "J."

Questions / Contact Information

The information on this page is a secure, primary source for license verification provided by South Carolina Department Labor, Licensing and Regulation. This website is maintained by LLR staff and is updated nightly reflecting changes to our licensing and enforcement database.

South Carolina Real Estate Commission

Phone: (803) 896-4400
Fax: (803) 896-4427
PO Box 11847
Columbia, S.C. 29211-1847

Commission Email

South Carolina Department of Labor, Licensing & Regulation



BON SECOURS MEDICAL GROUP

POWDERSVILLE PRIMARY CARE
290 Enterprise Dr
Easley SC 29642-8280
864-365-0290

3/28/2018 11:40 AM

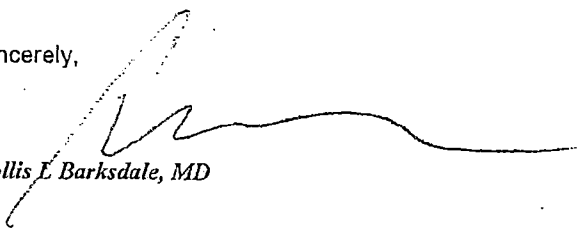
Mr. Christopher Holcombe
138 Brookstone Drive
Easley SC 29642

To Whom It May Concern:

This letter is written at the request of patient Mr. Christopher Holcomb. Mr. Holcomb has been seen at our office for depression and anxiety. He also is treated for hypertension. He began experiencing worsening depression and anxiety around August 2017. His symptoms began after he became face with the notion that he would be losing his home. It was at that time that he was started on antidepressant medication which he continues to take. He is paraplegic and is wheelchair bound and has permanent disability. He currently denies any suicidal or homicidal ideation. He has not been referred to psychiatry but he continues to have symptoms of depression despite his medication.

I hope that this information is helpful to you. Should you need any additional information, please feel free to contact our office at the above address.

Sincerely,



Collis E Barksdale, MD

Christopher Holcombe XXXXX3799



BON SECOURS MEDICAL GROUP

POWDERSVILLE PRIMARY CARE
290 Enterprise Dr
Easley SC 29642-8280
864-365-0290

10/2/2017 2:45 PM

Mr. Christopher Holcombe
138 Brookstone Drive
Easley SC 29642

To whom it may concern:

This letter is written at the request and consent of our patient, Mr. Christopher Holcombe. Mr. Holcomb is a quadriplegic who also suffers from Hypertension, neurogenic bladder with recurrent UTI, Anxiety and depression. He is very limited in his ability to obtain gainful employment. He is, for the most part, fairly independent for all ADL'S. Because of his limitations, it remains important that he maintains adequate housing to best manage his medical conditions and maintain his ability to live independently. Should you need additional information, please obtain consent and feel free to contact our office at the above address.

Sincerely,



Colfax L. Barksdale, MD

Christopher Holcombe XXXXX3799



GREENVILLE
HEALTH SYSTEM

701 Grove Road
Greenville, SC 29605
(864) 455-7000
ghs.org

September 19, 2016

To Whom It May Concern:

Mr. Christopher Earl Holcombe was under my care during his inpatient rehabilitation stay at Roger C. Peace Rehabilitation Hospital from September 7, 1999 through October 22, 1999. I saw Chris regularly during that time to support his adjustment to having both a traumatic brain injury and T12 paraplegia. I have followed him off and on during the ensuing seventeen years.

Chris has evolved from being totally dependent on the care of others to being a strong, capable, determined and independent single parent. With great effort and perseverance he returned to driving and went back to school while managing the challenges of living with a disability.

Although he has achieved an exceptional level of adjustment, his disabilities continue to pose significant obstacles to his everyday functioning. Everything he does requires considerable more energy and effort than it did prior to his injuries. In order to maintain his physical and mental health, he has to pay particularly care to his stress level. A high level of stress interferes with his needed focus on self-care and has the potential to precipitate a medical crisis.

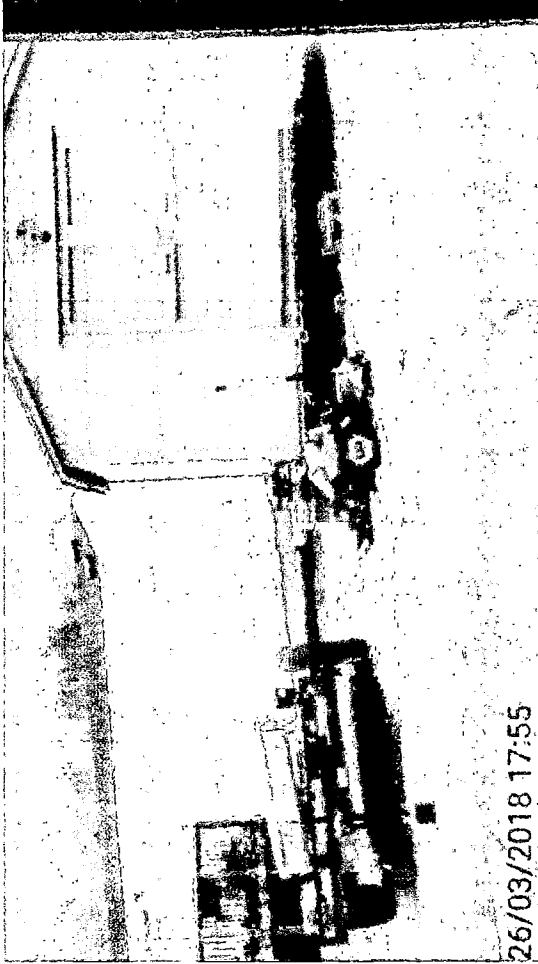
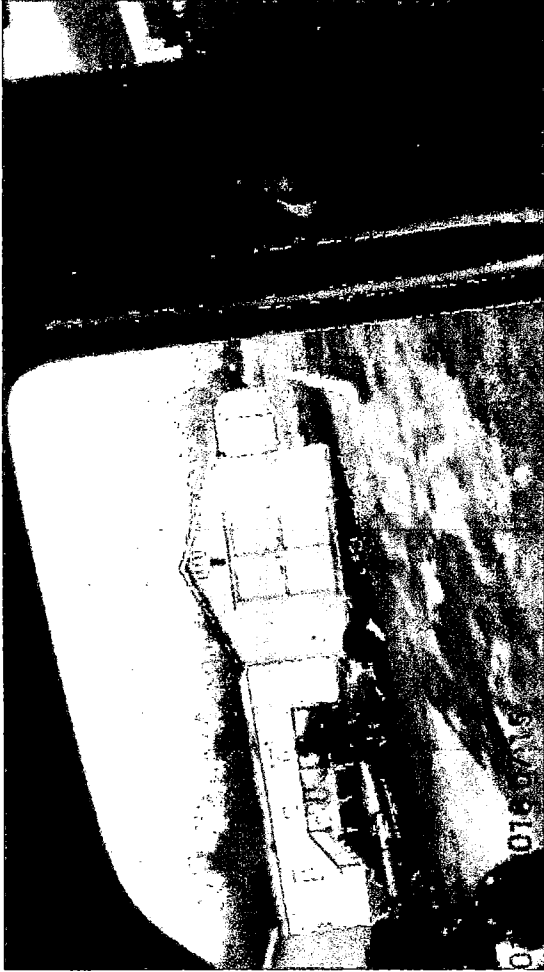
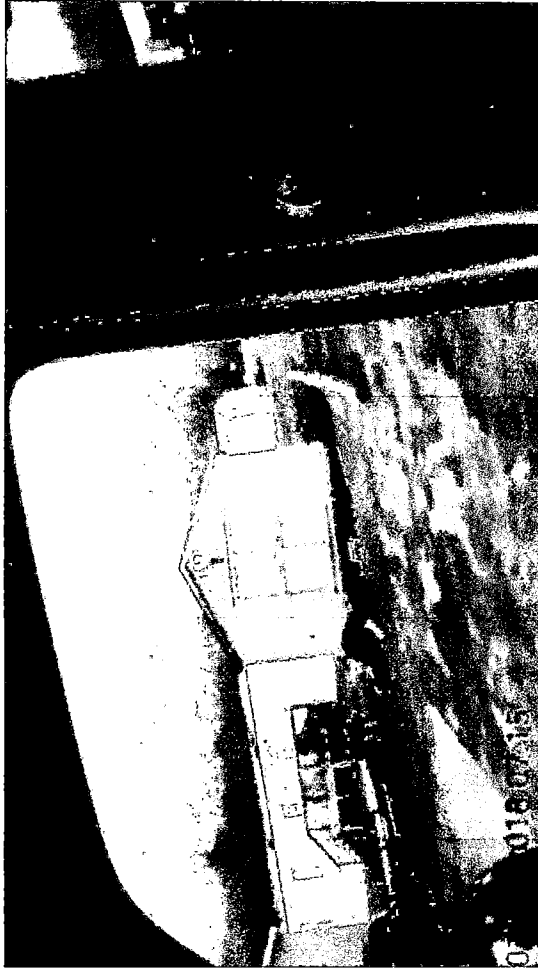
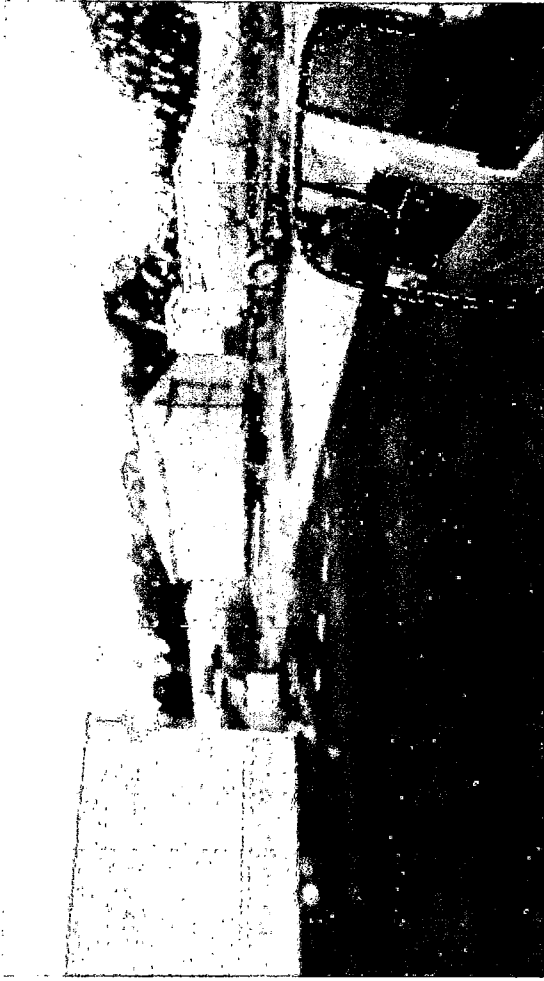
It is my belief that a challenge to his long-stable living situation could be disastrous to his health and well-being.

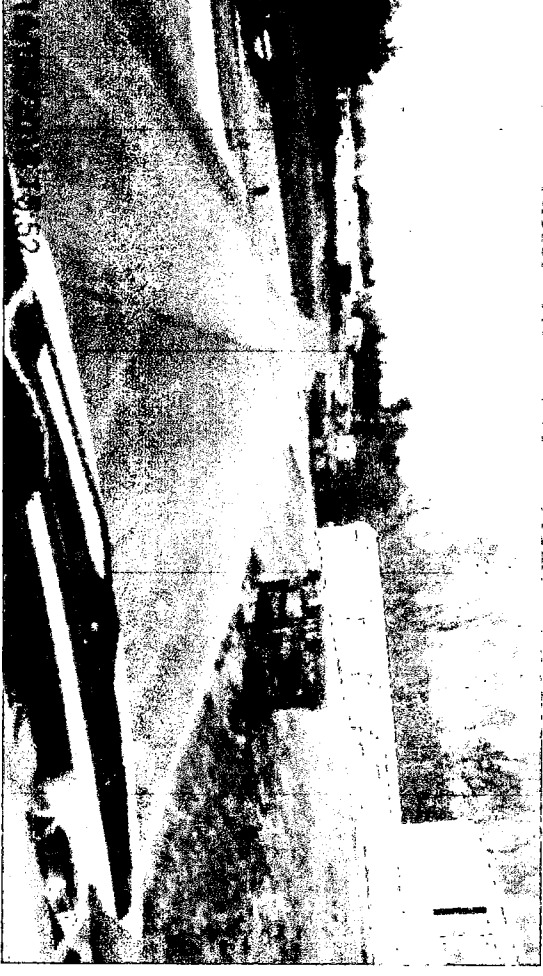
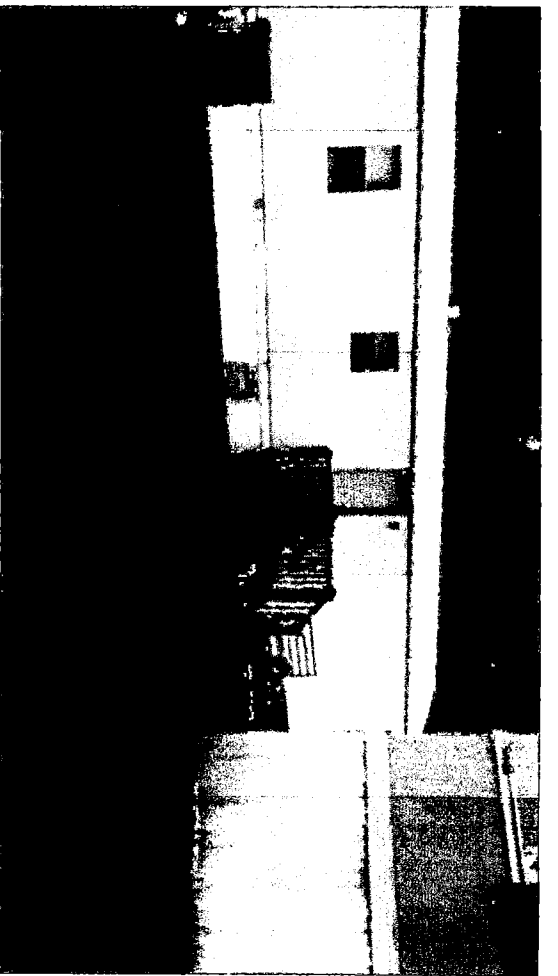
Sincerely,

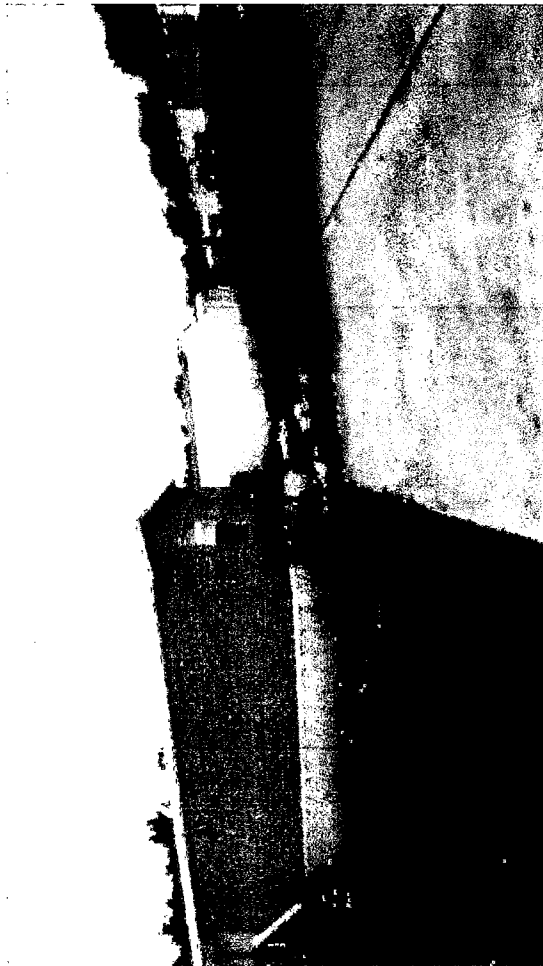
A handwritten signature in black ink, reading 'Anita D. McQuillen'.

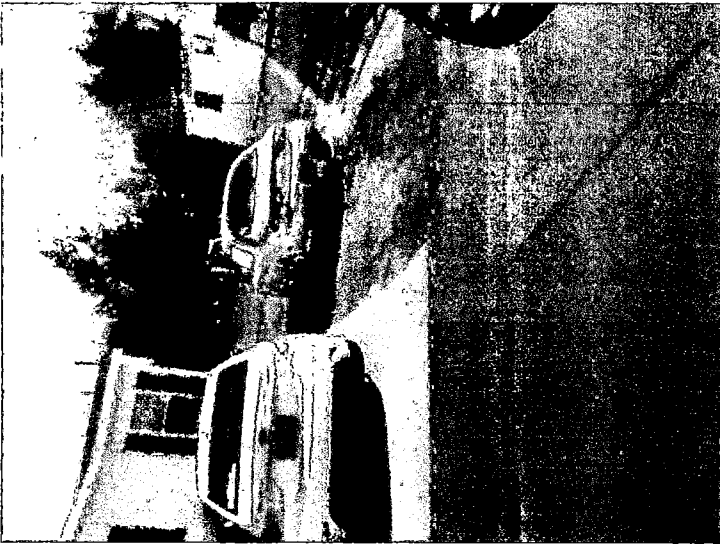
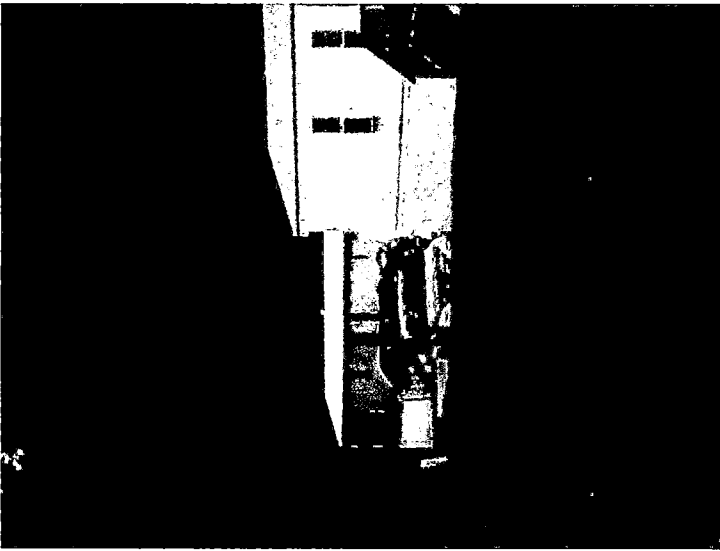
Anita D. McQuillen, PhD
Licensed Psychologist
Clinical Neuropsychologist
(864) 455-2600











To whom it may concern:

When going to the South Carolina Secretary of State site to verify and authenticate the business "Windy Hill MHP LLC" that is on file for the Appellant case number: 2017-002386; there is no business listed for that name at the address of 100 Hunt Rd Easley, South Carolina 29642. The only business that came up at that address was "WINDY HILL MOBILE HOME PARK, LLC".

Has the business name "Windy Hill MHP LLC" just been a name that has been used as a cover name or has the name been changed during the process of the case to "WINDY HILL MOBILE HOME PARK, LLC".

Thank You,

Chris Holcombe

A handwritten signature in black ink, appearing to read "Chris Holcombe", with a stylized flourish at the end.

cc: Ralph Gleaton esquire

Business Entities Online

File, Search, and Retrieve Documents Electronically

Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

windy hill

This name is currently being used

Search Results

Displaying 60 out of 83 records

Entity Name	Date of Incorporation	Entity Type	Entity Status	Incorporated State
<u>WINDY HILL FOOD SERVICE, LLC</u>	06/05/1998	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL FOUNDATION INC</u>	08/04/2008	Nonprofit	Good Standing	South Carolina
<u>WINDY HILL GOLF, INC.</u>	02/20/1979	Corporation	Dissolved	South Carolina
<u>WINDY HILL HARDWARE, LLC</u>	06/10/2013	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL HOLDINGS LLC</u>	11/20/2015	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL HORRY, LLC</u>	10/28/2013	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL INVESTMENT GROUP, L.L.C.</u>	04/30/1998	Limited Liability Company	Dissolved	South Carolina
<u>Windy Hill Investment Properties LLC</u>	12/08/2017	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL KEY</u>	05/17/1973	Limited Partnership	Good Standing	South Carolina

Entity Name	Date of Incorporation	Entity Type	Entity Status	Incorporated State
<u>WINDY HILL MANOR & SPECIAL EVENT PLANNING LLC</u>	03/02/2011	Limited Liability Company	Dissolved	South Carolina
<u>WINDY HILL MARSH, LLC</u>	06/19/2003	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL MOBILE HOME PARK, LLC</u>	03/10/2006	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL MOTOR SPORTS, LLC</u>	03/31/2000	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL MOTOR SUPPLY, LLC</u>	05/18/2010	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL OAKS, LLC</u>	02/10/2011	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL ORCHARD, INC.</u>	06/28/1991	Corporation	Good Standing	South Carolina
<u>WINDY HILL PARASAIL AND BANANA BOATS, INC.</u>	04/01/2005	Corporation	Forfeited	South Carolina
<u>WINDY HILL PARTNERS, LLC</u>	06/06/2005	Limited Liability Company	Good Standing	South Carolina
<u>WINDY HILL PAVILLION & BEACHWEAR, INC.</u>	04/24/1984	Corporation	Dissolved	South Carolina
<u>Windy Hill Poultry, LLC</u>	12/18/2017	Limited Liability Company	Good Standing	South Carolina

If you do not see the results you are looking for, please refine your search or contact the South Carolina Secretary of State for bulk data options.

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2017-002386

Karen F. Wagner, as Property
Manager of Windy Hill MHP
LLC,

Respondent,

v.

Chris Holcombe,

Appellant.

RECEIVED

MAY 18 2018

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Karen F. Wagner, Property Manager of Windy Hill MHP LLC, by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2017, addressed to her attorney of record, Ralph Gleaton, 935 South Main St., Ste 203, Greenville, South Carolina 29601 [by depositing a copy of it in the United States Mail to her attorney of record, Ralph Gleaton].

May 15, 2018

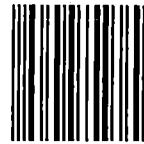
s/ Chris Holcombe
Chris Holcombe
138 Brookstone Dr.
Easley, South Carolina 29642
(864) 907-0863
Attorney for Appellant

cc: Ralph Gleaton Esquire

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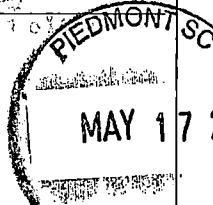
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Chas. H. Hinkle
133 Brookstone Dr.
Cary, SC 29542



ADDITIONAL USE



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*Refer to USPS.com® or local Post Office™ for availability.

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Date Accepted (MM/DD/YY)		Scheduled Delivery Time		Insurance Fee		COD Fee	
05-17-18		☐ 10:30 AM ☐ 3:00 PM ☒ 12 NOON					
Time Accepted		10:30 AM Delivery Fee		Return Receipt Fee		Live Animal Transportation Fee	
15:00		☐ AM ☒ PM					
Special Handling/Fragile		Sunday/Holiday Premium Fee		Total Postage & Fees			
\$		\$		MAY 18 2018			
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13.70 lbs.		WCB		\$ 24.70			

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		☐ AM ☐ PM			
Delivery Attempt (MM/DD/YY)		Time		Employee Signature	
		☐ AM ☐ PM			

LABEL 11-B, OCTOBER 2016

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