

RECORD ON 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.

RECORD ON APPEAL

RECEIVED
SEP 10 2018
SC Court of Appeals

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

Ralf Gleaton
935 South Main St
Ste 203
Greenville, South Carolina 29601
(864)250-9780
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

2016CV0410700527
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

Windy Hill MHP LLC

PLAINTIFF(S)

Vs

Chris Holcombe
135 Brookstone Drive
Easley, SC 29642

DEFENDANT(S)

Upon the application of the plaintiff listed above, which states:

Owner is transitioning to land and home ownership park.
Defendant began receiving notices in March, 2016

You the defendant(s) or lessee(s) of the premises located at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the:

Powdersville-Piedmont Summary Court
4 Civic Court, Easley, S. C. 29642
P O Box 51312, Piedmont, SC 29673-1312
(864) 269-5947

Judge Tucker

within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Wednesday, August 3, 2016

J. Thompson Tucker
JUDGE, Powdersville-Piedmont Summary Court

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Chris Holcombe, on:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1. _____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____

Sworn to and subscribed before me

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

On _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

2016CV0410700527

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Windy Hill MHP L L C

PLAINTIFF(S)

Vs

Chris Holcombe

138 Brookstone Drive

Easley, SC 29642

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the 31st day of August, 2016, you are hereby Ordered to proceed to the premises located at **135 Brookstone Drive**
Easley, SC 29642.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty days (20)** to **voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

August 31, 2016

A. Thompson
Powdersville-Piedmont Summary Court

being duly sworn state that:

- ☐ I personally served a copy of this Writ on _____, an occupant of the rental unit
- ☐ On _____ 20____, at _____ the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.
- ☐ On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: _____, 20____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) C/A: 2016-CP-04-02064
) MAGISTRATE'S CASE NO.
Windy Hill MHP, LLC,) 2016CV0410700527
) Plaintiff/Respondent,)
vs.) ORDER
Chris Holcombe,)
) Defendant/Appellant.)

Christopher E. Holcombe ("Holcombe") appeals the magistrate's court Writ of Ejectment issued on August 31, 2016 after a bench trial on the same date. Holcombe contends that Windy Hill MHP, LLC failed to grant him reasonable accommodations pursuant to the Fair Housing Amendments Act of 1998 at 48 U.S.C. § 3604 ("FHA") and the South Carolina Fair Housing Law at SC Code § 31-21-40 ("SCFHL") and that the trial court failed to properly assess Holcombe's situation in issuing the Writ of Ejectment. I affirm.

FACTUAL/PROCEDURAL BACKGROUND

Mr. Holcombe is disabled and bound to a wheelchair. Windy Hill is managed by Karen Wagner ("Wagner"). Windy Hill and Holcombe entered into a written lease agreement governed by the South Carolina Residential Landlord and Tenant Act ("RLTA") whereby Windy Hill leased the ground to Holcombe on which Holcombe placed a mobile home that he owns. That lease terminated by its terms on July 31, 2015.

As the end of the lease term approached, Wagner sent Holcombe a letter on July 20, 2015 outlining concerns, mainly involving the actions of Mr. Holcombe's son, who is not disabled and who lived with Mr. Holcombe. On June 24, 2015, Mr. Holcombe purchased a 2.14 acre parcel of land in Anderson County, South Carolina.

Wagner had a phone conversation with Holcombe on July 25, 2015 regarding the violations. She followed up that conversation with a letter on July 30, 2015. That letter again outlined the ways that Holcombe, through his son, was being a bad neighbor and states that Wagner and Holcombe mutually agreed that it would be best if he vacated at the end of his lease and that Windy Hill would not renew the lease. The letter also states that she offered him the reasonable accommodation of 60 days past the end of the lease term to vacate. Wagner also indicated that she might allow a month-to-month accommodation if the issues outlined in the letter were resolved.

Seven months after Mr. Holcombe's lease terminated, on March 22, 2016 Windy Hill sent Mr. Holcombe a letter stating that it desired to put its own home on the property and stated that Mr. Holcombe must be out by July 31, 2016. July 31, 2016 was a full year after the end of his lease term. On June 21, 2016 Windy Hill sent Mr. Holcombe another letter reminding him that he had to be out by July 31, 2016.

Mr. Holcombe did not vacate the property and Windy Hill filed ejectment proceedings. The ejectment hearing was held on August 31, 2016. At the hearing Mr. Holcombe admitted that he had made no preparation to move and argued that he should be reasonably accommodated because of his disability and that accommodation should be that he would be allowed to remain indefinitely.

The trial court considered his discrimination/accommodation argument and found that Windy Hill had made "due accommodations" and that Holcombe failed to "show any discriminatory policy" in the ejectment. The trial court therefore granted a Writ of Ejectment giving Holcombe 20 days to move his mobile home from Windy Hill's property. Holcombe appeals the issuance of this Writ.

STANDARD OF REVIEW

"Section 18-7-170 of the South Carolina Code (1985) articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

Bowers v. Thomas, 644 S.E.2d 751, 373 S.C. 240 (Ct. App. 2007).

Sections 18-7-140 and 18-7-170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984). "The appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses; and the grounds of exception made, without the examination of witnesses in court. The appeal shall be heard on the original papers and no copy thereof need be furnished for the use of the court." SC Code § 18-7-130.

LAW/ANALYSIS

The written lease between Windy Hill and Holcombe terminated by its terms on July 31, 2015. Thereafter Windy Hill had the right to recover possession of the premises by ejectment proceedings. SC Code §§ 27-40-750 and 27-40-760.

Holcombe argues that the FHA and SCFHL require that he, as a disabled person, be given reasonable accommodations for moving at the termination of his lease. He argues that this time is necessary because his lower income and lack of mobility mean that he needs more time to prepare for and afford the relocation of his mobile home, even to a lot he already owns. Holcombe offers no binding precedent for the proposition that reasonable accommodations must be made when a written lease terminates by its own terms. However, assuming that the FHA and SCFHL require such an accommodation, the "reasonable accommodation must be (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing." An indefinite delay in vacating property is not a reasonable accommodation. See *McQuestion v. Crawford*, 765 N.W.2d 822, 2009 WI App 35 (Wis. App., 2009) ("To suggest that those found eligible for emergency assistance can remain indefinitely in housing from which they have been evicted could lead to serious abuse."); *Andover Housing Authority v. Izrail Shkolnik*, 443 Mass. 300, 820 N.E.2d 815 (2005) ("This court has rejected the idea that indefinite requests for "more time" to address a disabling condition are reasonable."); *Groner v. Golden Gate Gardens Apartments* 250 F.3d 1039 (6th Cir. 2001) ("Such an indefinite arrangement, moreover, would likely have imposed an undue administrative burden on the Golden Gate staff. Accordingly, Groner has failed to demonstrate that such an accommodation was reasonable."); *Von Beltz v. Bentley Homes, LLC* (Cal. App., 2014) ("Von Beltz's request that defendants accommodate her by indefinitely delaying her eviction was not reasonable as a matter of law."). The trial court found, as does this Court, that the original 60 days, then ultimately one year, that Windy Hill allowed Holcombe to remain on the property after the written lease terminated was a reasonable, if necessary, to afford Holcombe an equal opportunity to relocate the mobile home he already owns to the lot of land he already owns.¹

Holcombe also argues that the trial court failed to make an individualized assessment of his needs. This Court disagrees. The trial court allowed Mr. Holcombe to both testify and summarize his position about his lack of income and the heightened requirements for relocating a mobile home customized for his disability. The trial court clearly considered these issues, along the facts that Windy Hill was entitled to repossession after ejectment proceedings based on the termination of the written lease, the year that Windy Hill had accommodated Holcombe past the termination of the written lease and the fact that Mr. Holcombe purchased a lot a year prior to the ejectment hearing. After considering Holcombe's arguments and the facts and the law, the trial court concluded, as does this Court, that Holcombe had been reasonably accommodated and there was no discrimination of Holcombe for failure to accommodate.

¹ The Court notes that because of this appeal Holcombe had now had an additional 15 months, for a total of 27 months past the termination of the written lease, to make arrangements to move his mobile home.

CONCLUSION

Based on the above analysis, the magistrate's court Writ of Ejectment is AFFIRMED and Mr. Holcombe has 20 days from the date of this ORDER to voluntarily vacate the property.

IT IS SO ORDERED!



Anderson Common Pleas

Case Caption: Christopher E Holcombe VS Windy Hill Mhp Llc

Case Number: 2016CP0402064

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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ELECTRONICALLY FILED - 2017 Nov 08 8:44 AM - ANDERSON - COMMON PLEAS - CASE#2016CP0402064

WINDY HILL M.H.P., L.L.C.

VS.

CHRIS HOLCOMBE

2016-CP-04-02064

AUGUST 31, 2016

LEGAL EAGLE

Certified Verbatim Reporters

Post Office Box 5682

Greenville, South Carolina 29606

864-298-0082 or 864-467-1373

depos@legaleagleinc.com

2 1 THE COURT: 2 And this is the case of Windy Hill Mobile Park, LLC 3 versus Chris Holcombe, civil case number 4 2016CV0410700527. I know the parties were speaking 5 to each other for a few moments, did you reach any 6 understandings before we go forward or? 7 MR. GLEATON: 8 Your Honor, Ralph Gleaton with the Greenville County 9 Bar, for Windy Hill. Your Honor, we would -- and 10 I'll let Mr. Holcombe confirm but we were not able 11 to come to an agreement. 12 THE COURT: 13 Okay, all right. 14 MR. HOLCOMBE: 15 No, sir, we were not able to make a decision on a 16 good agreement or anything. 17 THE COURT: 18 Okay, all right. And -- and your name, sir? 19 MR. GLEATON: 20 Again, it's Ralph, R-A-L-P-H, Gleaton, G-L-E-A-T-O- 21 N. 22 THE COURT: 23 Okay, all right. Thank you, Mr. Gleaton. Okay, 24 I'll briefly describe how we'll go forward today. 25 Mr. Gleaton, if you'll bear with me for the	4 1 THE COURT: 2 Okay? Now your testimony and any of the evidence 3 that's submitted to the Court and that of any of 4 your witness's testimony are subject to cross- 5 examination or questions by your opponent on the 6 record and also to the rules of evidence things like 7 hearsay or relevance to the case, okay? 8 MR. HOLCOMBE: 9 Okay. 10 THE COURT: 11 Once you've fully presented your defenses to the 12 case then both sides will make a closing argument, 13 okay? And like opening statements that's not meant 14 to be further testimony or evidence in the case, all 15 right? Are there any questions before we proceed? 16 MR. GLEATON: 17 Your Honor, is this a (inaudible) case or Rule to 18 Show Cause? 19 THE COURT: 20 This is a show cause hearing. 21 MR. GLEATON: 22 Thank you, Your Honor. 23 THE COURT: 24 And to clarify for the defendant there also is in a 25 show cause hearing you do have to show cause why you
3 1 defendant's sake. In a moment we'll proceed and 2 I'll place you as parties under oath and you can -- 3 we'll begin with the Plaintiff in the case and 4 you'll make an opening statement, or your attorney 5 will for you. And then Mr. Holcombe -- 6 MR. HOLCOMBE: 7 Yes, sir. 8 THE COURT: 9 -- you can give the Court an opening statement. Now 10 that's not meant to be testimony, sworn testimony or 11 evidence in the case, but simply your opening 12 statement or your opening summary of your defenses 13 to this eviction action against you, okay? 14 MR. HOLCOMBE: 15 Okay. 16 THE COURT: 17 Now, once you've both given the Court an opening 18 statement we'll return to the Plaintiff's side to 19 present their case. And once they've fully done 20 that and they feel that they've met the burden to 21 prove their case then we'll return to you and you 22 will present your case and any evidence and call any 23 witnesses that you may have to prove your defenses. 24 MR. HOLCOMBE: 25 Okay.	5 1 have a legal right to remain and why this is not a - 2 - 3 MR. HOLCOMBE: 4 Okay, I'm good with that. 5 THE COURT: 6 Okay. All right. Okay, if I can have the parties 7 please rise and raise your right hand to be sworn. 8 You don't have to rise up. Do you solemnly swear 9 that the testimony you're about to give is the 10 truth, the whole truth and nothing but the truth, so 11 help you God? 12 MR. HOLCOMBE: 13 Yes, sir. 14 MS. WAGNER: 15 Yes, sir. 16 THE COURT: 17 Okay, very well. And we will call -- you do have a 18 witness with you? 19 MR. HOLCOMBE: 20 I do have my son, yes. 21 THE COURT: 22 Okay, we'll call him when we get to him, okay? 23 MR. HOLCOMBE: 24 Okay. 25 THE COURT:

6 1 All right. Okay, you can begin, Mr. Gleaton. 2 MR. GLEATON: 3 Thank you, Your Honor. As you're well aware this is 4 an eviction matter. Mr. Holcombe has been a 5 resident at the Windy Hill Mobile Home Park since I 6 believe 1999, I might be wrong on that date. His 7 most current lease ended on July 31st of this year 8 so he's a month past that. We have not accepted 9 rent for the month of August. We notified him back 10 in March of our intent to end his lease at the end 11 of the lease period along with two other residents. 12 Windy Hill has decided to go to rather than renting 13 a spot -- right now they have a business model where 14 they rent a spot and people provide their own homes. 15 They've decided to go to a business model where they 16 rent the home and the spot so they're going to be 17 buying their own homes and obviously they want to do 18 this over a phase and he's one of the first three 19 people we've asked to leave and there are several 20 reasons for that. He has written a letter to the 21 Court alleging that this is because of his handicap 22 or that we're discriminating against him in some 23 way. That is not the case and we'll present 24 evidence to that. We -- he's not been a model 25 tenant. Windy Hill does feel for his plight,	8 1 and alike that, you know, my home is specifically 2 for me. You know, if I wanted -- if I want to go 3 hop in my shower I could roll my wheelchair up to my 4 shower stall, I can hop over into my shower and take 5 my shower if I need to, you know. I'm not being bad 6 but TMI if I need to go to the restroom I go to the 7 bathroom and I'm good. All my doorways are 8 accommodated three foot for me to get in and out of 9 and I just I can't up and just leave what I've got 10 because I have nowhere to go period. And I just 11 can't go up and just do anything because 12 accommodations and -- accommodations for, you know, 13 necessary needs of whatever, however for handicap, 14 you know, despite the laws that are there that's 15 just not a common everyday thing just to be able to 16 walk into. 17 THE COURT: 18 Okay. All right, thank you, sir. Okay, you can 19 present your case, sir. 20 MR. GLEATON: 21 All right, we'll call Karen Wagner of Windy Hill 22 Mobile Home Park. 23 THE COURT: 24 Ms. Wagner, you're already under oath and I think 25 we'll just let you just remain here if you want.
7 1 understands what he's going through and that's one 2 of the reasons they told him in March that they 3 intended to end his lease, give him four months and 4 now he's had five months and we would just like to - 5 - the Court to recognize that he has not purchased a 6 lot, he's a renter, his lease is over and we have a 7 right to ask for him to leave. 8 THE COURT: 9 Okay, thank you, sir. Okay, Mr. Holcombe, do you 10 have anything in opening? 11 MR. HOLCOMBE: 12 Yes. Like he mentioned I've been at Windy Hill, 13 I've been there since June of '99 and is -- my -- 14 you know, the reason I've not been able to move out 15 and proceed any further is because, you know, me 16 living on a fixed budgeted income, you know, I'm 17 limited to what I can and can't do and being 18 disabled/handicapped I just can't get up and move 19 just anywhere, you know, and I'm not being bad or 20 stupid but can I walk into your home or roll into 21 your home, take a shower and do whatever I need to 22 whenever I need to and that's the reason why I've 23 not been able to do anything different because with 24 not being able to have necessary accommodations, you 25 know, my home is -- you know, I have pictures here	9 1 MS. WAGNER: 2 Okay. 3 MR. GLEATON: 4 Would you prefer that I remain seated also, Your 5 Honor? 6 THE COURT: 7 That's fine, we'll just be informal about that. 8 EXAMINATION BY MR. GLEATON: 9 Q. Thank you, Ms. Wagner. What is your job? 10 A. I'm the property manager as a career and I do this 11 property management of Windy Hill on the side. 12 Q. And do you know Mr. Holcombe? 13 A. I do. 14 Q. All right. Where does Mr. Holcombe live? 15 A. 138 Brookstone Drive. 16 Q. Is that in Windy Hill Mobile Home Park? 17 A. It is. 18 Q. All right. And he's been there since 1999? 19 A. Uh-huh (affirmative). 20 Q. And so you've been there over a decade? All right. 21 And does he currently have a lease or is he 22 currently under a lease? 23 A. No, he's not. 24 Q. All right. When did his most recent lease end? 25 A. His most recent lease actually ended in the summer

10 1 of 2015. 2 Q. So I'm going to show you what isn't marked right now 3 but I will ask the Court to mark it. I don't know 4 how you want to do these, Your Honor, but we'll call 5 that Plaintiff's Exhibit A for -- or Exhibit 1 for 6 just a moment. Is that the lease you're talking 7 about? 8 A. Yes. 9 Q. All right. And that is a lease for one year? 10 A. Yes. 11 Q. Or an extension of a prior lease for one year? 12 A. Extension from a prior lease. 13 Q. And what's under the first page is the prior lease? 14 A. And this is the prior lease, yes. 15 Q. Okay. So the extension is from July 31, 2014? 16 A. Yes. 17 Q. Would that all -- be through actually June -- end of 18 June of 2015? 19 A. Actually I sent it out and I didn't get it back from 20 him. I had to ask for a second request (inaudible) 21 that second request to sign his agreement with me 22 and I finally got it back on 8/14. 23 Q. Okay, but when does this lease end? 24 A. Oh, it ends on 7/31/15. 25 Q. Okay. And the lease that it extends has a provision	12 1 doubled per the contract and hasn't increased? 2 A. No. 3 Q. Okay. And you have decided not to continue this 4 lease, correct? 5 A. Correct. 6 Q. And when did you inform Mr. Holcombe that you 7 intended not to increase the lease? 8 A. I sent him a letter on March -- excuse me, March 9 22nd. 10 Q. I have the other copy of this (inaudible) Exhibit 1. 11 THE COURT: 12 Okay. Have you -- Mr. Holcombe, have you seen this 13 -- this is your lease, your last lease? 14 MR. HOLCOMBE: 15 Is it one from March 22nd? 16 THE COURT: 17 Uh-huh. 18 MR. HOLCOMBE: 19 Yes, sir, I have it right here. 20 THE COURT: 21 Okay. Any objection to the -- 22 EXAMINATION CONTINUES BY MR. GLEATON: 23 Q. I'm going to show you what I'm going to ask the 24 Court to mark as Exhibit 2. 25 THE COURT:
11 1 at paragraph -- I beg the Court's indulgence, 27 2 regarding holdover tenants, correct? 3 A. Uh-huh (affirmative). 4 Q. Yes? 5 A. Yes. 6 Q. Okay. There's not a court reporter here but the 7 Judge is recording everything and the recorder -- 8 A. Okay. 9 Q. -- can't understand an uh-huh so I'm going to ask 10 you to say yes and no. And the holdover provision 11 says that the lease goes month-to-month if he stays 12 past his lease term, correct? 13 A. Correct. 14 Q. And it says that he's still under all the rules and 15 regulations of the lease if he's a holdover, 16 correct? 17 A. Correct. 18 Q. And it also says you get to double his rent while 19 he's a holdover, correct? 20 A. Correct. 21 Q. And have you doubled his rent -- 22 A. No. 23 Q. -- as a holdover? 24 A. I didn't even increase it last year. 25 Q. Okay, so you -- for the past year it hasn't been	13 1 Any objection, sir? 2 MR. HOLCOMBE: 3 Excuse me? 4 THE COURT: 5 Any objection to him -- 6 MR. HOLCOMBE: 7 Well, like I -- you know, that goes back to what I 8 mentioned to you a moment ago, you know -- 9 THE COURT: 10 Do you have any objection? 11 MR. HOLCOMBE: 12 Do I have any objection to this letter? 13 THE COURT: 14 To this being entered as evidence? The lease 15 agreement. 16 MR. HOLCOMBE: 17 The lease agreement as in this letter here? 18 THE COURT: 19 The one that ended on July 30, 2015. 20 MR. HOLCOMBE: 21 Well, I -- no, I don't have any objection to it. I 22 know that it ended in -- you know, if she would've 23 sent me a new one I would've -- you know, I would've 24 signed a new one. 25 THE COURT:

14 1 Okay. Thank you. 2 EXAMINATION CONTINUES BY MR. GLEATON: 3 Q. Okay, so I've showed you what we're going to ask the 4 Court to mark as Exhibit 2 and do you recognize 5 that? 6 A. Yes. 7 Q. All right, what is that? 8 A. This is the letter to ask him to remove his home on 9 March 22, 19 -- or 2016. 10 Q. Okay. And so you wrote him on March 22nd and asked 11 him to remove his home when? 12 A. For 7/31/16. 13 Q. And that gave him how long to make plans and to 14 actually move? 15 A. Four months. 16 Q. All right. And why were you asking him to move? 17 A. Windy Hill has decided to replace lot renters with 18 their own homes. We only have a handful of them 19 left and we decided to make that business decision 20 is to replace the homes with the lot renters. So 21 were trying to give them enough time to get their 22 things together and be able to do that transaction. 23 Q. Okay, so you didn't just call him 30 days out and 24 say be out? 25 A. Correct.	16 1 been opened, returned, what is that? 2 A. This is the certified letter that I sent to Chris. 3 I usually send my letters via mail and certified and 4 this one came back undeliverable. 5 Q. Okay. Actually what does it say? 6 A. Unclaimed, excuse me. 7 Q. Unclaimed, all right. 8 MR. GLEATON: 9 Your Honor, I want to ask that the March 22nd letter 10 be Plaintiff's Exhibit 2 and mark it into evidence 11 (inaudible) letter (inaudible) 3. 12 THE COURT: 13 Okay. 14 MR. GLEATON: 15 I have two other letters to other homeowners or 16 renters, excuse me, which would be the next two 17 numbers in line. I don't care whether or not 18 they're in evidence. I would ask them to be ruled 19 into evidence but certainly he's not seen them 20 before today and I handed him copies of them today. 21 THE COURT: 22 Okay. 23 MR. GLEATON: 24 When I say him I mean Mr. Holcombe. 25 THE COURT:
15 1 Q. You understand the law allows you to do that 30 days 2 notice? 3 A. Correct. 4 Q. But you gave him four months notice? 5 A. That's correct. 6 Q. All right, and has he moved? 7 A. No. 8 Q. All right. Now, you said you're planning on 9 replacing the homes with your own homes? 10 A. Correct. 11 Q. And that's one of the reasons you're starting to ask 12 people to move? 13 A. Absolutely. 14 Q. Is he the only person you sent a letter to on or 15 about March 22nd? 16 A. No, I sent to another renter on March 22nd to a Jean 17 Ambrose and she was -- her lease expired on 7/31/16 18 and she has vacated. And then on June 22nd I sent 19 another letter out to a resident at Windy Hill and 20 they were supposed to be out by 10/31/16 which is 21 another four months that they could move out and 22 they chose to allow me to buy their home instead of 23 them moving it. 24 Q. Okay. And attached to what I've asked the Court to 25 mark as Exhibit 2 there's an envelope that hasn't	17 1 Okay, Mr. Holcombe as to the letter which we will 2 mark Plaintiff's Exhibit Number 2, from March 22, 3 2016, do you have any objection? 4 MR. HOLCOMBE: 5 I do, yes, sir. And then the 88 -- the Fair Privacy 6 Act, the Disability Housing Rights, they all state 7 that when they make -- when -- 8 THE COURT: 9 Well what's your objection to them entering this 10 letter on -- 11 MR. HOLCOMBE: 12 Meaning? 13 MR. GLEATON: 14 Into evidence, what's your objection to them? 15 MR. HOLCOMBE: 16 My objection to that is -- 17 THE COURT: 18 Under the Rules of Evidence. 19 MR. HOLCOMBE: 20 Under the Rules of Evidence, as in evidence of the 21 letter being submitted to the -- you as the judge in 22 the courtroom? 23 THE COURT: 24 Why is it not admissible as evidence? 25 MR. HOLCOMBE:

18 1 I'm not quite understanding what you're asking me. 2 THE COURT: 3 Why is this letter not admissible as evidence? 4 MR. HOLCOMBE: 5 Evidence as in the letter that she sent to me? 6 THE COURT: 7 Yes. 8 MR. HOLCOMBE: 9 I -- I received that letter and -- or are you 10 talking about the letter that was unsigned for? 11 THE COURT: 12 This was the letter from March 22, 2016. 13 MR. HOLCOMBE: 14 Okay, yes, sir. And the reason I state that is 15 because as far as evidence of them and asking for me 16 to move my home is like I say the 88 and the state 17 legislator and some others doc -- legal 18 documentation that I have here states that, you 19 know, by law that they're required to make necessary 20 accommodations and arrangements for disabled/ 21 handicap people. 22 THE COURT: 23 Okay. 24 MR. HOLCOMBE: 25 And that's --	20 1 MR. HOLCOMBE: 2 Well, like I say again the only objection that I 3 have is I understand what their philosophy and their 4 mindset is, but like I say as I am as a disabled/ 5 handicap person, I just can't -- and being on a fix 6 budgeted income I just can't up and just move at any 7 given time. You know, if I was still young making 8 the kind of money I used to it wouldn't have been a 9 problem but I just I can't do that. 10 THE COURT: 11 Okay. Well, we'll enter these letters into evidence 12 as a letter from March 21, 2016, Plaintiff's Exhibit 13 Number 3 and the letter from June 22, 2016 as 14 Plaintiff's Exhibit Number 4. Okay. 15 EXAMINATION CONTINUES BY MR. GLEATON: 16 Q. Thank you. Now, certainly you believe that you have 17 the right to ask him to leave because his lease is 18 out, correct? 19 A. Correct. 20 Q. And you've given him notice, ample notice to move? 21 A. Correct. 22 Q. And he is claiming that you are discriminating 23 against him in some way because of his disability, 24 you do understand he does have a disability, 25 correct?
19 1 THE COURT: 2 Well, that's not one of the Rules of Evidence of -- 3 let me overrule that. 4 MR. HOLCOMBE: 5 I do apologize. 6 THE COURT: 7 Okay, and this is the letter which the Court will 8 mark Plaintiff's Exhibit Number 3, which was 9 unclaimed, do you have any objection to that? 10 MR. HOLCOMBE: 11 As the one, the unclaimed one, I just -- I just know 12 that certified mail is considered legal 13 documentation and once it's signed and noted it's 14 like legal documentation and, you know, through 15 previous past experiences I've always been told 16 never sign for a certified letter. 17 THE COURT: 18 Okay, we'll enter that into evidence. And then we 19 have the second letter is from March 21st which 20 we'll mark Plaintiff's Exhibit Number 3, do you have 21 any objection? 22 MR. HOLCOMBE: 23 Objections to the letters? 24 THE COURT: 25 Yeah.	21 1 A. Correct. 2 Q. And it's a real disability. 3 A. Correct. 4 Q. Is that the reason you're asking him to leave? 5 A. No. 6 Q. Does his disability harm you or Windy Hill -- 7 A. No. 8 Q. -- Mobile Home Park in any way? 9 A. No. 10 Q. Other than you are trying to do a complete turnover 11 of the entire park, and you need to start somewhere, 12 is there a reason why he would be in the first wave? 13 A. Yes. 14 Q. Okay. Has he been a model homeowner -- or renter, 15 excuse me? 16 A. No. 17 Q. All right. I'm going to show you what I'm going to 18 ask the Court to mark as the next exhibit. I regret 19 I don't know the number. Do you recognize that? 20 A. Yes, this is for 138 Brookstone where Chris lives. 21 Q. Okay. And what is that? Other than what it's for, 22 it's a letter? 23 A. It's a letter that was dated to him on July 30, 2015 24 on items that needed to be addressed around his 25 home.

22 1 Q. Okay. And you don't have to read the entire letter 2 but what are some of the concerns that you had back 3 in a year ago in July of 2015? 4 A. Basically it's the driving over my property and 5 tearing up the grass and several -- trash being in 6 his yard and not being taken care of. I end up 7 picking up some of it and after awhile I just got 8 tired of it, so. 9 Q. Now you wrote him a letter in July of 2015 was this 10 the first time you had an issue with this? 11 A. Yes. 12 Q. Okay. And why did this start happening in 2015? 13 A. Well his son was older and he's the one that was 14 doing all the driving on the property and I don't 15 know why there would be trash there but somebody 16 just wasn't taking the trash to the dumpster. 17 Q. Okay. So before 2015 things were taken care of, 18 after 2015 things started to get bad? 19 A. Yeah. I mean it was pretty good over the years. I 20 can't say it wasn't. 21 Q. And you addressed this to him in a letter in 2015? 22 A. Right, and followed up with a phone call. 23 Q. And did things get better? 24 A. A little bit, but my main concerns were still 25 tearing up the yard.	24 1 A. It means that we have put down a black surface on 2 the property, we seal coated some of the cracks and 3 then -- 4 Q. The roads on the property? 5 A. The roads on the property. 6 Q. Okay. 7 A. So it shows where somebody has driven beside his 8 house onto the grass behind where the storage 9 building is and proceeded to come back out and just 10 drag mud -- tire tracks all the way down the 11 property driveway. 12 Q. Now this might happen once and it's not a big deal, 13 right? Did this only happen once? 14 A. No, it happened all the time. 15 Q. Okay. And the second picture is a closer up version 16 of what's in this first picture? 17 A. Correct at a different -- different timeframe. 18 Q. So two different days? 19 A. Correct. 20 Q. All right. And it also shows -- and we see the mud 21 tracked on the road, we also see the yard torn up? 22 A. Correct. 23 Q. Look at the third picture. 24 A. The third picture is once again road tire -- you can 25 see where they've driven on -- around the home and
23 1 Q. Okay, I'm going to show what will be -- I'll ask the 2 Court to mark as an exhibit after that one, what is 3 that? 4 A. This is on July 30th was a follow-up -- it was a 5 phone call follow-up for the violations or the 6 concerns that I had, Windy Hill asking him if he 7 would -- I'd offer him 60 days to move out because 8 we were -- we were done with the lease and if he 9 would call me back and let me know what -- what we 10 could do to work something out and I never heard 11 back from him and I haven't spoken to him in a year. 12 Q. Okay, did you get a letter? 13 A. I got nothing in response from him. 14 Q. No phone call? 15 A. None. 16 Q. So you're asking him and giving him 60 days back at 17 the end of his lease but you continue to collect his 18 rent, right? 19 A. Correct. 20 Q. Now, I'm going to show you some pictures. Can you 21 look at those pictures one at a time and describe 22 them to us? 23 A. Yes. This is in front of Mr. Holcombe's house. We 24 had just seal coated the property and -- 25 Q. What does seal coated mean?	25 1 on the grass and out through the driveway and 2 there's a picture of his son and you can see there's 3 mud on his tires where it shows that this is what 4 he's been doing. 5 Q. Okay. 6 A. Different date. 7 Q. Next picture? 8 A. This one was right after we had the place re-sealed 9 and his son had a four wheeler that I had no idea he 10 had and he proceeded to start driving around the 11 green building that we have on the property and of 12 course there's a lot of red mud back there because 13 there's no dirt -- grass and then he proceeded to 14 come back out of the road and once again down the 15 property with these huge red tire marks. 16 Q. Okay. And the next picture? 17 A. The next one was another time where I had asked them 18 please not to drive the four wheeler on the property 19 but he did. I was out on the property and I saw him 20 and he tried to hide from me so he took his four 21 wheeler and hide -- hid it behind 122 Brookstone 22 which is another home close to theirs to hopefully 23 that I wouldn't see it but I saw it and I took a 24 picture. 25 Q. Okay. And next?

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1 A. This is the building where you can see the tire
2 tracks where he went around the green building,
3 which is our storage building, and around our little
4 -- we have a few little rocks there that you can see
5 where he kind of burned around there and then came
6 back out onto the road.
7 Q. Okay, so these pictures are just to document the
8 issues -- some of the issues you had with Mr.
9 Holcombe and the people he had living in his home?
10 A. Correct.
11 Q. And the same issues that you wrote about in your
12 letters to him --
13 A. Correct.
14 Q. -- a year ago?
15 A. Correct.
16 Q. I'll just stop right here so we can mark these, Your
17 Honor. Again, on the front of the June 22nd letter
18 we have a -- excuse me, what's the date on that
19 letter, June 21?
20 A. Yeah, June 21, that's a 30 day notice to remind him
21 that he had 30 days to move.
22 Q. Your Honor, I apologize, I'm looking at the wrong
23 thing. Where is -- here they go. No we don't.
24 There we go, June 20 and then we have a letter post
25 marked -- sorry, that's July 20, 2015 we have a

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1 letter post marked July 20, '15 unopened, returned
2 un --
3 A. Un --
4 Q. -- unclaimed.
5 A. -- unclaimed.
6 THE COURT:
7 Okay. All right, we'll mark the -- okay the letter
8 marked July 30, 2015 as Plaintiff's Exhibit Number
9 5. The letter that was a follow-up on the letter
10 from July 30th is Plaintiff's Exhibit Number 6 and
11 the photos as Plaintiff's Exhibit Number 7, okay.
12 MR. GLEATON:
13 Thank you. Oh, I'm sorry, are you still going, Your
14 Honor?
15 THE COURT:
16 Okay.
17 MR. GLEATON:
18 I apologize.
19 THE COURT:
20 Okay. Mr. Holcombe, do you have any objections
21 under the Rules of Evidence for these --
22 MR. HOLCOMBE:
23 As far as the four wheeler behind the --
24 THE COURT:
25 You can -- you're going to have an opportunity to

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1 make a defense momentarily --
2 MR. HOLCOMBE:
3 Yes, Your Honor.
4 THE COURT:
5 -- and to the address any of these and tell --
6 explain. What I'm looking for right now is if there
7 is any reason that these are not admissible as
8 evidence in the case?
9 MR. HOLCOMBE:
10 Yes, the picture with the four wheeler behind the
11 home that's -- that's not for what it's mentioned to
12 be.
13 THE COURT:
14 Okay. Well, I don't see that as being -- that can
15 be explained in your defense but I don't think
16 that's a Rule of Evidence.
17 MR. HOLCOMBE:
18 Okay.
19 THE COURT:
20 Objection is overruled we'll enter those into
21 evidence.
22 EXAMINATION CONTINUES BY MR. GLEATON:
23 Q: I'm going to go forward Ms. Wagner with some more
24 pictures. I'm going to ask you to look at the next
25 two. What do these next two show?

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1 A. There's a picture of his home where there is a blind
2 that's messed up and in this business, you know,
3 some people do have them and they need to replace
4 them. This blind was not replaced. It was
5 eventually, but not at this time. And then the
6 screen had blown out and I had mentioned that, that
7 was fixed. But the screening is in bad repair but
8 because his ramp comes down and hides it I wasn't
9 really fussing about that it's just more of the --
10 Q. The disrepair of his property?
11 A. Correct.
12 Q. Then we have a couple of pictures which I believe
13 all show some of the trash issues you spoke about on
14 the property?
15 A. Correct. And that was my dilemma is that his trash
16 bags and so forth on the back deck. You know, we do
17 have animals that can come and chew that stuff up
18 and it blows on the property and I have addressed
19 this on several occasions to please not store it
20 back out there. And I have pictures that show on
21 different occasions that it was still out there.
22 Q. And then finally a photo and what is this last
23 photo?
24 A. The last photo is where their storage building is in
25 the back of the house and you can see where his son

30 1 has driven his truck back there and parked it and 2 that's where our issue is is they keep driving over 3 the drain field to go to the back and he -- I don't 4 know if he's hiding his car or what he's doing but 5 it's -- it's just tearing up my landscaping. 6 Q. Okay. Now, a lot of us have this picture in our 7 heads of mobile home parks just being trashy, seedy 8 places, is that what Windy Hill is like? 9 A. No, it is not. 10 Q. I'm going to show you a last picture and this -- 11 first of all, where is this picture taken? 12 A. This is at the front of the property when you first 13 drive in to Windy Hill. 14 Q. And is this a fair representation of what most of 15 the Windy Hill looks like? 16 A. Absolutely. 17 Q. And is it fair to say that people have paved parking 18 decks in many of these home spots? 19 A. Yes, all of them. 20 Q. Including Mr. Holcombe's? 21 A. Yes, he does. 22 Q. So there's no need to park on the grass because 23 there's a paved parking deck? 24 A. Correct. 25 Q. And all the houses are kept in good order and the	32 1 the park I have never ever called it a trailer park. 2 Q. And given the feel and the marketing you're trying 3 to put behind Windy Hill, would it be conducive to 4 your marketing to start referring to it as a trailer 5 park or its inhabitants as trailer trash? 6 A. No. 7 Q. Okay. I'm going to show you a letter, of course it 8 will be from June 21st, do you recognize that? 9 A. Yes, this is a 30 day reminder notice that Chris had 10 30 days out of the four months that it was time for 11 him to move on July 31st. 12 Q. Okay, so you sent him the original notice on -- 13 well, you talked to him through a letter in 2015 14 about potentially moving out to contact you but he 15 didn't contact you. 16 A. Correct. 17 Q. You sent him a letter in March saying I'm giving you 18 four months -- 19 A. Correct. 20 Q. -- but you got to get out. You sent him a letter in 21 June saying this is a reminder you have 30 days. 22 A. Correct. 23 Q. And paper clipped to his envelope is that where you 24 sent it to him certified mail? 25 A. Correct.
31 1 lawns are trimmed and things like that? 2 A. That's correct. 3 Q. All right. I'm going to ask the Court to mark 4 these, they are in order (inaudible). 5 THE COURT: 6 Okay, thank you. These will be marked Plaintiff's 7 Exhibit Number 8. Mr. Holcombe do you have any 8 objections? 9 MR. HOLCOMBE: 10 No, sir. 11 THE COURT: 12 Okay. 13 EXAMINATION CONTINUES BY MR. GLEATON: 14 Q: Now, we just talked about how you perceive -- or how 15 you keep Windy Hill Mobile Home Park. Mr. Holcombe 16 sent a letter to the Court in response to your 17 eviction notice. In it he said that you had called 18 him trailer trash in the past, have you ever done 19 that? 20 A. No, sir, absolutely not. 21 Q. And why would you not call him or somebody else 22 trailer trash? 23 A. Well because I run a mobile home park and why would 24 I call my -- my -- my residents that? And I -- 25 everybody knows that I call it a mobile home park or	33 1 Q. Returned undelivered? 2 A. Correct. 3 Q. And then he sent you a check for rent for August 4 rent, correct? 5 A. That's correct. 6 Q. I'm going to show you the next document and what is 7 that? 8 A. This is a letter that I sent on August 11th and I 9 sent it certified with his check back in it and I 10 just basically said that I could not accept his rent 11 for August. 12 Q. Because you were not allowing him to stay for the 13 month of August? 14 A. Correct. 15 Q. Okay. Now, have you had trouble communicating with 16 him over the years? Does he get your mail or do 17 your mail return undelivered? 18 A. Not regular mail, no but certified yes. It never 19 gets -- it gets returned. 20 Q. All right. I'd ask that these two letters be marked 21 and entered, Your Honor. 22 THE COURT: 23 Okay, very well. We'll mark the letter from June 24 21, 2016 as Plaintiff's Exhibit Number 9 and the 25 letter from August 11th is Plaintiff's Exhibit 10.

34 1 And Mr. Holcombe do you have any objection to 2 entering these into evidence? 3 MR. HOLCOMBE: 4 No, sir. 5 THE COURT: 6 Okay. 7 EXAMINATION CONTINUES BY MR. GLEATON: 8 Q: Now, Mr. Holcombe has stated both today and in his 9 letter that you need to make reasonable 10 accommodations for him, you gave him four months 11 notice, correct? 12 A. Correct. 13 Q. We're now at five months -- 14 A. Correct. 15 Q. -- as of today. 16 A. Yes. 17 Q. Do you believe that to be reasonable given that the 18 law only requires 30 days? 19 A. Yes. 20 Q. All right. He doesn't own this lot correct? 21 A. He does not. 22 Q. Windy Hill owns this lot? 23 A. Correct. 24 Q. And his lease is up? 25 A. His lease is up.	36 1 THE COURT: 2 Okay. All right, very well. Okay, let me change my 3 tape real quick. -- in the case of Windy Hill 4 versus Chris Holcombe and the Plaintiffs have 5 rested and we will move to Mr. Holcombe and you can 6 at this time you can begin to present your defenses. 7 MR. HOLCOMBE: 8 Okay. And defense of the information that has 9 proven -- that has been provided you know like I 10 mentioned me being like I am disabled/handicap I 11 become disabled/handicap August 2nd of '99 just 12 shortly after I moved into Windy Hill Mobile Home 13 Park or a trailer park (inaudible) and the reason -- 14 the reason I refer to it as a trailer park and it's 15 not to be discriminative or however, you know, and 16 it's just a discrepancy of, you know, where I come 17 from being born and raised in this area that's what 18 it's always been referred to is a trailer park and 19 nothing different and you -- and it's a case of like 20 I tell people I graduated from Traveler's Rest High 21 School so that has some information to explain why 22 I'm the way I am and my mindset about things. But 23 as far as the defense on my part like I say, you 24 know, I'm -- I'm not able to just up and move and I 25 have the letters here that were mentioned, the
35 1 Q. And you're asking the Court to order him to vacate? 2 A. Correct. 3 MR. GLEATON: 4 I beg the Court's indulgence one moment. Thank you, 5 Your Honor, I believe that's all we have subject to 6 potential recall but I think that's all we have. 7 THE COURT: 8 Okay, all right. Thank you very much. Okay, Mr. 9 Holcombe at this time do you have any questions or 10 cross-examination for the Plaintiff? 11 MR. HOLCOMBE: 12 The information meaning do I have anything to say in 13 regards to what has been discussed (inaudible)? 14 THE COURT: 15 In just a moment we're going to -- they've rested 16 their case and we're going to go to you in a moment 17 -- 18 MR. HOLCOMBE: 19 Yes, sir. 20 THE COURT: 21 -- and for you to present your defenses. But right 22 now I'm asking (inaudible) questions or cross- 23 examination? 24 MR. HOLCOMBE: 25 Not at this time, no.	37 1 information that your office sent to me, your letter 2 and then here is the lease agreement from where I 3 moved in and where I purchased my home. I have that 4 information and then I have the March 22nd letter, 5 removal of your home, and then like I say, you know, 6 I didn't know what to do with it. And then I have 7 the letter -- the removing minder -- or the moving 8 minder -- reminder and then that letter mentioning 9 for the Windy Hill violations in regards to shooting 10 a gun, driving on the grass, driving around your 11 home, shooting a gun and then see part of the reason 12 for the gun shooting on the property is because with 13 my -- my -- my wheelchair ramp is adjacent to the 14 back of my home which is adjacent to the tree line 15 in the back and there's been -- you know, there's 16 been wild hogs and things and a lot of wild critters 17 and to -- there was a wild hog chase my son up that 18 back ramp when he was walking his dog, okay. And 19 then there's been critters to try to get me going up 20 and down that ramp at night and when I was trying to 21 walk the dog, take the dog out so, you know, that's 22 the reason for shooting on the property because my 23 son is just looking out for me and trying to help 24 protect me so nothing gets a hold of me because I 25 just can't get up and run. And then driving on the

38 1 grass and avoiding the speed bumps, that's a daily 2 thing everybody does that that lives in there. You 3 know, you -- and then see that's why -- and a couple 4 two or three different locations that's why the 5 grass to this day is still tore up because they -- 6 people drive around them speed bumps all the time 7 and then they -- the young'uns they come in and out 8 of there in them low set cars, you know, they go 9 around her speed bumps all the time. And then the - 10 - as far as around the building, the tracks around 11 the building talking about the four wheeler and 12 stuff, you know, Matthew he went around where he -- 13 he was making the marks on the road having them big 14 old mud gripping tires on his four wheeler he didn't 15 want to make no mess in the road so he was going 16 behind the building instead of getting out on the 17 road and then see that's like the car -- the car -- 18 the truck tires that we have on my van and his truck 19 too are -- they're KO2 all-terrain tires, so they -- 20 therefore they have big knobs on them and they hold 21 mud and whatnot so then as -- that grab -- where the 22 yard was messed up and soppy it said the yard holds 23 water right there and see water drains off of that 24 pasture behind the house and my yard catches the 25 brunt end of all the water drain that comes off that	40 1 and had it put there on that lot that I'm at and -- 2 and do you need to see this information, sir? 3 THE COURT: 4 You can submit it if you wish. Is it just your 5 ownership of the -- 6 MR. HOLCOMBE: 7 Well, I have a lot of different -- all the 8 information in regards to what you and I've 9 discussed or what has been discussed and talked 10 about and that's -- let's see, you don't need that, 11 you've got that you sent that to me, you sent that 12 to me, I give you that and then here is -- here is 13 the lease and the -- and that's in regards to what 14 has been discussed about the letters that were 15 mentioned a moment ago. 16 THE COURT: 17 Yeah. 18 MR. HOLCOMBE: 19 And there's -- that one that was mentioned. Okay, 20 we've got that for you. 21 MR. GLEATON: 22 (Inaudible) let me just double check. 23 MR. HOLCOMBE: 24 And here is -- that's the lease of when I first 25 moved in (inaudible).
39 1 hill behind the house back there on that other 2 property in that big open horse -- cow pasture. And 3 -- and the cutting, you know, path through the 4 woods, you know, he would -- that was where the -- 5 there's a big old blackberry patch sitting right 6 there and that's where the first right turn of my 7 wheelchair ramp is at and he took his four wheeler 8 and he cut out that mess right there because there 9 was possums, raccoons or something jumping out at me 10 when I'd go up my ramp because there's not even 11 barely enough room to walk between my ramp and that 12 blackberry bush so he took his four wheeler and he 13 knocked all that stuff down to keep from anything 14 coming out at me or at his dog when I would take him 15 walk the dog in and out. And then as far as the 16 eviction as in regards to moving and things like I 17 informed Ms. Karen I have nowhere to go to and I 18 just can't readily just up and move and do whatever, 19 however because, you know, finding a handicapped 20 place to move -- which of course I own my mobile 21 home I have proof of that here somewhere and -- in 22 your records here. Let me see. Yes, here it is 23 where on my stapled to this lease agreement and from 24 when I moved in on July 1999 when his mom and I were 25 still married and that's when I purchased my home	41 1 THE COURT: 2 First moved in, okay. 3 MR. HOLCOMBE: 4 And then stapled to that is the contract for the 5 starting -- that was the actual -- that was the 6 actual approval letter that I -- approval that I had 7 and the reason for that information is just to prove 8 how long that I've been there where I'm at. And, 9 you know, like I say I just can't up and move 10 because I don't make that kind of money anymore. 11 THE COURT: 12 Okay. 13 MR. HOLCOMBE: 14 And, you know, that was '99, I was making 50 -- 40, 15 \$50,000 a year as an electrician (inaudible) 16 disabled (inaudible) like that anymore. 17 THE COURT: 18 Okay. Any objection, Mr. Gleaton? 19 MR. GLEATON: 20 No objection to the documents and we will agree that 21 Windy Hill doesn't own the house that is on the lot. 22 And if he says he owns it we don't have any evidence 23 that he doesn't. 24 THE COURT: 25 All right.

42 1 MR. HOLCOMBE: 2 Okay, and then let's see the -- as far as -- let's 3 see, I'm just trying to keep my ducks in a row. 4 This was -- this was your letter that you sent to 5 me. This was the second letter that you sent to me. 6 This was my letter to you, okay. And then this was 7 the -- and as far as the issue with the trash and 8 information about the mess that was on my back 9 porch. I did have, you know, yes in one of her 10 lease -- in the lease agreement it did state that, 11 you know, there was not to be any trash cans or any 12 per any trash bins of any sort on the back porch or 13 anything like that but see at the same time that the 14 -- all the rules for the disabled/handicap state 15 that, you know, there -- they had to make 16 accommodations and changes necessary for me to be 17 able to live comfortably and to be able to take care 18 of any issues or circumstances or situations and the 19 reason for all the trash in the yard is when she 20 sent me a letter stating that I had to remove the 21 trash can -- or on the phone mentioned to me that I 22 had to remove the trash can off -- because I had a 23 big old 50 -- not a 55 gallon drum but it's a -- one 24 of the big side of the road -- like side of the road 25 trash cans where you put about three bags of trash	44 1 not ever walked -- she has not come up to me, Chris 2 what can I do to help you out and then see she's 3 always sent me these negative derogatory -- I say 4 what I call negative or these derogatory letters and 5 here is the letter that I'm reading off of now and I 6 have other documentation available also to back that 7 one piece of information up. And -- 8 THE COURT: 9 Are you moving this into evidence? 10 MR. HOLCOMBE: 11 Yes, sir, that is evidence. I do apologize. Like I 12 say this is the first time I've actually been in a 13 courtroom myself because I've always had -- 14 THE COURT: 15 This is I think from the People with Disabilities -- 16 MR. HOLCOMBE: 17 (Inaudible) 18 THE COURT: 19 -- Disability Rights and Housing. Any objection? 20 MR. HOLCOMBE: 21 Yes, sir, and then also -- let me see -- let's see 22 that's the -- that's the trailer trash issue and the 23 -- we'll get to that in a moment. 24 MR. GLEATON: 25 Your Honor, he did show me everything he had in his
43 1 into. You know, when she told me I had to get rid 2 of that, you know, I got rid of it like she asked me 3 to and of course that's why trash started 4 accumulating in the yard since July of last year, 5 okay. And as far as the rules and let's see the -- 6 the -- requires housing providers to allow persons 7 with disabilities to make reasonable modifications, 8 and that's noted there. And then requires housing 9 providers to make reasonable accommodations for 10 persons with a disability, reasonable accommodations 11 is a change in rules, policies, practices and 12 services so that a person with a disability will not 13 have -- so a person will have an equal opportunity 14 to use and enjoy a dwelling unit or common space. A 15 housing provider should do everything she/he can do 16 or she -- he/she can assist but she/he is not 17 required to make a -- changes that would 18 fundamentally alter the program or create an undo 19 financial and administrative burden. Reasonable 20 accommodations may be necessary to -- excuse me, 21 reasonable accommodations may be necessary at all 22 stages of the housing process, including 23 application, tenancy or to prevent eviction. Then 24 see, Ms. Karen the whole time that I've been here 25 and all these issues that have come about she has	45 1 file. I believe that is either a piece of law or 2 piece of information, regardless I don't believe 3 it's admissible (inaudible) the Court can consider 4 these two if it's something from someone's website 5 then it's hearsay, either way I object to its 6 admissibility but I understand the Court will take 7 it for what it's worth. 8 THE COURT: 9 Okay. I -- I'm going to sustain that objection and 10 then obviously -- 11 MR. HOLCOMBE: 12 And then I -- 13 THE COURT: 14 -- we will consider the laws for what they are. 15 MR. HOLCOMBE: 16 Yes, sir. And then also I have additional 17 information from the South Carolina House Government 18 Codes Title 31, Chapter 21 it -- it states -- 19 where's it at? This is yours, I have it marked on 20 mine. Let's see that one's -- right, no, that's not 21 (inaudible) discussing. Okay, and I've got this 22 marked on one of my pages. I've got so much 23 information here. Okay, to -- okay, yes, sir, that 24 one -- this one Title 31, Chapter 21 says to 25 discriminate or rent -- to discriminate in the sale

46 1 of a home or to otherwise make unavailable or deny a 2 dwelling to any buyer because of a handicap, okay 3 and then also to make -- (inaudible) the other one 4 is to profit, to induce or attempt to induce a 5 person to sell or rent any dwelling by 6 representation regarding the entry or prospective 7 entry into the neighborhood, a person or persons in 8 a particular (inaudible) race, sex, handicap, family 9 status or origin, okay. And then the -- the rights 10 of physical disabled person Title 43, Chapter 33, 11 housing accommodations mean any -- housing 12 accommodations means any real property, or portion 13 thereof, which is used or occupied or is intended, 14 arranged or designed to be used and occupied, as the 15 home, residence or sleeping place of one or more 16 human -- human beings, but shall not include any 17 accommodations, included within subsection (a) 18 single-family residence, okay. And then also no 19 persons may discriminate against a handicapped 20 person with respect to the accommodations, the 21 public services -- I apologize, to the public 22 accommodations, public services, or housing without 23 reasonably -- without reasonable justification. No 24 protection or right of access provided by law for 25 the handicapped person is reduced or eliminated by	48 1 privileges of sale or rental of a dwelling or in 2 provision of services or facilities in connection 3 with such dwelling because of a handi -- or because 4 of a handicap that person and then any persons 5 associated with that person (inaudible). 6 THE COURT: 7 Okay. 8 MR. HOLCOMBE: 9 Yes, sir. 10 THE COURT: 11 This is getting a little cumulative. What -- 12 MR. HOLCOMBE: 13 I do apologize. 14 THE COURT: 15 The Court takes it that your defense is that they're 16 discriminating against you in this action because of 17 your handicap, is that correct? 18 MR. HOLCOMBE: 19 That is correct, yes, sir. 20 THE COURT: 21 Is there anything that you would add to that? 22 MR. HOLCOMBE: 23 As in? 24 THE COURT: 25 As a legal defense.
47 1 the provisions of this section. A handicap -- and 2 then Section 43-33-540 injunctive relief or civil 3 damages for a persons discriminated against a 4 handicapped person, this is coming from Title 43. A 5 handicapped person aggrieved by the discrimination 6 prohibited by this article has the right to seek 7 injunctive relief or civil damages, okay. And then 8 also the information from the US Code Title 42, 9 Chapter 45 discrimination in the sale or rental of 10 housing and other prohibited practices, Section E: 11 for profit, to induce or attempt to induce any 12 person to sell or rent any dwelling or represent -- 13 (END OF SIDE A) 14 MR. HOLCOMBE: 15 -- the entry or prospective entry into the 16 neighborhood of a person or persons of any 17 particular race, color, religion, sex, handicap, 18 family status, national origin, okay. And then the 19 information here the Fair Housing Act it also states 20 that information as well as she talking about my -- 21 my son who I call my young'un, to discriminate or 22 rental of dwelling -- excuse me, discrimination in 23 sale or rental of housing and other prohibited 24 process of practices (inaudible) to discriminate 25 against any person in terms of conditions or	49 1 MR. HOLCOMBE: 2 Well, in the -- 3 THE COURT: 4 Okay. 5 MR. HOLCOMBE: 6 -- in the -- in the sense of adding to it, I mean, 7 what I'm asking or requesting is that, you know, 8 with this information that's been provided, you 9 know, like I've mentioned before -- 10 THE COURT: 11 Okay. 12 MR. HOLCOMBE: 13 -- I just -- I'm just needing to have, you know, 14 something done and taken care of because with me 15 being like I am I have nowhere to go at this point. 16 THE COURT: 17 Okay. 18 MR. HOLCOMBE: 19 And then, you know, and it's all in my well-being to 20 be able to stay where I'm at until I can do 21 something about this. 22 THE COURT: 23 Okay. 24 MR. HOLCOMBE: 25 If I can't -- if I can't do any better and if I've

50 1 got to go -- if I have to go live out on the street 2 within, you know, within a week I'd be in the 3 hospital and then we would go into another, you 4 know, mess of this stuff here because I couldn't 5 take care of myself and, you know, my health, me 6 being like I am I have to take care of, you know, 7 things a certain way and I just can't do that at any 8 time, anywhere and any place.. 9 THE COURT: 10 Okay. All right. Okay, Mr. Holcombe do you have 11 anything further to present? Do you want to call 12 your son? 13 MR. HOLCOMBE: 14 Yes, sir and then also the other thing to present 15 along with calling my son was the mention of calling 16 us trailer park trash. She has specifically 17 mentioned that to me over the telephone and the -- 18 the information in regards to the trailer park 19 trash, poor people live in a trailer parks and -- 20 and then derogative description for persons who've 21 (inaudible) to residential act in a mobile home park 22 and it is distinguished by poor hygiene, foul 23 language, slovenly or slutty clothing and general 24 ignorance recreation including drinking malt liquor 25 and lawn chairs and other things such as that. And	52 1 Okay. 2 MR. GLEATON: 3 I'm happy to get him, Your Honor. 4 THE COURT: 5 Yeah. 6 MR. GLEATON: 7 I would like to cross-examine Mr. Holcombe at some 8 point, should I do that now or after his son 9 testifies? 10 THE COURT: 11 Yeah, yeah, let's go ahead and do that. I'm sorry I 12 should've allowed you opportunity. 13 MR. GLEATON: 14 Thank you, Your Honor. 15 EXAMINATION BY MR. GLEATON: 16 Q. Mr. Holcombe, you would agree that your most recent 17 written lease ended a year ago, correct? 18 A. That is correct. And the reason I don't have 19 another one is because she hasn't given me one. And 20 like I say, again, you know if I get up and do 21 something I would be more than obliged to do 22 something. But, you know, like I am as a disabled/ 23 handicap person, you know, on a fixed Uncle Sam 24 budget that I have I just can't readily up and say, 25 okay I can do this and move on.
51 1 then see if I could, you know, that's extremely 2 discriminative and insulting to me and if I could 3 bring the information up to you to prove the reason 4 for why, you know, could I do that, please? 5 THE COURT: 6 What is that? 7 MR. HOLCOMBE: 8 The information of why, you know, her comments about 9 being trailer park trash as being so discriminative 10 and insulting. 11 MR. GLEATON: 12 I believe he has the definitions of the term trailer 13 park trash and I -- 14 THE COURT: 15 Okay. 16 MR. GLEATON: 17 -- object to that (tape cuts out) if he has a letter 18 or something. 19 THE COURT: 20 I think the Court's completely apprised of the 21 meaning of the word, okay. All right. Would you 22 like to call your son at this time? 23 MR. HOLCOMBE: 24 Yes, sir, if we could, please. 25 THE COURT:	53 1 Q. Okay. And you agree that she gave you notice back 2 in March that she would like you to leave in July? 3 A. Yes, I do know that she provided me with that 4 information and I informed her this of many 5 different times since that point in time there is -- 6 I don't have anywhere else to go and I can't -- you 7 know, I can't just -- and like I informed the Court 8 and you all that I just can't up and just do 9 whatever, however because as a disabled/handicap 10 person things are just not readily available to what 11 it is -- I'll say excuse my word because it's not 12 professional but for y'all, for you all. I -- y'all 13 or you all can just walk into this house, this 14 house, this house, you know, whichever house, take, 15 you know, TMI and just take a shower, do this, do 16 that, and just, you know, hop in the bathtub, you 17 know, do whatever ready and available but like I say 18 again my home is specific to me. I roll into my 19 shower. I take my shower. I have my stove and all 20 my accommodations and everything is set for me to 21 use and it's everything that's accommodated for me. 22 My doorways are wide enough to where I can get in 23 and out of. My shower is set and accommodated to 24 where I can use it and all my, you know, whatever -- 25 you know, my (inaudible) --

54 1 Q. Well, let me just stop you for a minute, Mr. 2 Holcombe. 3 A. I'm sorry. 4 Q. You do understand that this is not an action to take 5 your home? 6 A. I understand that, but again -- 7 Q. Okay, they own the lot. They're not -- they're not 8 saying that you don't own your home. 9 A. Yes, sir, I understand that. 10 Q. This is an action to have you to move your mobile 11 home to another (inaudible). 12 A. I understand that, yes, sir, but like I say again 13 you know, I just -- I can't do that and see the 14 reason I can't move my home specifically is with my 15 home being custom and accommodated to me I have 16 pictures here to show that, you know, with my home 17 being custom to me my shower stall that I have in my 18 home has a three inch deep -- they cut -- when they 19 come and accommodated my home for me to use they cut 20 into my floor joists by three inches. My mobile 21 home has two by ten floor joists in it and they cut 22 down into my floor joists by three inches and I have 23 a concrete pad and marble walls on my -- you know in 24 my shower room and if my home is moved or if the 25 foundation of my home is disrupted in any way it's	56 1 at August 2nd of '99 so therefore these necessary 2 modifications that's been done to my home I had to 3 have these modifications done and these were state 4 paid for modifications and the disability special 5 needs board because me being like I am that, you 6 know, to where I can live just as good as everyone 7 else does to where I can take care of me and my 8 personal hygiene. 9 Q. Okay, in June of '15 you bought a lot of land here 10 in Anderson County, correct? 11 A. I did buy a lot and I do have a piece of property. 12 But like I made Ms. Karen and her father aware of 13 that, you know, my property -- that property that I 14 purchased being that things have happened the way 15 they have happened my property that I have or that I 16 purchased that I had planned on making something 17 happen with I've had to put that on the back burner 18 because me being like I am I can't get up and work 19 on that property, okay. And then, you know, I have 20 documentation here to prove, you know, what's going 21 on. I haven't been able to get -- my boy he's 22 involved with a workman's comp case and he was the 23 one working on this property and when he messed his 24 back up I had to put all that on hold because he 25 couldn't go to the property and work on that
55 1 going to mess -- it's going to crack the base of my 2 shower and the marble stud -- the marble walling 3 will be cracked and destroyed. 4 Q. Okay. So, you made these modifications to your 5 home? 6 A. These are necessary modifications to my home for me 7 to be able to live just the same as you all do, yes. 8 Q. And as the Judge pointed out you own the home, 9 correct? 10 A. Yes, he has. 11 Q. And you made these modifications knowing that you 12 were renting the place that you live not owning the 13 place that you live? 14 A. Well, the mod -- the necessary modifications were 15 like I mentioned a moment ago I moved -- and see the 16 whole trick to this story is when I purchased this 17 home back in June of '99 it was supposed to have 18 been a temporary place of living because I mean I 19 made you all aware of the kind of income and the 20 money that I made at that point in time in my life. 21 I was supposed to have only been there about a year 22 and I was going to have a house built and move on 23 but, you know, being that, you know, I had -- I 24 bought the place that I'm living at June of '99 and 25 I turned around and had (inaudible) put me where I'm	57 1 property so -- and the moral of my point to this 2 story is that property is just the same as any piece 3 of wood out here and the only thing different about 4 it is it's got water on it so I can burn but that 5 property is inhabitable -- inhabitable at this time 6 because it has no power or septic line. 7 Q. And you bought that property slightly before you 8 received the letters in July of '15, you're talking 9 about the shooting and the driving and all the 10 things -- 11 A. I don't remember. I bought that property some time 12 last year. I don't remember specifically when. 13 Q. Let me ask that question different. You did receive 14 notice in July of last year about the shooting and 15 the issues that Windy Hill had? 16 A. Yes, I did. And like I made you all aware of the 17 reason for the shooting is because with -- with that 18 property and that -- with the property -- the woods 19 and everything behind my home and there's been, you 20 know, issues with, you know, deer, critters, 21 critters being coons, possums and whatever, you 22 know, and I've had a lot of different kind of 23 critters to try to attack me when I've tried -- when 24 I've been walking the dog at night. And it's a -- 25 Q. And you -- I'm sorry. I apologize I didn't mean to

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1 interrupt you, were you finished?

2 A. But whatever -- and see the reason why he was -- and

3 like I mentioned the reason why they were shooting

4 and things going on is because my son was shooting

5 at these critters to make sure they didn't get me

6 because I can -- I just can't get up and run and,

7 you know, grab a gun because if I shoot a gun now

8 it's going to lay me on my back.

9 Q. So after you got the two letters in July of '15 you

10 never got in touch with Windy Hill Mobile Home Park,

11 did you?

12 A. And then the reason I didn't is I don't -- and see

13 the problem that I have is me doing the Mr. Mom

14 thing, working -- going -- well; I didn't go to

15 school last year because of the auto accident we had

16 back in March; that just had me stressed out and was

17 going through a lot of legal litigation with all

18 that mess and that went on forever. So that's part

19 of the reason why I forgot all about calling Ms.

20 Karen is because, well like I said we had a wreck

21 back in March 8th of last year and that was tied up

22 until August of last year.

23 Q. And because she didn't know about the animal issue

24 she wasn't given an opportunity to remediate that or

25 fix that for you?

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1 A. Well, you know, and I figured instead of having to

2 call her and then bother her or anything like that

3 as far as taking care of the critter problem, you

4 know, just shoot it be done with it and leave it

5 alone because that's the only time he's ever done

6 that is when there's been issues or circumstances

7 that come up.

8 Q. All right. And with regard to the trash and your

9 potential issues with trash -- I mean, first of all

10 your son lives with you, correct?

11 A. Yes, sir.

12 Q. And he can take the trash to the dumpster just

13 (inaudible).

14 A. (Inaudible) like I said, you know, after we had that

15 rift last year -- excuse me --

16 Q. Okay.

17 A. -- the wreck that we had last year the wheelchair

18 that I had it was -- it is -- was a -- it was a

19 similar (inaudible) wheelchair to this one here

20 except it had a longer (inaudible) but anyway when

21 that guy -- that drunk driver pulled out in front of

22 me over there in Greenville I hit that man doing 45,

23 50 miles an hour and the van that I had and that

24 wheelchair that I had it broke the wheelchair up and

25 with my boy sitting in the back seat when that big

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1 old wheel -- these wheelchairs weigh about 30 pounds

2 a piece and this big old wheelchair when it

3 (inaudible) wheelchair locked it jumped up and wound

4 up in his lap and it cracked his kneecap, his shin

5 bone and cracked his jawbone.

6 Q. Okay.

7 A. So, you know, since March 8th of last year he ain't

8 been able to do anything for me.

9 Q. So you've known since July 30, 2015 that Windy Hill

10 thought it was a good idea for you to go ahead and

11 leave and your fifth -- contract would end in '15

12 correct?

13 A. Well, like I said, yes, sir. But with all the mess

14 that's been going on and then, you know, my boy

15 working and then, you know, all this mess that he

16 had been tied up with as far as workman's comp and

17 not being able to get anything to do -- not being

18 able to get anybody to do anything for me I can't

19 just -- I just can't up and do just whatever

20 whenever because necessary accommodations are being

21 -- are required and then see also there are state

22 laws that I can't be handled -- I can't be held

23 accountable for the person's living in my dwelling

24 and I have information available for that.

25 Q. Okay; so you believe that accommodation that you

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1 need is to be able to stay at the property

2 indefinitely?

3 A. Until I can -- until I can figure out what I'm going

4 to do. At this point we just -- as long as we can

5 come to an agreement and, you know, come in here and

6 do whatever at this time that's what we would need

7 to do because I just -- I can't put no finger and

8 point no finger this -- well by this date I'm going

9 to be done I can't do that because I don't know.

10 Q. And I apologize to the Court if I'm rehashing I

11 don't intend to I just want to make sure that you

12 agree that you received notice in March that you had

13 four months to move out and then another notice in

14 June that you had another 30 days to move out?

15 A. Well, yes, sir I do know that. And like I say, you

16 know, with all the -- all the hashing and trashing

17 that's been going on since March of last year and

18 then me being like I am I can't just get up and do

19 whatever whenever and however, you know. My health

20 won't allow me to do that and my physical wellbeing

21 won't allow me to do that. With my son being, you

22 know, what has happened with my boy he can't help me

23 right now because with all the stuff that's going on

24 so you -- I just -- I don't have that ability to

25 just, you know, to get up and do whatever, however

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1 whenever and --

2 Q. Nothing further. I'm sorry.

3 A. No, go ahead.

4 Q. Nothing further from Mr. Holcombe and is your son

5 also Mr. Holcombe?

6 A. No, sir. Holcombe as well, yes.

7 THE COURT:

8 Okay.

9 MR. HOLCOMBE:

10 In a jovial sense, you know, I -- you know, I'll

11 call him different things.

12 THE COURT:

13 Okay; Mr. Holcombe, if you'll come around to the

14 witness stand. And what's your first name, sir?

15 MR. MATTHEW HOLCOMBE:

16 Matthew Holcombe.

17 THE COURT:

18 If you'll put your left hand on the bible in front

19 of you and raise your right hand. Do you solemnly

20 swear that the testimony you're about to give is the

21 truth, the whole truth and nothing but the truth so

22 help God?

23 MR. MATTHEW HOLCOMBE:

24 I do.

25 THE COURT:

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1 Okay, if you'll have a seat there and please answer

2 any questions that your father has for you and then

3 afterwards any that Mr. Gleaton has for you, okay?

4 EXAMINATION BY MR. HOLCOMBE:

5 Q: Yes, you are aware that she has sent us a letter

6 back in March that we had to be vacated by the end

7 of last month, correct?

8 A. Yes.

9 Q. Okay, all right. And then at the same time, you

10 know, like the information that was provided to the

11 Court or presented to the Court since March 8th of

12 last year you and I have not been able to do

13 anything on account of the motor vehicle accident

14 that we had and then after you started working on

15 the job that you was working on you inquired an

16 issue and you're working a workman's comp case and

17 you're physically unable at this point, correct?

18 A. Correct.

19 Q. Okay. And at the same time the stress that this has

20 caused my young'un from all this mess because as you

21 see he and I we communicate well --

22 THE COURT:

23 Just -- just --

24 MR. HOLCOMBE:

25 Excuse me?

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1 THE COURT:

2 Just ask him questions.

3 MR. HOLCOMBE:

4 I'm sorry.

5 EXAMINATION CONTINUES BY MR. HOLCOMBE:

6 Q: And like I say you -- you confirmed the information

7 about the letter. You confirmed the issue with the

8 wreck and then has -- has there been issues with us

9 being heard not really -- the issues with being

10 aggravated against or discriminated against in some

11 sense on account of how you and I are? And then --

12 and the sense also has there been issues about the

13 trash in --

14 THE COURT:

15 Would you like to answer that out loud, please?

16 WITNESS:

17 I said correct, yes.

18 THE COURT:

19 Okay.

20 MR. HOLCOMBE:

21 I'm sorry.

22 EXAMINATION CONTINUES BY MR. HOLCOMBE:

23 Q: And then also didn't Ms. Karen inform us that we --

24 we have -- we kept the trash can on the back porch

25 at the house to keep things in a clean sensible

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1 manner but when she informed us that we had to

2 remove that trashcan from the back patio or off my

3 ramp in other words, once that -- once the trash can

4 was removed that's when we started having issues

5 with the trash on account of you not being able to

6 take the trash off when necessary, correct?

7 A. Correct.

8 Q. And then see -- and the same -- and also if -- if

9 there's -- and they had mentioned that she sent this

10 eviction letter if we have to move would I be able

11 to take care of myself or to -- or would there be

12 health issues shortly after we left.

13 A. First question, you would not and then second

14 question yes.

15 Q. Okay, and do at this current point in time can you

16 and I just readily up and go wherever, however

17 whenever we want to?

18 A. Absolutely not.

19 Q. Okay, and -- and also has there been accusations

20 about Ms. Karen calling or referring to you and I as

21 trailer park trash?

22 A. Yes.

23 Q. Well didn't you -- you had someone with you to

24 actually witness that and we didn't have -- didn't

25 bring that witness with us because she couldn't get

66 1 off work; is that true? 2 A. Yes. 3 Q. And then, you know -- and also with one of the 4 pictures that was taken to where she claimed that 5 you was trying to hide the four wheeler behind the 6 mobile home where Shane and the other gentleman 7 lives, were you trying to hide that four wheeler or 8 did you have it parked out of the way because they 9 were partying? 10 A. Yes, I had it parked out of the way. 11 Q. Okay, and then on a regular basis did you and -- for 12 all the years that you and I have been there did we 13 cause any problems or anything that we needed -- 14 have we ever caused any problems? Has there been 15 any known issues from day one until now? 16 A. Until -- until now no. 17 Q. Until last year and then -- and it's just kind of 18 strange that since you and I -- since we had that 19 wreck last year it just seems like everybody has -- 20 because of what happened and because -- because of 21 what happened with that accident that we had last 22 year and me receiving another vehicle out of that 23 accident everybody seems to assume that we got a 24 bunch of money, is that correct? 25 A. Correct.	68 1 on the phone and you apologized for doing that 2 correct? 3 A. Yes. 4 Q. Matter of fact after apologizing you've done it 5 again, correct? 6 A. Unknowledgably yes. 7 Q. Yeah. And then you've called her and said I don't 8 know why I keep doing it but I won't and I want you 9 to know I'm sorry? 10 A. When I was younger, yes. 11 Q. Okay. Nothing further, Your Honor. 12 THE COURT: 13 Okay. All right. Okay, no further questions you 14 can step down and you can remain in this courtroom 15 from this point on. Okay, Mr. Holcombe, do you have 16 anything further to present before we go to closing 17 arguments? 18 MR. HOLCOMBE: 19 Well, would you like for me to provide you all with 20 all of the information that I have here available 21 for you? 22 THE COURT: 23 I don't need anything else -- 24 MR. HOLCOMBE: 25 As far as the information --
67 1 Q. And realistically if they checked our checkbooks 2 right now there would be very minimum numbers as far 3 as money goes in the account, correct? And you and 4 I live on a daily basis and we just -- we think just 5 -- just whatever, whenever, however, correct? 6 A. Correct. 7 Q. Okay. 8 THE COURT: 9 Anything further? 10 MR. HOLCOMBE: 11 That's all that I have at this time, yes, sir. 12 THE COURT: 13 Okay. 14 EXAMINATION BY MR. GLEATON: 15 Q: Mr. Holcombe, you do with your dad at least most of 16 the time, correct? 17 A. Yes, sir. 18 Q. And you have driven both your truck and your four 19 wheeler across the dirt and track mud into the road 20 of Windy Hill Motor Home -- or Mobile Home Park, 21 excuse me? 22 A. I figured it's with, you know, all the run off she 23 has on the road it wouldn't have made any 24 difference. 25 Q. All right. And you've spoken with Ms. Wagner here	69 1 THE COURT: 2 I don't -- I don't need copies of any (inaudible) 3 that you were reading, okay? 4 MR. HOLCOMBE: 5 All right. But -- and then, yeah, the only other 6 thing and it's done been hit and missed on is I was 7 going to ask, you know, talking about the reason why 8 my rent for this month was not accepted and that's 9 been -- that's been acknowledged so I was going to 10 ask the Court why she has refused to take my rent at 11 this point but that has been answered. But I guess 12 I did make the effort to make the payment on the 13 rent for August and as they stated that she has not 14 cashed the check so therefore it's not that I didn't 15 try to pay the rent it's just the fact that she has 16 not willingly accepted the money. 17 THE COURT: 18 Okay. All right, let's go ahead and do you have 19 anything in closing? 20 MR. GLEATON: 21 Closing argument, Your Honor. Your Honor, I don't - 22 - I don't want to beat this to death but he doesn't 23 own the lot. He doesn't rent a dwelling from us he 24 owns a -- he rents a spot of land with a parking 25 deck on which he can put his own home. He doesn't

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1 get to keep it forever. It's to -- we both have to
 2 comply with both the -- you know, any contracts we
 3 enter to and the law of South Carolina our contract
 4 ended a year ago the law of South Carolina says if
 5 we're month-to-month we can have him out in 30 days
 6 notice, we gave him four months notice. I
 7 understand his plight. But he has a piece of land
 8 that in theory he could move to. But that doesn't
 9 matter. We have not discriminated against him.
 10 We've asked other people to move. We have asked him
 11 to move because of his actions and those of the
 12 people living with him but not because of his
 13 disability. We deny that we ever called him any
 14 derogatory names but if we did those derogatory
 15 names didn't have anything to do with disabilities
 16 so that's not implicated. And to the extent that we
 17 are required to give him reasonable accommodation
 18 because of a disability I would argue that starting
 19 to talk to him a year ago about moving out, giving
 20 him an extra year of month-to-month rent, giving him
 21 express notice four months out that is all the
 22 accommodation that need to give. So, as much as I
 23 might feel for Mr. Holcombe I believe that the law
 24 is pretty clear that we are allowed to have him
 25 move. Thank you, Your Honor.

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1 THE COURT:
 2 Thank you. Okay, Mr. Holcombe, do you have anything
 3 in closing?
 4 MR. HOLCOMBE:
 5 Yes, sir, I sure do. And in regards to the law, the
 6 law does plainly state the property owners or the
 7 company business or whomever are required to make
 8 necessary accommodations and, you know, to whatever
 9 -- well accommodate me and, yes, sir, I do have
 10 property but as I stated again that property is
 11 inhabitable and I have nowhere to go to because
 12 there is no -- there is no power or septic on the
 13 property it was -- it's a project in progress is
 14 what it amounts to and at this point in time, like I
 15 say again, I have nowhere to go to to where I can be
 16 able to take care of myself and do well for myself
 17 as I have done the past 17 years plus. And if I
 18 were to have to move now yes, I know I rent the lot
 19 but the point being is with me having to rent the
 20 lot and not having anywhere to go to to -- with
 21 necessary accommodations to make things work for me
 22 I just -- I wouldn't make it and I can't -- and I --
 23 and I can't do that at this time because my health
 24 and my wellbeing is at stake because if I have to
 25 move and go anywhere that's not accommodated for me

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1 my health will diminish greatly within a short
 2 period of time. And I'm requesting to be able to be
 3 assisted with doing whatever is necessary to make
 4 the prior accommodations to be able to make things
 5 work.
 6 THE COURT:
 7 Okay. Thank you very much for your time. The Court
 8 finds, Mr. Holcombe, that we do sympathize with your
 9 plight that you've shown no reason, no legal cause
 10 that the Plaintiff's have to keep you there and keep
 11 your home. They have made due accommodations for
 12 you and I've -- the court finds that you have not
 13 shown any discriminatory policy in this eviction and
 14 they have acquired the right to have you evicted and
 15 you will still have 20 days to have your home moved
 16 from the issuance of the writ of ejectment. And the
 17 Court finds for the Plaintiff. Now, appeals from
 18 the magistrate court are made to the circuit court
 19 at the Anderson County Clerk of Court within 30 days
 20 of the announcement of this decision. If Mr.
 21 Holcombe, if you were to file an appeal to this it
 22 costs \$150 and you would have to go on bond with
 23 this court to pay the rent in full, the back rent,
 24 you would have to bring it current and you would
 25 have to go on bond with this court to keep it

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1 current through the pendency of that appeal. If at
 2 any time upon notice that you fell behind in that
 3 rent then this court would end that appeal and the
 4 ejectment would take place, okay? Is there anything
 5 further?
 6 MR. GLEATON:
 7 No, Your Honor.
 8 THE COURT:
 9 Okay.
 10 MR. HOLCOMBE:
 11 What was that again? I do apologize. I didn't
 12 quite understand that specifically.
 13 THE COURT:
 14 With regards to an appeal?
 15 MR. HOLCOMBE:
 16 Well with the appeal and specifically what is going
 17 on at this point.
 18 THE COURT:
 19 Okay. They will -- having found for the Plaintiff
 20 they can file with this court for an -- for a writ
 21 of ejectment and the Court will issue that document
 22 and it'll be hung on your door. And in the case of
 23 ejectment of a mobile home unit that you have to
 24 move from the property and set it somewhere else,
 25 you get 20 days to have that done. Now, you know,

74 1 if it should -- that time should go by and it's 2 still there it -- they would acquire the right to 3 have that moved off, placed in impound or sold at 4 public auction, okay? 5 MR. HOLCOMBE: 6 Okay. 7 THE COURT: 8 With -- but that's a different process, okay. That 9 doesn't happen automatically. If you should -- or 10 either party should decide to file any appeals, to 11 this process that's got to be done within 30 days of 12 the announcement of this decision at the Anderson 13 County Clerk of Court's office, okay. I believe the 14 filing fee is \$150 and for the defendant and the 15 ejectment action you have to go on bond with this 16 court, you have to show that you have got your rent 17 up to date and that you have to promise that you're 18 going to keep that rent up to date through the time 19 that the circuit court is looking at it, okay, until 20 that appeal is over. If you don't this court can 21 end that appeal and they can execute the writ of 22 ejectment, okay? 23 MR. HOLCOMBE: 24 Okay. 25 MR. GLEATON:	76 1 CERTIFICATE 2 3 I, the undersigned, Jessica Antonucci, Notary Public 4 in and for the State of South Carolina do hereby certify 5 that: 6 That the foregoing tape was transcribed at the 7 request of Mark Fessler, Esquire; 8 A court reporter was not present at the proceedings 9 and therefore cannot guarantee that every word of 10 testimony could be heard or that the speaking parties are 11 properly identified; 12 I further certify that I am neither counsel nor 13 solicitor to any of the parties in said suit, nor 14 interested in the event of the cause. 15 In witness whereof, I have hereunto set my hand and 16 seal this 27th day of December, 2016. 17 18 19 20 _____ 21 Jessica Antonucci 22 Notary Public for South Carolina 23 My Commission expires 7/06/2025 24 25
75 1 Thank you, Your Honor. I do apologize, my 2 understanding we need to apply for the writ of 3 ejectment it's not going to be issued automatically? 4 THE COURT: 5 That's correct. It's a \$10 filing fee and you can 6 do at the Clerk's okay? 7 MR. GLEATON: 8 Okay. 9 THE COURT: 10 All right, thank you. 11 MR. HOLCOMBE: 12 All right, now I do have a question for you, sir. 13 What am I supposed to do about my well-being and my 14 -- 15 16 17 18 19 20 21 22 23 24 25	

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State of South Carolina

Court of Common Pleas

County of Anderson

Christopher Holcombe)

Plaintiff,)

v.)

Windy Hill MHP LLC,)

Defendant.)

Transcript of Record
2016-CP-04-02064

July 20, 2017

Anderson, South Carolina

B E F O R E:

The Honorable McIntosh, Judge.

A P P E A R A N C E S:

Mark Fessler, Esquire
Attorney for the Plaintiff

Ralph Gleaton, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: Is everybody here on *Holcombe v. Windy Hill*?

(Affirmative responses.)

THE COURT: Is everybody necessary to be here, here?

(Affirmative responses.)

THE COURT: In other words, my schedule is at 11:15, but if y'all are ready to proceed, let's -- let's go ahead and do it.

MR. FESSLER: Yes, Your Honor.

MR. GLEATON: Your Honor, Windy Hill is technically the plaintiff, but I'm going to be over here to accommodate.

THE COURT: I didn't hear you.

MR. GLEATON: Windy Hill is technically the plaintiff and I represent Windy Hill, but I'm going to sit over to accommodate your courtroom.

THE COURT: All right. This is an appeal from a magistrate's court?

MR. GLEATON: Correct, Your Honor.

THE COURT: I do not have the return. Do you have a copy of the return?

MR. GLEATON: I don't know if I ever filed a

1 return, Your Honor.

2 MR. FESSLER: There was a return e-filed and
3 it's on the public index.

4 THE COURT: There was one e-filed?

5 MR. FESSLER: It was just a one-page summary of
6 the ---

7 THE COURT: Just one second. Let me look at it
8 and see.

9 MR. FESSLER: Yes, Your Honor.

10 THE COURT: Does Windy Hill MHP mean "mobile
11 home park"?

12 MR. GLEATON: Yes, Your Honor.

13 THE COURT: Okay. So I'm only reviewing the
14 issue of ejectment and non-damages; is that correct,
15 Mr. Gleaton?

16 MR. GLEATON: Correct, Your Honor.

17 THE COURT: All right, sir. This is your
18 appeal?

19 MR. FESSLER: Yes, Your Honor.

20 THE COURT: All right. What is the standard
21 review for this Court from an appeal from
22 magistrate's court?

23 MR. FESSLER: Your Honor is entitled to review
24 all facts and law de novo on a judgment according
25 to the ---

1 THE COURT: I don't think I do look at a de
2 novo. I think I look at it as an abusive
3 discretion.

4 MR. FESSLER: Umm ---

5 THE COURT: If you have a case that says
6 otherwise, I think you're incorrect on that.

7 MR. FESSLER: I was looking at South Carolina
8 Code 18-7-170.

9 THE COURT: 18-7-170?

10 MR. FESSLER: Yes, Your Honor.

11 THE COURT: I don't have -- I can't recall the
12 case, but I have a specific memory for some reason
13 that this is not any type of de novo, we don't take
14 evidence, and we just determine whether it's an
15 abusive discretion case, but based on an error of
16 law or of the rule not supported by facts in
17 evidence.

18 MR. FESSLER: Yes, Your Honor. I would
19 submit -- I've submitted a memo and sort of cited
20 three codes -- two code sections from the *Vacation*
21 *Time of Hilton Head Island v. Kiwi Corporation*.

22 THE COURT: Okay.

23 MR. FESSLER: The Court of Appeals citing
24 18-7-140 says that the Circuit Court sitting in an
25 appellate capacity has the same ability to make a

1 determination as the manner of Circuit Judges and
2 trials without a jury, so to rule on all issues of
3 fact and law. And that's my understanding of the --
4 of the ---

5 THE COURT: Well, I may be wrong. Do you have
6 your memo?

7 MR. FESSLER: Yes, Your Honor.

8 THE COURT: Would you pass that forward,
9 please, sir?

10 MR. FESSLER: (Complying.)

11 THE COURT: Mr. Gleaton, what's your
12 understanding of my standard review?

13 MR. GLEATON: Your Honor, I received those
14 memos a few days ago and haven't had a chance to go
15 over those, but I agree with Your Honor that you are
16 sitting as an appellate court reviewing for just
17 errors of law for abusive discretion. However ---

18 THE COURT: I have to look it up.

19 MR. GLEATON: Yes, Your Honor.

20 THE COURT: Quite frankly, I think that -- I
21 see what you're saying in the statute. I don't
22 think that's the case, but let me look.

23 MR. GLEATON: Thank you, Your Honor.

24 THE COURT: I don't do a lot of appeals from
25 magistrate court, so I don't know the rule. Can't

1 tell you with a strong conviction one way or the
2 other.

3 MR. FESSLER: Certainly, Your Honor.

4 THE COURT: All right. So this is your appeal,
5 and I'll be glad to hear you on it.

6 MR. FESSLER: Yes, Your Honor. Mark Fessler,
7 South Carolina Legal Services for the Appellant and
8 the defendant below, Christopher Holcombe.

9 And the appeal issue in this case involves
10 issues of interpretation and policy and application
11 of the Fair Housing Act, which is a Federal
12 Congressional Session, as well as South Carolina's
13 Fair Housing Law, which is basically ---

14 THE COURT: And did you raise that issue in the
15 magistrate's court?

16 MR. FESSLER: Yes, Your Honor, it was raised.
17 Mr. Holcombe attempted to submit copies of the law,
18 as well as, I think, articles. The judge did not
19 accept those items, so I don't exactly what he tried
20 to submit. I did not represent him then.

21 THE COURT: Well, according to the return in
22 this case, the plaintiff, Mobile Home Park, sought
23 to eject this gentleman as well as other tenants
24 because, number one, they're changing the business
25 model; number two, you've been a problem tenant,

1 that his lease had ended and so he was on a
2 month-to-month basis. Is that not correct?

3 MR. FESSLER: Your Honor, that is the case that
4 they made to the magistrate. And my assertion is
5 that the Fair Housing Act and South Carolina Fair
6 Housing law embodies policies and considerations
7 that can sometimes displace contractual obligations
8 the Court of Appeals ---

9 THE COURT: So -- oh, and also that he was in
10 arrears with his payment. Do you agree or disagree
11 that he's in arrears?

12 MR. FESSLER: I disagree.

13 MR. GLEATON: I haven't read the return, Your
14 Honor, but I will tell you that if the magistrate
15 judge said he was in arrears and payment, that was a
16 mistake. He has -- he was up-to-date.

17 THE COURT: He was current?

18 MR. GLEATON: Yes, Your Honor.

19 THE COURT: Did you give -- did the plaintiff
20 give him notice of termination of the month-to-month
21 tenancy as provided?

22 MR. GLEATON: Yes, Your Honor. When it gets to
23 my turn, I'll explain all that.

24 THE COURT: Is there any question about that?

25 MR. FESSLER: No, Your Honor. We don't dispute

1 that there was notice given. However, the Federal
2 statute ---

3 THE COURT: What particular Federal statute are
4 you referring to?

5 MR. FESSLER: It's 42 U.S. Code § 3604-(3)(B).

6 THE COURT: 44 U.S. Code what?

7 MR. FESSLER: 42 --

8 THE COURT: Oh, 42. Go ahead and pass it
9 forward.

10 MR. FESSLER: Yes, Your Honor. And this
11 largely mirrors -- I think it's probably verbatim
12 with the South Carolina Fair Housing Law ---

13 THE COURT: Okay.

14 MR. FESSLER: And it's ---

15 THE COURT: What is the South Carolina
16 equivalent to that? Do you know?

17 MR. FESSLER: I can -- I don't have my
18 memorandum in front of me right now, but it's cited
19 in the memorandum. Well, actually, I do have a
20 draft copy, so it is...

21 THE COURT: And the particular subsection you
22 say is the most applicable.

23 MR. FESSLER: Yes, Your Honor. So in the South
24 Carolina law, I will point to the statement of
25 Section 31-21-40, as well as section 31-21-70. They

1 are read in conjunction. 31-21-40 sets out a
2 general prejudice, and then 70 sort of defines a
3 term within that.

4 But the idea is that a reasonable accommodation
5 from a landlord is required if it exists in order to
6 enable a handicapped person -- which I don't think
7 there's any dispute that Mr. Holcombe is handicapped
8 under the definition on both of those code
9 sections -- if it's necessary ---

10 THE COURT: But didn't he have reasonable
11 accommodations the fact that he was there? I mean,
12 that means that he was afforded accommodations,
13 right?

14 MR. FESSLER: Well, Your Honor, the question is
15 what is a reasonable accommodation. Simply the
16 length of time is not a determinative factor. Case
17 law that discusses -- Fourth Circuit case law
18 establishes the elements of what a reasonable
19 accommodation is, says you have to conduct facts ---

20 THE COURT: Let me stop you there. I'm sorry.

21 MR. FESSLER: Sure.

22 THE COURT: But if I understand what you're
23 saying, the fact that this gentleman unfortunately
24 is disabled, and I agree that he is, at least
25 appears to be, once a landlord enters into a lease

1 agreement with him, the fact that he's disabled
2 means he can't terminate that lease ever?

3 MR. FESSLER: No, Your Honor. The question
4 is ---

5 THE COURT: Under what conditions can he
6 terminate and which condition can he not?

7 MR. FESSLER: Certainly, Your Honor. Certainly
8 for violations on the lease if it's reasonable to
9 terminate.

10 THE COURT: The lease is over.

11 MR. FESSLER: The lease was on a
12 month-to-month.

13 THE COURT: Sir?

14 MR. FESSLER: Yes. The lease was on a
15 month-to-month situation. They -- and they wanted
16 to evict him, but evictions can be delayed if it's
17 reasonable to accommodate a handicapped person under
18 the specific facts and circumstances of that case.

19 THE COURT: So let me ask you, and I know --
20 I'm going to give you a full opportunity, so I
21 understand in the long run. Are you asking for
22 additional time to allow him to vacate the premises,
23 or are you saying, no, you can't evict me, period?

24 MR. FESSLER: No. We're not saying -- that is
25 what Mr. Holcombe argued before the magistrate

1 court. And with the benefit of counsel and
2 reviewing the case law, even though he raised that
3 as a request, it doesn't appear that that is
4 reasonable.

5 So I would agree indifferent duration is not
6 reasonable, but that's not what he's asking for.
7 He's asking for the ability to be one of the last
8 tenants to be -- because there are still people that
9 are renting lots from Mr. Holcombe's client, and so
10 Mr. Holcombe -- excuse me -- Mr. Gleaton's client.

11 And so instead of being kicked out in the first
12 wave of tents being kicked off the property who are
13 just renting lots rather than renting lots and
14 mobile homes, that he be put into that last set to
15 give him enough time to figure out how he can move
16 his mobile home, because this is more complicated
17 than simply him leaving one location and finding
18 another location. He needs to actually take his
19 mobile home and put it on another piece of land.

20 THE COURT: What steps has he taken to do that?

21 MR. FESSLER: Your Honor, he has called around
22 and tried to find somebody to do septic and stuff.
23 He needs septic installation. And this goes beyond
24 the record.

25 THE COURT: I understand. I understand.

1. MR. FESSLER: But as a practical matter, he
2. needs to -- he needs to get a septic tank installed.
3. And so when I took the case over, we talked about
4. out -- he called Roto Rooter. He called Ben
5. Franklin Plumbing. And Ben Franklin Plumbing gave
6. him a quote of \$10,000 which is -- which is way
7. outside his financial ability.

8. I talked to opposing counsel about maybe do
9. they know somebody who does septic, and he sent some
10. names a couple weeks ago. I talked to one of those
11. people personally. Mr. Holcombe was not able to get
12. people to call him back. I don't really know what
13. company or business does septic. It's not something
14. advertised. It's a ---

15. THE COURT: There are plenty of people who do
16. septic tanks around here.

17. MR. FESSLER: And I -- so I talked to one
18. fellow, Mr. Porter. He -- when I talked to him, it
19. sounded like he'd be willing to go out and get an
20. estimate, what it would cost to get the septic
21. installed.

22. What he -- what Mr. Holcombe needs, he needs to
23. know what the estimate will be to get the septic
24. installed and the mobile home moved, because at that
25. point he'll know whether it is financially possible

1 for him to do that.

2 THE COURT: Does he have -- does he have real
3 estate?

4 MR. FESSLER: He owns the parcel of land to
5 which the mobile home would be moved. So that --
6 and he bought that I think in 2015.

7 And so there's a checklist that I attached as
8 an exhibit that was e-filed with the memorandum and
9 ask that you take judicial notice of the steps
10 involved. And it was filed as a separate document
11 to the -- to the memo, but it lists the steps that
12 are necessary for the county to allow a mobile home
13 to be moved.

14 So it's not as simple as him just sort of
15 shopping around, trying to find a new apartment.
16 You know, and also given his limitations, if he were
17 to try to find another location, you'd have to find
18 one that specifically accommodates his needs.

19 The other important thing about this particular
20 mobile home and why he's trying to keep this
21 particular mobile home is because the Department of
22 Special Needs through -- through Medicaid funding
23 modified the mobile home to widen some doors,
24 accommodate him so he could shower. So losing this
25 home is not just losing something that he's

1 purchased and dependant on. It's losing a home that
2 is specifically designed to meet his particular
3 needs.

4 And I think in light of the pressing -- what
5 courts have called the highest national priority,
6 Fair Housing Act, which would also translate to the
7 South Carolina Fair Housing laws since they're --
8 they're the same statutes.

9 They're South Carolina cases that says where
10 you have -- where you have South Carolina adopting
11 verbatim law from another Federal statute. In that
12 case, it was Title 7 is where it's at. Those cases
13 are binding or authoritative in terms of South
14 Carolina law. So in light of what the Federal cases
15 have called the highest national priority.

16 And the importance of this home too,
17 Mr. Holcombe, as a disabled individual, you know,
18 his ---

19 THE COURT: What difference if the doors are 10
20 feet wide or 2 feet wide is it to have them the
21 trailer?

22 MR. FESSLER: Well ---

23 THE COURT: I understand that there are
24 probably some ramps and certain requirements there
25 likely will have to be installed, but the -- the --

1 the width of the doors and everything like that has
2 no effect on moving this trailer, does it?

3 MR. FESSLER: That's correct, Your Honor.
4 We're simply explaining why he needs this particular
5 trailer.

6 THE COURT: Oh, okay.

7 MR. FESSLER: If it is upheld, then he
8 basically has 20 days to move the property before
9 they can sell it.

10 THE COURT: Well, let me -- let me stop you.

11 Mr. Gleaton, you understand that 20 days is not
12 really time for this gentleman to move this
13 property. Do you not agree?

14 MR. GLEATON: Twenty days?

15 THE COURT: Yes, sir.

16 MR. GLEATON: No, Your Honor, but it's been two
17 years.

18 THE COURT: Well, I think -- first of all, I
19 don't want this gentleman to be stuck out there with
20 no place to live.

21 But second of all, I don't want him sitting
22 around dragging his feet because they have a right
23 to continue on with their business plan and all the
24 other things.

25 MR. FESSLER: Yes, Your Honor.

1 THE COURT: What specific answer -- sounds like
2 you've been pretty involved in this and that's
3 admirable.

4 MR. FESSLER: Yes, I have.

5 THE COURT: Before you put that, what
6 specifically have you found as far as septic? I'm
7 hearing nothing. How about, you know, all you have
8 to do with the county because I know back years ago
9 I did the same thing. You just get a permit to move
10 it. You have electrical, and that's stuff -- that's
11 not a big deal. Has any steps been taken towards
12 that?

13 MR. FESSLER: Your Honor, since I've sort of
14 taken over trying to investigate this for
15 Mr. Holcombe, he has ---

16 THE COURT: Has any steps been taken towards
17 that?

18 MR. FESSLER: Not physical steps. I have
19 talked to Mr. Porter, the contact that they provided
20 me. I've also called a -- I called the Department
21 of Special Needs and spoken to a maintenance person
22 over there, and he referred me to a Charles
23 Seawright, Seawright Construction. And he says he
24 believes ---

25 THE COURT: Is that Chuck Seawright?

1 MR. FESSLER: Yes, Your Honor.

2 THE COURT: Okay. He put a septic times two.

3 MR. FESSLER: Yes. And he said they do both
4 septic and building, so maybe they can do the whole
5 thing in one swoop.

6 THE COURT: Right.

7 MR. FESSLER: I left a message for
8 Mr. Seawright yesterday afternoon.

9 THE COURT: Do you know his number? He used to
10 be one of my clients. Give it here and I'll call
11 him right now.

12 MR. FESSLER: Let's see. Did I write that
13 down? Yes. 940-6944.

14 THE COURT: What is it?

15 MR. FESSLER: 940-6944.

16 THE COURT: 6944. Y'all just hang tight for me
17 a moment, please.

18 MR. FESSLER: Yes, Your Honor.

19 (From 11:27 to 11:31 a.m., a recess was taken.)

20 THE COURT: All right. I -- I left my number
21 with Mr. Seawright. My law clerk says, Mr. Fessler,
22 that you're right on the standard review. I still
23 don't think that's right, but I'm not arguing that.

24 As a practical matter, Mr. Gleaton, I'm not
25 going to put this man out in the street without

1 having a spot to go to.

2 But, Mr. Fessler ---

3 MR. FESSLER: Yes, Your Honor.

4 THE COURT: --- he's got to show some good
5 faith ---

6 MR. FESSLER: Yes, Your Honor.

7 THE COURT: --- and he's got to make some
8 affirmative ---

9 MR. HOLCOMBE: (Indicating.)

10 THE COURT: Hang on. Talk to your lawyer.

11 You've got to -- he's got to make some affirmative
12 steps in getting this thing out of there because
13 they have a right to get him out. If not -- if he
14 doesn't, then there will be -- there's consequences
15 as a result of that.

16 What I want to do is take this under
17 advisement. Okay. I do want to check the standard
18 review, because I have some memories. Sometimes I
19 dream things, but anyway's, my standard review may
20 clarify something from the Supreme Court that is an
21 abusive discretion standard. That means if that be
22 the case, sounds to me after reading the return,
23 there's evidence in the record to support what we
24 did.

25 But at the same time, I want your client,

1 through you if you don't mind ---

2 MR. FESSLER: Yes, Your Honor.

3 THE COURT: --- make steps towards
4 communicating with whomever at the county has to be
5 called, get the power, talk to Seawright or whoever,
6 and notify Mr. Gleaton and y'all stay in touch, say
7 this is what we're doing to show you we're getting
8 out of here.

9 MR. FESSLER: Yes, Your Honor.

10 THE COURT: Meanwhile, I'm going to be
11 considering my order.

12 MR. GLEATON: I understand Your Honor is taking
13 it under advisement. I understand -- I believe that
14 I understand exactly what the Court is doing. If
15 the Court will give me three minutes, I would like
16 to put my case on the record just so it's on the
17 record.

18 THE COURT: Absolutely.

19 MR. GLEATON: I understand everything
20 Mr. Fessler is saying, and whether the standard used
21 one way or the other, in this case, Mr. Fessler has
22 done all this, has filed the actual transcript of
23 the trial, so it's there in the record.

24 What the record will reflect, Your Honor, is
25 that Mr. Holcombe's lease terminated at the end of

1 July 2015.

2 Before his lease terminated, Windy Hill's owner
3 sat down with him and said -- there's a letter.
4 It's also part of the record in this case. It's
5 filed with the Court.

6 There's a letter that they sent him after that
7 meeting that says, "This confirms our meeting. This
8 confirms that we agreed that you need to move.
9 You've been a bad neighbor."

10 THE COURT: That was last year?

11 MR. GLEATON: '15, two years ago.

12 And so -- "But we also understand that you have
13 some issues about getting out, so we're going to let
14 you go month-to-month."

15 Now, the lease, and this is again in the record
16 says, "If you go month-to-month without a new lease,
17 the rent is twice of what it was." She didn't make
18 him pay rent -- pay double rent, so they let him
19 keep the old rent from month-to-month.

20 So that's two accommodations. We're going to
21 let you stay so you can figure out where to go, and
22 we're going to let you keep your old rent, but
23 you're month-to-month.

24 Eight months later in March, she sends a notice
25 that says, "Okay. You got to go. We're going to

m

1 give you till July." That's a whole year and it's
2 also 120-days notice instead of 30-days notice.
3 That's a third accommodation.

4 He doesn't move out in July. He's taken no
5 steps to move. He did have a piece of property he
6 bought in July of '15 right after we had that talk
7 with him, so he had a piece of property to go to, so
8 no steps that we're aware of to get there.

9 We get the eviction. He appeals. It is now
10 July '17. It's been two years. And now Mr. Fessler
11 is on board. Mr. Fessler has been wonderful. He's
12 done a great job for his client. I don't think
13 Mr. Holcombe's a bad person, but it's been two
14 years. I'm happy they're moving that way.

15 Again, I think I understand what the Court is
16 doing by taking it under advisement, but we really
17 do have a right to at some point -- we think we've
18 made reasonable accommodations.

19 We would argue that we don't have to because
20 there was a lease and the lease terminated. But
21 even if we do have to, we believe we're okay.

22 THE COURT: Well, you have a different type of
23 lease. It's just a month-to-month instead of the
24 original lease.

25 But that being said, according to what the

1 magistrate found, there was -- he wasn't treated any
2 differently than anybody else. In fact, what you're
3 telling me, he's been accommodated.

4 I tell you, Mr. Fessler, I'm of the opinion --
5 and this is just that order right now -- that if
6 this isn't done within 60 days, he's going to have
7 to be forcibly removed from there.

8 Given two years, sir, that is -- there's no way
9 to explain that.

10 MR. HOLCOMBE: (Indicating.)

11 THE COURT: Yes, sir. I'll be glad to hear
12 from you. You might want to talk to your attorney
13 before you speak though.

14 MR. FESSLER: Your Honor, we discussed the
15 matter, and I think Mr. Holcombe has taken a
16 different attack once we became involved in this
17 case. I understand the two years --

18 THE COURT: Two years is outrageous.

19 MR. FESSLER: And we are making, you know,
20 good-faith efforts to try to -- I'll call
21 Mr. Seawright back today.

22 THE COURT: All right. Well, do that. I told
23 him that you -- I gave him your name too.

24 MR. FESSLER: Yes, sir.

25 THE COURT: So I don't know if you can kind of

1 work it -- how it works.

2 Please impose on your client that within, you
3 know, in my mind, I'm not ruling this yet, but very
4 likely 60 days from today's date there will be
5 somebody with a crane moving that mobile home if
6 it's not out of the park if there's not something
7 very concrete accomplished towards getting him out
8 of there.

9 MR. FESSLER: Yes, sir. I understand.

10 THE COURT: And I'm not trying to be mean to
11 you, but that's just the way it is. Okay.

12 MR. HOLCOMBE: I understand. Yes, sir.

13 (The proceedings concluded at 11:36 a.m.)

14 * * * * *

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

/s/ Lisa Scott Lisa Scott

Lisa Scott
Circuit Court Reporter



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.

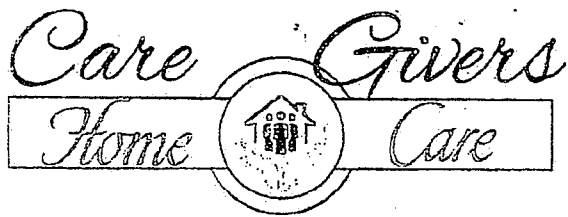
Although he has achieved an exceptional level of adjustment, his disabilities continue to pose significant obstacles to his everyday functioning. Everything he does requires considerable more energy and effort than it did prior to his injuries. In order to maintain his physical and mental health, he 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



A Division of Access Healthcare Services

1901 Laurens Rd

7/24/2017

Greenville SC 29607

864-242-1947

To Whom It May Concern,

Care Givers Home Care provides in homecare assistance to Chris Holcombe on a weekly basis up to 15 hours per week. The personal care aide assists the client with activities of daily living including light household duties related to client's diagnosis of spinal cord injury. Mr. Holcombe's mobility is limited related to this diagnosis and he uses a wheel chair for locomotion. Caregivers Home Care has provided these personal care services to Mr. Holcombe since March 2015. These services are authorized with case management at Anderson County Department of Disabilities and Special Needs Board. Please feel free to contact me at 864-242-1947 if you have any questions.

Misty Hendrix

A handwritten signature in black ink, appearing to read "Misty Hendrix", written over a horizontal line.

Nurse Supervisor



BON SECOURS MEDICAL GROUP

POWERSVILLE PRIMARY CARE
290 Enterprise Dr
Easley SC 29642-8280
864-365-0290

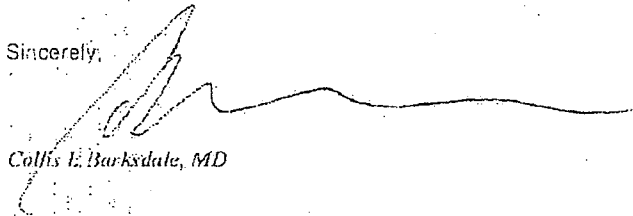
10/2/2017 2:45 PM

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,


Colhis L. Barksdale, MD

Christopher Holcombe XXXXX3799



BON SECOURS MEDICAL GROUP

POWDERSVILLE PRIMARY CARE

290 Enterprise Dr
Easley SC 29642-8280
864-365-0290

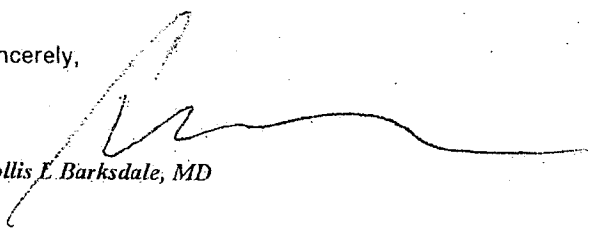
3/28/2018 11:40 AM

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

Additional Information Related to Case

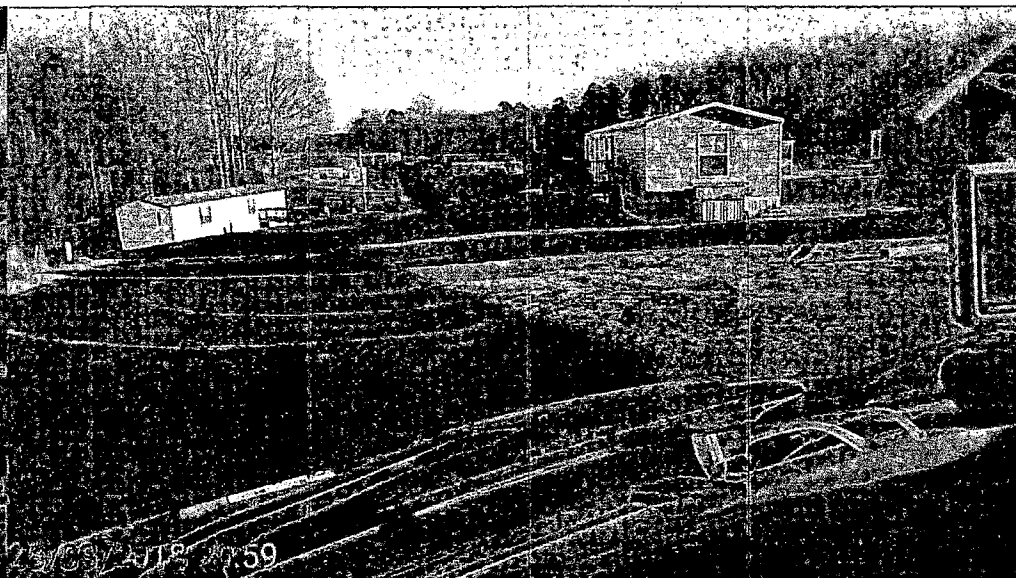
When going to the South Carolina Secretary of State site to verify and authenticate the business "Windy Hill MHP LLC" that is on file for the Appellant case number: 2017-002386; there is no business listed for that name at the address of 100 Hunt Rd Easley, South Carolina 29642. The only business that came up at that address was "WINDY HILL MOBILE HOME PARK, LLC".

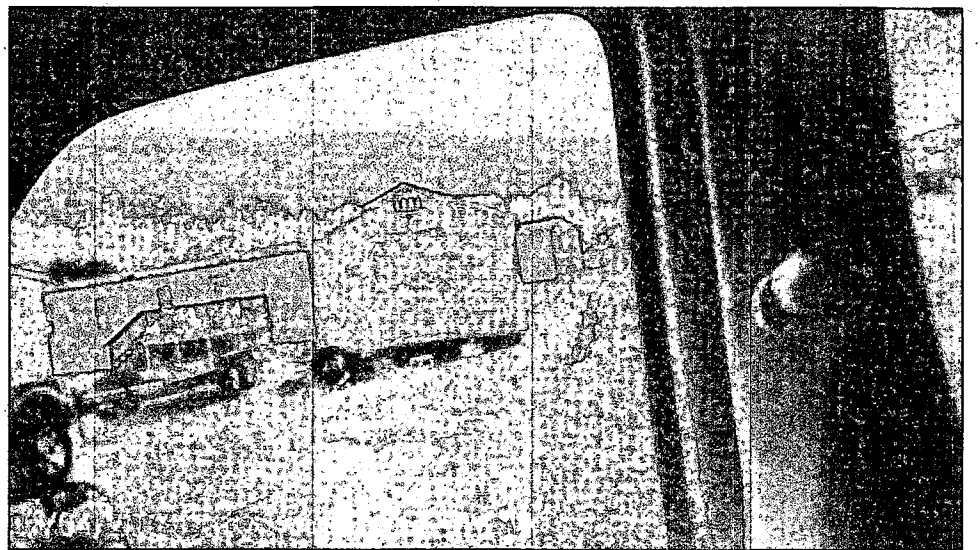
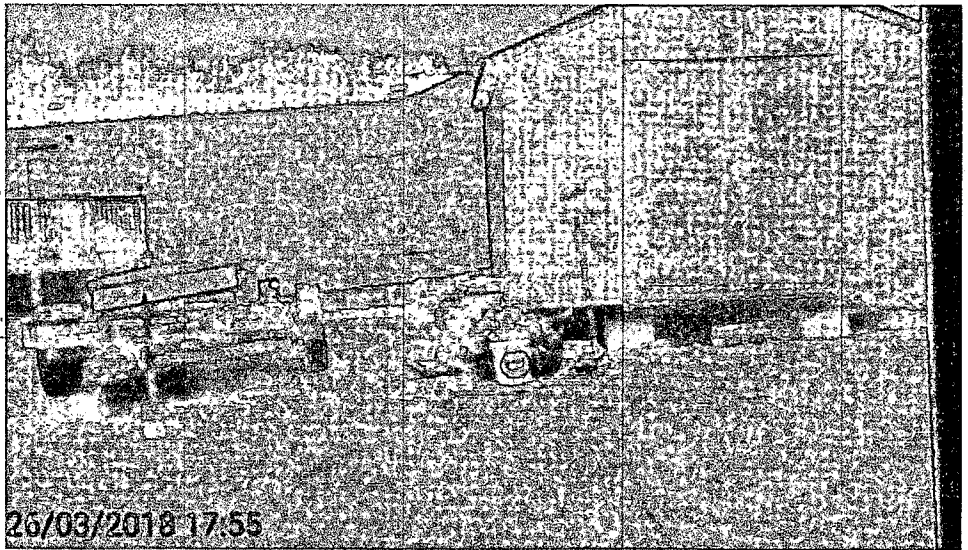
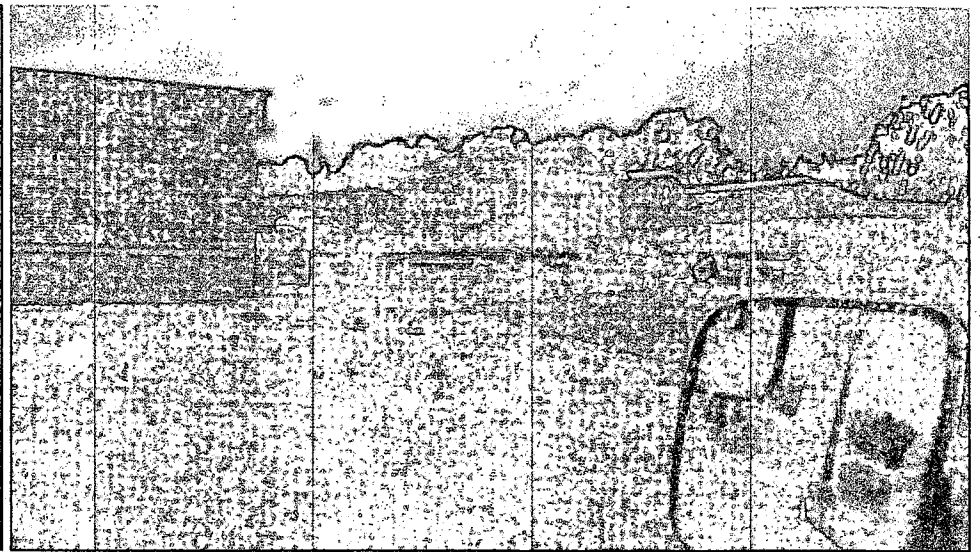
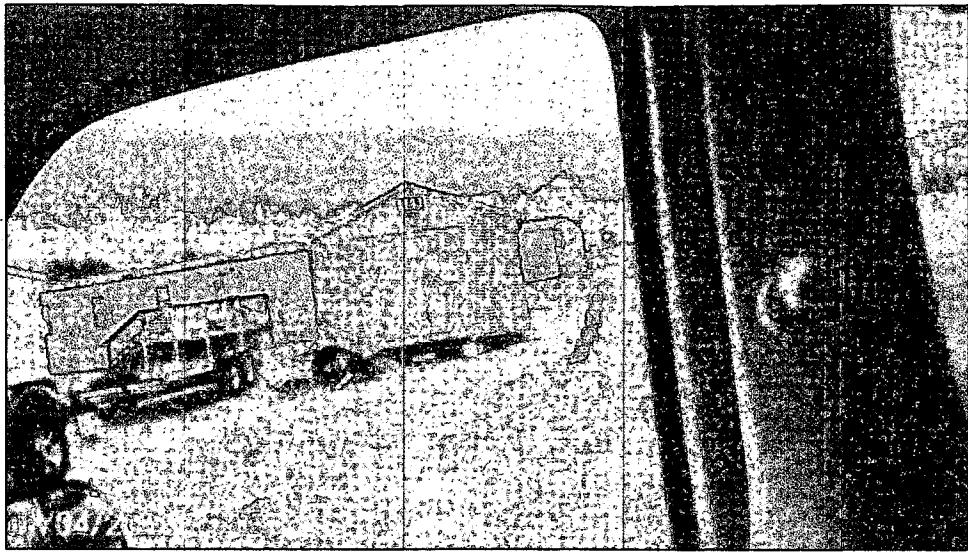
Has the business name "Windy Hill MHP LLC" just been a name that has been used as a cover name or has the name been changed during the process of the case to "WINDY HILL MOBILE HOME PARK, LLC".

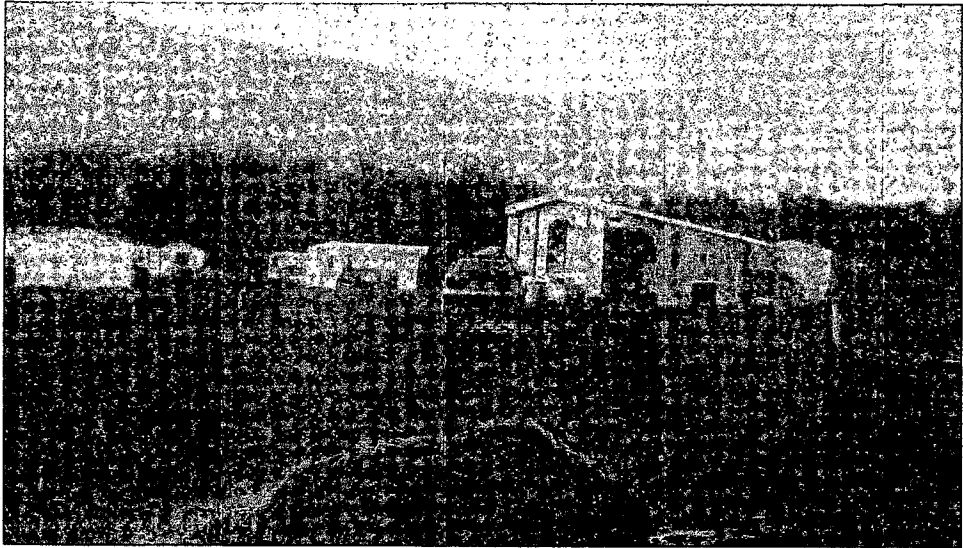
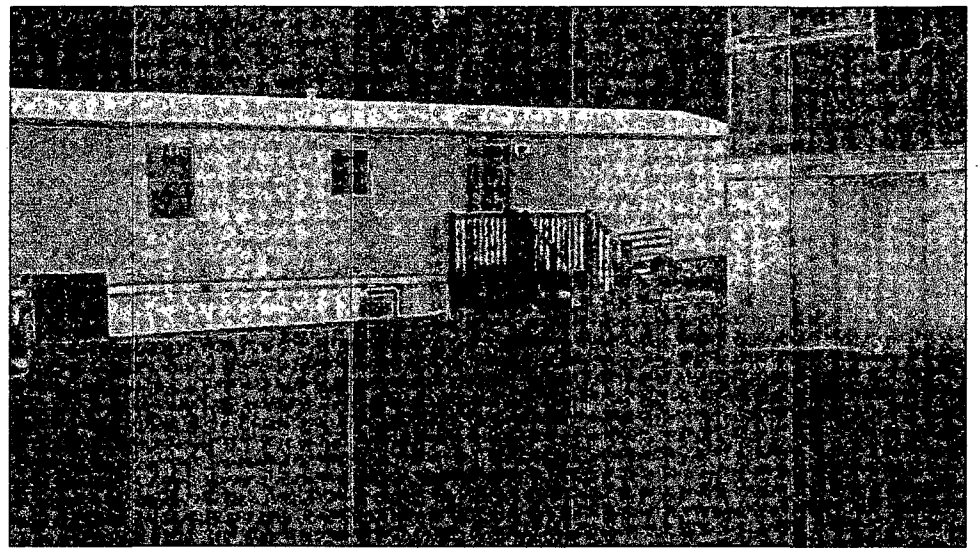
With the high levels stress that has come from this process, this has held me back from being able to finish my education and has held me back from being able to move on with my life. This stress has also affected my performance at my part-time job that I work to try to make.

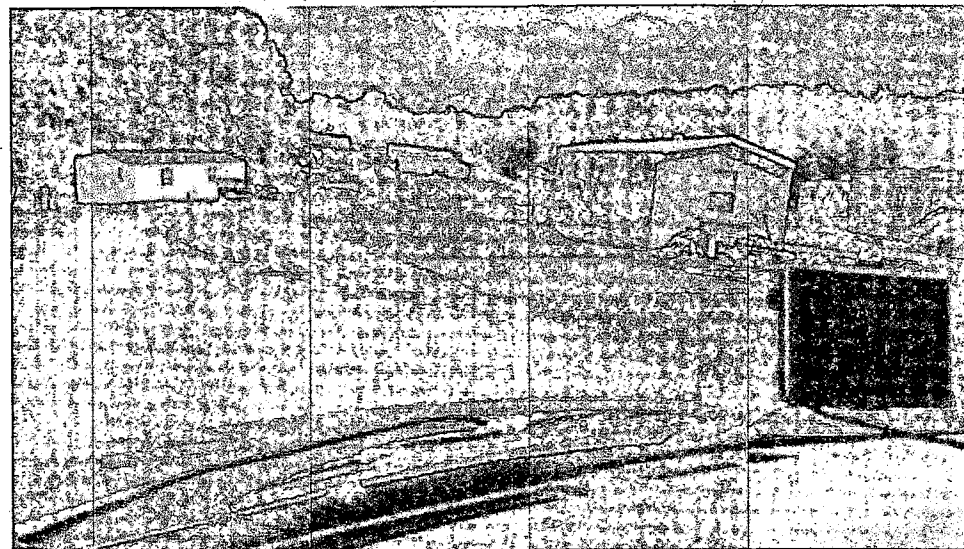
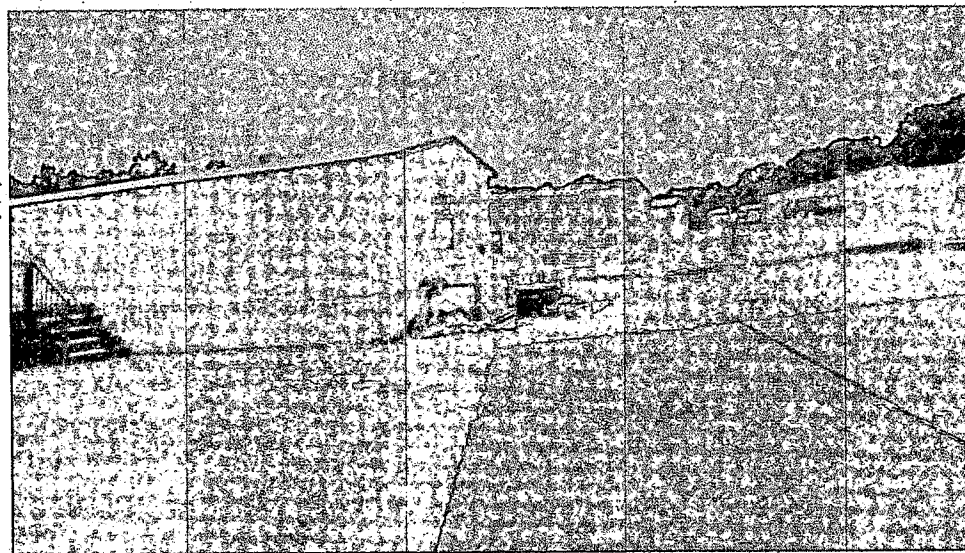
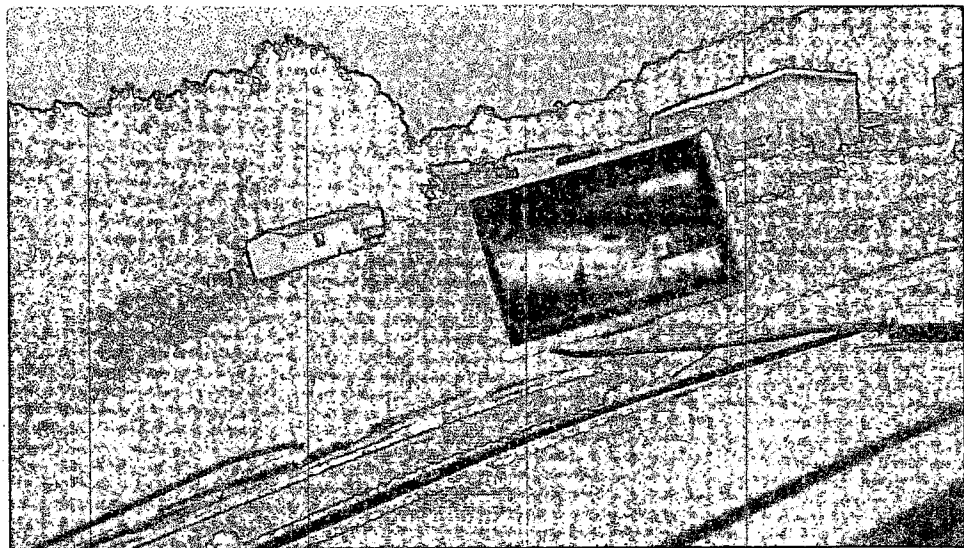
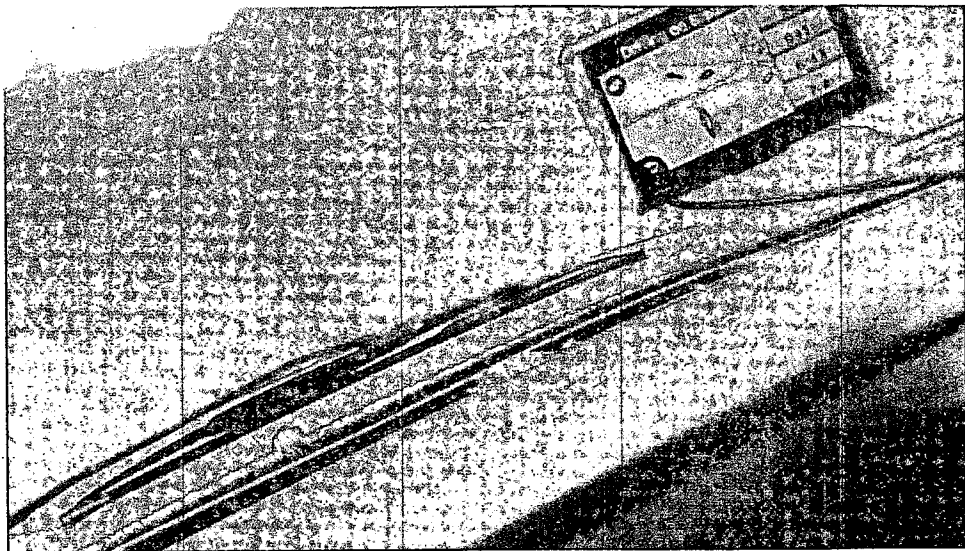
I was able to purchase some property and was trying to move on with my life, but when I found out from all the movers that were called that my home was not movable because of the modifications that were made to it causes it was not structurally safe to move off its foundation. One moving place informed me that it could collapse as soon as they start knocking the blocks out from under it.

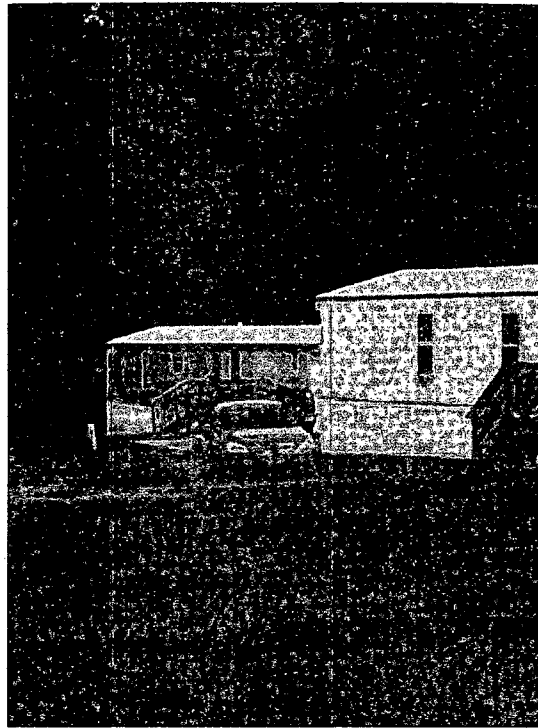
The reason for appealing the case is because the attorney that represented me in the lower court did not represent me well with my whole circumstance. I talked with Mr Fessler and provided him all the documentation that has been submitted to the SC Court of Appeals. On Several conversations Mr Fessler informed me he was not sure about or that the other medical information did not apply to my case. I provided him with then medical information and the laws related to my situation.











Business Entities Online

File, Search, and Retrieve Documents Electronically

WINDY HILL MOBILE HOME PARK, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 03/10/2006

Expiration Date: N/A

Term End Date: 03/10/2105

Dissolved Date: N/A

Registered Agent

Agent: KAREN F WAGNER

Address: 100 HUNT RD
EASLEY, South Carolina 29642

Official Documents On File

Filing Type	Filing Date
Amended Articles of Organization	07/02/2018
Organization	03/10/2006

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: First name:
License number: City:
State Abbreviation:
License Type:

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

[Print this page](#)

Board: Real Estate Commission

KAREN WAGNER
CHARLOTTE, NC

License number: 106969

License type: Salesman

Status: ACTIVE

Expiration: 06/30/2019

Office: COTTINGHAM CHALK HAYES REALTORS

Board Public Action History:

[View Orders](#)

[View Other License for this Person](#)

No Orders Found

[File a Complaint against this licensee](#)

[Print this page](#)

Board: Real Estate Commission

KAREN F WAGNER
VALDOSTA, GA

License number: 29869

License type: Property Manager

Status: ACTIVE

Expiration: 06/30/2020

Office: AMBLING MANAGEMENT COMPANY LLC

Board Public Action History:

[View Orders](#)

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No Orders Found

[File a Complaint against this licensee](#)

Results List

Details

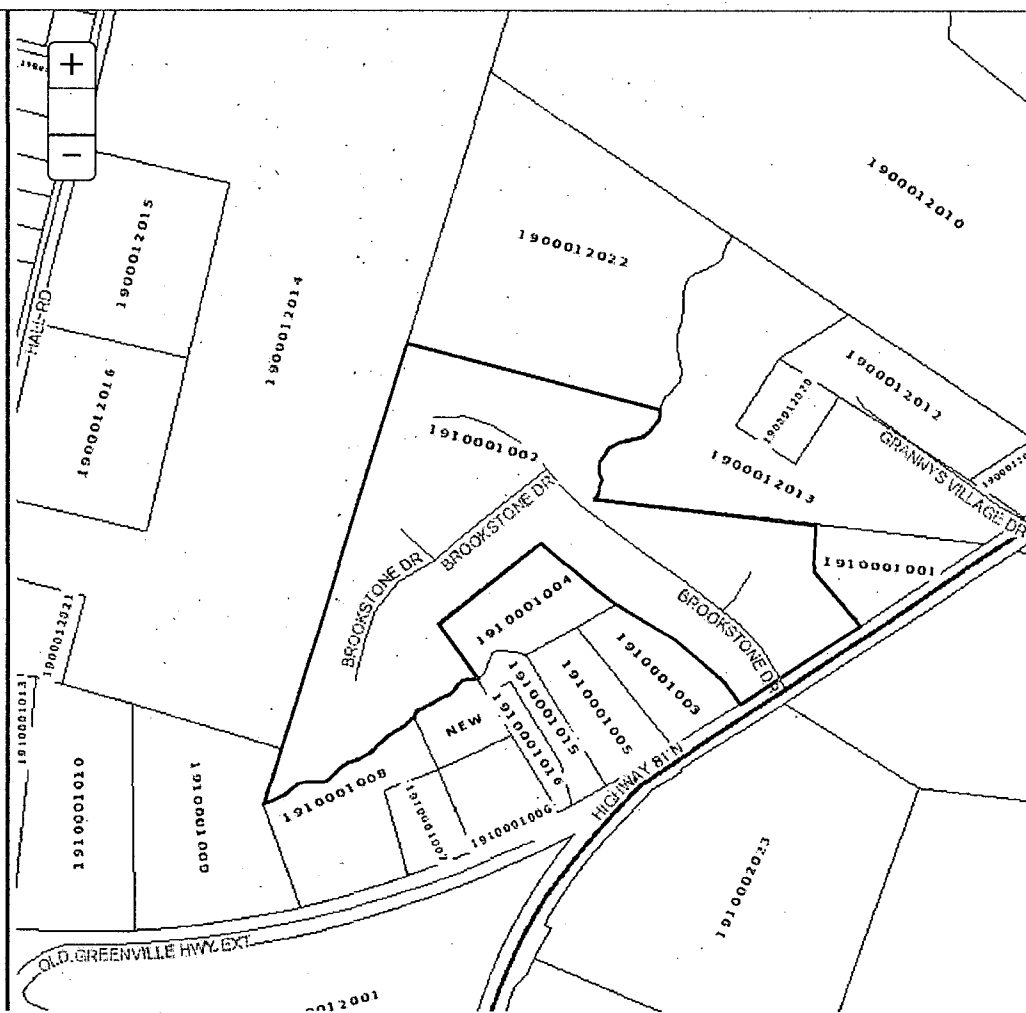
Anderson County Tax Parcel

TMS: 1910001002
Owner: WINDY HILL MOBILE HOME
PARK LLC
100 HUNT RD
EASLEY SC 29642

Physical Address:	
Description:	TR A + PT TR 3 HWY 81N 19.60
Deed Reference:	9481 146
Sale Price:	\$10.00
Sale Year:	2010
Previous Owner:	MALTARP GEORGE
Total Market Value:	\$846,900.00
Tax District:	103

- Property Record Card

Zoom To	Buffer	Adjoiners	Clear
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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 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.

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.

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 (<u>Senate Journal-page 171</u>)
1/13/2015	Senate	Referred to Committee on Judiciary (<u>Senate Journal-page 171</u>)
3/24/2015	Senate	Recalled from Committee on Judiciary (<u>Senate Journal-page 5</u>)
3/24/2015	Senate	Committed to Committee on General (<u>Senate Journal-page 5</u>)

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VERSIONS OF THIS BILL

1/13/2015

1
2
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9 **A BILL**

10
11 TO AMEND ARTICLE 1, CHAPTER 35, TITLE 43 OF THE
12 1976 CODE, RELATING TO THE PROTECTION OF
13 VULNERABLE ADULTS FROM ABUSE, NEGLECT, OR
14 EXPLOITATION, SO AS TO DEFINE A SENIOR CITIZEN AS
15 A PERSON SIXTY YEARS OR OLDER AND TO EXTEND
16 APPLICATION OF THE PROTECTIONS OF THE ARTICLE
17 TO SENIOR CITIZENS; TO ADD HUMAN TRAFFICKING AS
18 A CRIME SUBJECT TO FINES AND IMPRISONMENT; TO
19 CHANGE EXISTING CRIMINAL PENALTIES; TO CREATE
20 DUTIES RELATED TO DISCHARGING VULNERABLE
21 ADULTS AND SENIOR CITIZENS FROM CERTAIN
22 SETTINGS; TO CREATE AN AFFIRMATIVE DEFENSE TO
23 COMMITTING OFFENSES PROVIDED FOR IN THE
24 ARTICLE; AND FOR OTHER PURPOSES.

25
26 Be it enacted by the General Assembly of the State of South
27 Carolina:

28
29 Whereas, South Carolina's senior citizens are valued members of
30 our community who deserve to live with respect and dignity; and

31
32 Whereas, the population of the State's citizens age sixty and older
33 has increased from nearly 915,000 in 2010 to a projected
34 1,200,000 in 2020, an increase of approximately thirty percent; and

35
36 Whereas, it is widely recognized that, in general, senior citizens
37 are at a greater risk of harm from abuse, neglect, and exploitation,
38 than are younger adults; and

39
40 Whereas, while the Omnibus Adult Protection Act of 2006 protects
41 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~~ 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~~;

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 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 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----



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 JUSTICE
CIVIL RIGHTS DIVISION



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.

Windy Hill Family Park

LEASE AGREEMENT

THIS LEASE is made and entered into this _____ day of _____, 2008, by and between Windy Hill Family Park (hereinafter referred to as "Landlord"), and _____, hereinafter referred to as Tenant.

This Lease is on the following terms, covenants, rules, and regulations which the Landlord and Tenant agree to keep and perform.

1. PREMISES AND TERM: Landlord leases to Tenant, and Tenant leases from Landlord, rental space in Lot# _____ Address: **Brookstone Drive Easley, SC 29642** in the premises known as: Windy Hill Family Park located at Highway S1 N. Easley, SC 29642 (the "Community"). Tenant's right of occupancy consists of the exclusive use and occupancy of the lot assigned to the Tenant / Tenants (the "Co-Tenants").

The term of this Lease (the "Term") shall commence at _____ 2008 the "Commencement Date" and end at _____ 2009 the "Expiration Date". The Tenant's obligation to pay rent hereunder (and the Guarantor's (s)), as hereinafter defined, obligation to ensure payment of the same) shall continue for the entire Term and until all sums due Landlord have been paid in full.

2. POSSESSION: If possession of the Lot/Unit is not granted by Landlord on the Commencement Date, rent shall be abated on a daily basis until possession is granted provided such late delivery shall not extend the Term. If possession is not granted within thirty (30) days after the Commencement Date, Tenant, as its sole remedy, may give Landlord written notice after such thirty (30) day period to void this Lease, and have a full refund of any deposit. Landlord shall not be liable for damages for any delay in delivery of possession.

3. RENT: The amount of rental due hereunder ("Rent") for the Lot/Unit shall be \$ 160.00 payable in twelve (12) equal monthly installments of \$ 160.00 (each rent installment shall hereinafter be referred to as an "Installment"). All other charges due hereunder for services provided or charges assessed (including, but not limited to, other utility charges, any sales or rent tax and fines for violating the Rules and Regulations) are hereinafter collectively referred to as "Additional Rent". The sum of all unpaid installments, plus additional rent are referred to herein as "Total Rent". The first Installment is due and payable no later than the Commencement Date. Each subsequent Installment is due and payable on the first day of each full calendar month (the "Due Date") through the end of the Term, in advance, without prior demand, offset or deduction. This Lease Agreement shall not be valid and occupancy shall not be granted without prior payment of the first month's rent installment and delivery of a properly executed and duly enforceable Parental Guaranty. Tenant shall pay the rent at the Landlord's office or at such other place as may be designated by the Landlord. Except as may otherwise be required by law, or by the Landlord, all rental payments made by Tenant to Landlord shall be by check or money order. Should any check given by Tenant to Landlord be dishonored by Tenant's bank, Landlord shall have the right to require that all future rent payments, except as may otherwise be required by law, be paid by money order or certified check. Landlord shall provide Tenant with a written receipt for all cash monies received by the Landlord from the Tenant. Each Installment and all other charges due hereunder shall be payable in advance to the Landlord at P. O. Box 51343, Piedmont, SC 29673. All Installments and all other charges due hereunder shall be paid by personal check, cashier's check, certified funds, or money order to Windy Hill Family Park. It is the Tenant's responsibility to ensure that payment is received by the Due Date.

4. LATE CHARGE: In the event any Installment or other payment due hereunder is not paid in full at the location specified in Paragraph 3, prior to the fifth (5th) day of the month (the "Past Due Date"), Tenant shall pay a late charge of \$50 on the 6th of the month. Late charges are due and payable when assessed. If the Past Due Date falls on a holiday observed by Windy Hill Family Park, payment must be made prior to the closing of business of first day following the holiday. If payment is made by check, and such check is not honored by Tenant's bank, Tenant shall pay Landlord the amount of \$25.00 for each check returned to Landlord. Said charges shall be due and payable immediately upon notification to Tenant of such instance, and shall be in addition to any late charges resulting from the check's failure to clear the bank. Tenant acknowledges the returned check charges and late charges specified herein represent an agreed

Initials

Lease Agreement

Windy Hill Family Park

clear the bank. Tenant acknowledges that returned check charges and late charges specified herein represent an agreed upon charge for the administrative expense suffered by Landlord as a result of such late payment and not payment for the use of money. Any return check must be redeemed in cashier's check or money order. Partial payments will not be accepted on any return check for any reason. After two (2) return checks all future rental payments owed must be paid in cashier's check or money order. If Tenant makes a partial payment of any Installment or Additional Rent, Landlord is entitled to keep the amount of such partial payment and apply it to any outstanding obligation, and Landlord's acceptance of such partial payment does not constitute a waiver of the Tenant's obligation to pay the entire amount of all obligations owed Landlord, including Additional Rent. Tenant acknowledges that any payment received by Landlord will first be applied to any outstanding Rent or Additional Rent incurred by or on behalf of Tenant, prior to applying the same to the current Installment(s) due. If the payment tendered by Tenant fails to satisfy the total charges outstanding, then Tenant shall immediately pay the total balance due, plus any late charges incurred by virtue of Tenant's failure to timely pay all sums due from Tenant to Landlord.

5. **USE:** The Lot shall be used solely as a private residential dwelling only and for no other purposes. Without the prior written approval of Landlord, Tenant may not keep more than one (1) vehicle at the Community. If Tenant desires to have a guest, which for the purposes of this Lease shall be defined as any person staying in the Lot or Unit for more than two nights, then Tenant shall register the guest(s) with Landlord. However, Tenant shall not have guest(s) for more than four (4) consecutive nights. In the event of the occupancy by any unregistered or unauthorized guest(s) of the Lot or Unit, Landlord shall be entitled to recover from the Tenant and guest(s) (whose liability shall be joint and several) an amount equal to the amount of the most recent Installment, in addition to the right of Landlord to declare the Lease in default and pursue any of Landlord's other remedies hereunder or at law. Tenant agrees: (i) to abide by all applicable governmental laws, orders, rules and regulations, (ii) to avoid disruptive behavior or conduct, (iii) not to injure the reputation of the Community or its residents, (iv) not to take any action or inaction which would cause an increase in the rate of insurance at the Community, (v) not to use profane language, (vi) not to exhibit loud or boisterous conduct, (vii) not to engage in the use or sale of any illegal or controlled substance, (viii) not to have firearms or explosives of any kind in the Community, and (ix) not to engage in any activity which interferes with or decreases the use and enjoyment of the Community by other residents.

6. **CONDITION OF UNIT:** Tenant hereby acknowledges that the Lot or Unit are being delivered in "as-is" condition, and Tenant's acceptance of the Lot or Unit at the beginning of the Term constitutes Tenant's acknowledgment that the Lot or Unit and its furnishings are in good repair and tenantable condition, except as otherwise specifically noted on the Move-In/Move-Out Inspection Report, which is to be completed at move-in/move-out. Any personal property remaining on and/or in Lot/Unit at the end of the Term shall be deemed abandoned by Tenant and may be disposed of by Landlord as allowed by law.

7. **FURNISHINGS:** Tenant hereby acknowledges that if the Premises contain the furnishings specified in Exhibit "B" attached hereto, hereinafter referred to as the "Furnishings", and that except as specified in said Exhibit "B", the Furnishings are in good condition and further agrees that when Tenant vacates the Premises, all of the Furnishings will remain in the Premises and be in the same condition as when Tenant occupied the Premises, reasonable wear and tear excepted.

8. **ASSIGNMENT & SUBLETTING:** Tenant will not assign this Lease, or sublet said Premises, or any part thereof, nor permit the Premises to be occupied by anyone other than Tenant and such other tenants of the Premises as may be authorized by Landlord, without the prior written consent of Landlord, which consent may be withheld in the sole and absolute subjective discretion of the Landlord, nor use or permit the Premises to be used for any purpose other than that of a private dwelling. In the event Landlord agrees to an assignment of this Lease or a subletting of the Premises, Tenant will be charged a fee of \$50.00 for the additional office work involved.

9. **LIABILITY:** A conflict of any kind, including, but not limited to, actual or threatened physical injury, between Tenant and Co-Tenant(s) in the Unit or tenants that reside at the Community does not constitute grounds for termination of Lease by Tenant. Landlord shall not be liable for any personal injury to Tenant or damage or loss to Tenant's property, including, but not limited to, any injury, loss, or damage caused by burglary, assault, vandalism, theft, or any other crimes.

10. **UTILITIES:** Landlord will pay all charges for rubbish removal, exterior street electricity, during the term of this Lease, and any extension thereof.

11. **TENANT'S OBLIGATIONS AND RESPONSIBILITIES:** Tenant agrees to keep and maintain the Lot and Unit in a good, clean, and sanitary condition, excepting reasonable wear and tear, and to make no alteration or addition thereto (including, but not limited to affixing fixtures to the Unit/lot or Unit) without the prior written consent of Landlord. Tenant shall promptly report to Landlord all damage and repairs, which need to be made to the Unit/lot and Unit. Tenant shall be liable for and shall pay all costs and expenses for damages and repairs to the Lot/Unit (including, but not limited to, the cost of replacing or repairing all broken or damaged furnishings or fixtures; any costs related to defacement or damage to

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walls, ceilings, floors, carpets and doors; and reasonable charges for Landlord's overhead, administrative cost, and expense) caused by Tenant's (or guest(s) of Tenant) abuse, carelessness or misuse of the Lot/Unit. Such costs for repair and damages shall constitute Additional Rent. It is understood that tenant is responsible for any damage caused to the Lot and/or Unit as well as the Community by Tenant or Tenant's guests, and Tenant and Co-Tenants shall be jointly and severally liable, at the sole discretion of Landlord, for any damages to the kitchen and living/dining area of the Unit, including, but not limited to, its furnishings, fixtures, walls, ceilings, floors, carpets, and doors, and such costs for repair and damages or disappearance shall constitute Additional Rent. No furnishing assigned to the unit shall be removed or dismantled without written permission from Landlord. Tenant shall be responsible for and liable for the conduct of Tenant's guests, licensees, and invitees. Any use of the Unit/lot, Unit, or Community by a guest, licensee, or invitee of Tenant, which would violate any provision of this Lease, shall be considered a breach of this Lease by Tenant. Tenant shall immediately report to Landlord and the local law enforcement authority all acts of vandalism to the Lot and/or Unit, or Community.

12. LANDLORD'S RIGHT OF INSPECTION AND ENTRY: Tenant agrees that Landlord, or its agents or representatives, may enter the Unit/lot, Unit, Lot, or other Units at the Community at reasonable hours for the purpose of making inspections and repairs or for the purpose of displaying the Unit/lot or Unit to prospective tenants or purchasers. In an emergency situation, Landlord may enter at any time to protect life or prevent damage to the Unit/lot or Unit. Tenant by placing a work order for work to be performed authorizes Landlord or agent to enter dwelling unit for the purposes of completing that work order in a timely manner. If Tenant refuses Landlord or agent the right of entry they will be held responsible for any financial losses that are sustained by the Landlord.

13. INTERRUPTION OF SERVICE: The Tenant will receive no rent reduction, nor will Landlord be liable to Tenant, due to repairs or interruption of services to utilities, appliances or equipment in or about the Premises or due to defects in the Premises not caused by Landlord's fault, omission, negligence or other misconduct; or due to the inability of Landlord to obtain proper fuel, utilities, or repair/replacement parts. In case it shall become necessary at any time, from accident or repairs, or to improve the condition or operation of the Premises, or any equipment or utilities appertaining thereto, for Landlord to stop or curtail the operation of said equipment or utilities, Landlord may do so, but in such case due diligence shall be used to complete the work.

14. PARKING, RECREATION, AND COMMON AREAS: Various areas of the Community are designated and intended for the use in common by all tenants, including the parking areas and walkways. Tenant acknowledges Landlord retains the absolute right to alter, modify, or eliminate said Amenities should Landlord so elect. Tenant shall have no rights by reason of this Lease to the use of any Amenities covered in this section. The use of the Amenities by the Tenant shall be at the Tenant's own risk and use may be regulated, denied, or restricted at any time by Landlord. Tenant is required by this Lease and warrants that Tenant shall personally supervise Tenant's guests, invitees, and licensees and their every use of Unit/lot, Unit, Lot, and Amenities, and Tenant is completely responsible for their safety, negligence, and all of their actions. Tenant understands that Landlord will not provide supervision of the same.

* **15. VEHICLE PARKING:** Owner reserves the right to control the method, manner, and number of parking spaces allotted per lot/unit. No more than two parking spaces per lot/unit are provided without expressed written permission from Management. Management reserves the right to regulate the entry to the Community by agents, furniture movers, and delivery people. All vehicles must be parked only in areas that are designated for such purposes. No vehicles will be allowed to park at any time for any reason, on the grass, in front of dumpsters, blocking other vehicles, outside the boundaries of a single designated parking space, or in any other area not appropriately marked for vehicle parking. By order of the Fire Marshall, any and all vehicles parked in designated fire lanes will be towed without warning at the vehicle owner's expense. Any vehicle parked in a handicapped parking space without proper handicapped designation may be towed, without warning, at the vehicle owner's expense.

- All vehicles must be currently licensed and in good operating condition (i.e. free of oil leaks, flat tires, broken windows, safe, not unsightly, etc.). Additionally, any vehicle allowed to remain on the Community once possession of the rental home has been surrendered or abandoned will be towed without notice at the vehicle owner's expense. Resident agrees that any violation of these rules will result in the vehicle being towed without notice at the vehicle owner's expense. Agent for Owner, its principals and its employees, shall not be liable for any damages arising as a result of towing. In addition, Resident agrees to indemnify (to include attorney's fees) Owner and Agents for Owner for any liability that may be imposed on them. All resident's vehicles must be registered with the Management Office prior to being parked in the Community. Motorcycles are not permitted within the boundaries of the Community at any time. RV's, boats, personal watercraft, trailers and commercial vehicles are not permitted to be stored or parked in the community at any time. The Owner and its agents or assignees assume no responsibility for the security of the personal property of the Resident or Resident's guests.

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16. RULES AND REGULATIONS: The Windy Hill Family Park Rules and Regulations, as well as the Community Policies are included and incorporated herein by reference as Exhibit "A", and are an important part of this Lease. By executing this Lease, Tenant acknowledges that he or she has read and agrees to abide by the Rules and Regulations, as well as the Community Policies. Landlord reserves the right to make changes to the Rules and Regulations and such amended Rules and Regulations shall be deemed as equally binding upon Tenant as if originally set forth herein upon notice to Tenant.

17. NOISE & BEHAVIOR: Tenant will not make, permit or facilitate any unseemly or disturbing noises or conduct by the Tenant, Tenant's family, employees, agents and/or guests; nor do, permit or facilitate any illegal or immoral conduct or obstruct or interfere with the rights, comforts or convenience of other tenants or Landlord. Tenant will not permit to enter the Premises or to remain therein any pets, animals, or person of bad or loose character or of improper behavior. Tenant further agrees not to conduct, give or permit vocal or instrumental instruction or practice. Tenant shall further prevent any person on the Premises with Tenant's permission from willfully or wantonly destroying, defacing, damaging, impairing or removing any part of the building, or the Premises or the facilities, equipment or appurtenances thereto, nor may the Tenant do any such thing.

ILLEGAL ACTIVITY:

1. Tenant agrees not to conduct any illegal activity on the property, including, but not limited to, the sale, possession or manufacture of illegal drugs or drug paraphernalia.
2. Tenant will not permit the dwelling unit to be used for, or facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is the resident or a guest of the resident.
3. Tenant shall not engage in acts of violence or threats of violence, including, but not limited to, the unlawful discharge of firearms, on the premises.
4. Tenant shall not possess or store firearms on the premises.

18. CASUALTY: In the event of fire or other casualty, Tenant must immediately notify Landlord. If the Unit/lot, Lot and/or Unit is partially destroyed by fire or other casualty not attributable to the negligence or carelessness of Tenant or Tenant's guest, licensee, or invitee, the Unit/lot or Unit, as applicable, may be promptly restored and repaired by Landlord and any Installment(s) for the period that the Unit/lot, Lot, and/or Unit is un-tenantable shall abate, unless Landlord provides Tenant with alternative living space, in which event installment(s) will not be abated. However, if the Lot and/or Unit is substantially destroyed, then this Lease may be terminated by either Landlord or Tenant, in which event the remaining unpaid installments due hereunder shall cease to accrue as of the date of such damage or destruction. Notwithstanding the foregoing, it is expressly understood and agreed Tenant shall not be excused from paying any installment if the damage or destruction to the Unit/lot and/or Unit is the result of or is attributable to the negligence or carelessness of Tenant or the guests, licensees, or invitees of Tenant, and Tenant shall be charged for the cost of any repairs or clean-up attributable to carelessness or negligence by Tenant or Tenant's guests, licensees, or invitees which charges shall be considered as Additional Rent.

19. TENANT'S PROPERTY AND RENTER'S INSURANCE: Tenant is responsible for acquiring and maintaining Tenant's own insurance on personal property, furniture, clothing, and valuables kept by Tenant in or about the Unit/lot, Lot, Unit, and Community. Landlord shall have no liability with respect to same, whether such items are lost, injured, or damaged by theft, wind, rain, fire, Act of God or other casualty, and Tenant expressly waives all claims for such injury, loss, or damage. The Landlord is not responsible for and will not provide fire or casualty insurance for Tenant's personal property.

20. LANDLORD'S PERMISSION OR CONSENT: If any provision of this Lease requires the written permission or consent of Landlord, such written permission or consent may be granted or withheld in the sole discretion of Landlord, may contain such conditions as Landlord deems appropriate, and shall be effective only so long as Tenant complies with such conditions. Moreover, any written permission or consent given by Landlord to Tenant may be modified, revoked, or withdrawn by Landlord at any time, at Landlord's sole discretion, upon written notice to Tenant.

21. NOTICES: Tenant shall, within five (5) days after occurrence, notify Landlord, in writing, of any alleged violation by Landlord of any of its obligations arising under this Lease or otherwise. Failure of Tenant to give such notification in writing, within the time prescribed shall constitute a total and complete waiver of said alleged violation and shall not be asserted by Tenant as any grounds for nonperformance of Tenant's obligations under this Lease. Landlord has designated Windy Hill Family Park Management, as its agent for the purposes of managing and operating this Community and for exercising any of Landlord's rights hereunder. Every notice or demand to Landlord, whether pursuant to this Lease or otherwise, must be in writing and must be delivered by certified mail, Return Receipt Requested, to: Windy Hill Family Park; P. O. Box 51343, Piedmont, South Carolina 29673; c/o Property Manager. All notices from Landlord to Tenant shall be delivered personally or to the Apartment, or sent by First Class or Certified Mail, addressed to Tenant at the Apartment.

22. ABANDONMENT: In the event the Unit/lot, Unit and/or Lot is abandoned, Landlord shall have the right, without

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notice, to secure the Unit/Lot with new locks, to store or dispose of any property or personal possessions left in the Unit/Lot by Tenant or Tenant's guests, licensees, or invitees, and to re-rent the Unit/Lot for new occupancy. Any such abandoned property or personal possessions shall be considered Landlord's property and title shall vest in Landlord. Landlord, in its sole discretion, shall have the right to determine when the Unit/Lot is abandoned. Tenant agrees abandonment of the Unit/Lot shall include, but is not limited to, any one of the following: the removal of personal property from the Unit/Lot other than in the usual course of continuing occupancy, the failure to pay Rent or other charges, discontinuance of any utility service, and failure to respond to any notices, phone calls, or correspondence from Landlord.

23. DEFAULT BY TENANT: If Tenant fails to pay any Installment or Additional Rent, as and when due hereunder, or if Tenant abandons Unit/Lot or fails to perform any of its obligations hereunder, or if any information contained in Tenant's rental application is untrue or misleading, Tenant shall be in default hereunder and Landlord may at its option terminate this Lease by written notice to Tenant. Tenant shall surrender possession of the Unit/Lot to Landlord upon the date specified in such termination notice, and Tenant shall be liable to Landlord for, and shall indemnify Landlord against, all loss and other expenses (for re-letting, refurbishing, cleaning or otherwise making the Unit/Lot suitable for re-letting) suffered or incurred by Landlord as a result of Tenant's default and termination of this Lease. Notwithstanding the commencement of a dispossession proceeding and the issuance and execution of a writ of possession on account of any default by Tenant, Tenant shall remain liable to Landlord for all Installments and Additional Rent, accrued through the date on which possession is obtained by Landlord, and Tenant shall continue to be liable for any installment(s) and Additional Rent accruing thereafter until the earlier of the expiration of the Term or the re-rental of the Unit/Lot. It is intended that Landlord's remedies for a default hereunder shall be as broad as permitted under the laws of the State and shall include, without limitation, (a) the right to cancel this Lease, reserving the right to collect any unpaid Total Rent; or (b) the right to rent the Unit/lot for the account of Tenant, in which event the proceeds from subletting shall be applied first to the cost of subletting (including advertising and commissions), second, to the cost of repairing any damage to the Unit/lot, and third, to Tenant's rental obligations hereunder, with Tenant and Guarantor(s) remaining fully responsible for any deficiency in the rental obligations for the remainder of the Term. The exercise of any one remedy shall not be deemed exclusive of the right to collect Total Rent, or of Landlord's right to avail itself of any remedy allowed by law. In the event the Rules and Regulations now or hereafter enacted prescribe warning and/or charges for certain actions of Tenant which may constitute violations of this Lease, Landlord may elect, in its sole discretion, to enforce the default and/or termination provisions contained herein or to enforce the provisions of the Rules and Regulations. In the event of a default by Tenant hereunder, in addition to any other remedies, Landlord is entitled to employ an attorney at law to enforce Landlord's rights hereunder and all reasonable fees and cost connected therewith shall be paid by Tenant. Any rental obligations or damages that remain unpaid after default shall bear interest at the lesser of fifteen (15%) percent per annum, or the highest rate allowable by law. In the event of re-entry and repossession by the Landlord, Landlord shall have the right to store or dispose of Tenant's property remaining in the Unit/lot, and Tenant shall be liable for all costs fees and damages incurred by Landlord and such re-entry shall not be deemed an acceptance by the Landlord or a surrender of any rights of Landlord or otherwise constitute a release of Tenant from the terms of this Lease. Tenant agrees Landlord shall have no liability for any actions taken to secure the Unit/lot, obtain possession of the Unit/lot, or store or dispose of any personal property or possessions found in the Unit/lot when Landlord deems the Unit/lot to have been abandoned, and such actions are a Contractual matter to which Tenant has given his consent, and any alleged action shall not give rise to a claim in tort or to a claim for punitive damages.

24. MOVE-IN AND MOVE-OUT PROCEDURES: Immediately preceding Tenant's taking possession of the Unit/lot, Tenant may and Landlord shall conduct an inspection of the Unit and Unit/lot and shall note on the Move-In/Move-Out Inspection Report (the "Inspection Report"), which shall be incorporated by reference and made a part hereof upon completion, any defects or damages, and any other conditions observed. Landlord and Tenant shall sign the Inspection Report within 72 hours of move-in as conclusive evidence of existing defects, damages, or conditions and of a full inventory of furniture and fixtures. If Tenant fails to conduct the Inspection and/or sign, return the Inspection Report or specifically dissent in writing to any damage or defect, then Tenant waives the right to dispute any assessment of damages to the Unit/lot and/or Unit. Upon Tenant's surrendering possession of the Unit/lot and Unit at the termination of the Lease, Landlord shall note in the space provided on Landlord's copy of the Inspection Report the present condition of the Unit and Unit/lot, including all appliances, furnishings and fixtures therein, and any damage done thereto which is deemed by Landlord to have occurred during Tenant's occupancy and use of the Unit and Unit/lot, and Tenant may inspect the Unit/lot and Unit. Upon termination of this Lease for any reason, Tenant shall surrender possession of the Unit and Unit/lot in a clean and sanitary condition, including removing all trash from the Unit/lot and Unit. Tenant shall return to the Landlord all keys issued to the Tenant by the Landlord. If all keys issued to Tenant are not returned to Landlord, Tenant shall pay all costs associated with re-keying locks for the Unit and/or Unit/lot, along with the cost of replacement of all keys for the locks re-keyed.

RENEWAL: Tenant must vacate premises by the expiration of the term of the Lease Agreement, unless

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such term is properly extended. If Tenant desires to extend the term of the Lease Agreement, Tenant shall give written notice to Landlord at least 90 (ninety) days prior to expiration of the then-current term (in accordance with the requirements set forth in the Lease Agreement).

25. SUBORDINATION: This Lease is subject and subordinate to any mortgage or deed of trust now or hereafter covering the property of which the Premises leased hereby is a part and is subject and subordinate also to any extension, renewal, modification, replacement or consolidation of any such mortgage or deed of trust. The provisions of this Section shall be self-operative and no further instrument of subordination shall be necessary. Promptly upon the request of any person succeeding to the interest of the owner of the property of which the Premises hereby leased is a part, whether through the enforcement of any remedy provided for by law or by any such mortgage or deed of trust or as the result of any voluntary or involuntary conveyance or other transfer of such interest in lieu of foreclosure, the Tenant automatically, without the necessity of executing any further document, will become the tenant of such successor in interest.

26. INDEMNIFICATION: Tenant, for himself/herself, and his/her representatives, heirs, assigns and successors releases Landlord, and its affiliates, officers, directors, shareholders, employees and agents thereof (hereinafter the "Indemnified Parties") from liability for and agrees to indemnify the Indemnified Parties against all losses incurred by the Indemnified Parties as a result of (a) Tenant's failure to fulfill any condition of this Lease; (b) any and all liability for injury or loss relating to Tenant's use and occupancy of the Unit/lot, Unit, or Community; (c) any damage or injury happening in or about the Unit/lot, Unit, or Community to Tenant's guests, licensees, invitees, or such person's property; and (d) Tenant's failure to comply with any applicable laws, rules or regulations.

27. TENANT HOLDING OVER: If Tenant shall continue to occupy the Premises after the expiration of this Lease Agreement, or any renewal or extension thereof, and if the Landlord shall have consented to such continuation of occupancy, such occupancy shall (unless the parties hereto shall otherwise agree in writing) be deemed to be under a month to month tenancy, at twice the rental payable hereunder just prior to the Tenant holding over, which shall continue until either party shall mail notice to the other (pursuant to Section 25 of this Lease) at least one (1) month prior to the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate. As long as the Tenant is in possession of the Premises, all of the obligations of the Tenant and all rights of the Landlord applicable during the term of this Lease shall be equally applicable during such period of subsequent occupancy.

28. WAIVER: The failure of the Landlord to insist upon a strict compliance with any of the covenants, rules or regulations of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, rule, regulation or option, but that all covenants, rules, regulations and options shall remain in full force and effect. Landlord shall not be liable or responsible to Tenant for the violation of any covenant, rule or regulation in any other lease by any other tenant.

29. APPLICABLE LAW: This Lease shall be given effect and shall be construed by application of the law of South Carolina.

30. SECTION HEADINGS AND NUMBERS: Section Headings and Section Numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, construe or describe the scope or intent of such sections or in any way affect this Lease.

31. HEIRS AND ASSIGNS: This Lease, and all covenants, conditions, rules and regulations herein contained, are binding upon and shall inure to the benefit of the successors and assigns of the Landlord and the heirs, administrators and those assigns of the Tenant who shall have been approved in accordance with Section 8 of this Lease.

32. SEVERABILITY: If any provision of this Lease or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Lease which can be given effect without the invalid provision or application; and to this end, the provisions of this Lease are declared to be severable.

33. WAIVER OF BREACH: Receipt by the Landlord of rent with knowledge of the violation of any term or provision of this Lease or the rules or regulations thereof, shall not be deemed a waiver of such breach.

34. QUIET ENJOYMENT: The only covenant of quiet enjoyment applicable to this tenancy, express or implied, is that provided under South Carolina Law.

35. TENANT ACKNOWLEDGEMENT OF SECURITY POLICY: A. No representation: Tenant acknowledges that neither Landlord nor Agent has made any representations, either written or oral, concerning the safety of the community in which the Premises is located or the effectiveness or operability of any security devices or security measures on the Premises of Facility. B. No Warranty or guarantee: Tenant acknowledges that Landlord and Agent neither warrant nor guarantee the safety or security of Tenants or their guests or invitees against any criminal or wrongful acts of third parties. Each Tenant, and their Guests or Invitee are responsible for protecting his or her own person and property and hereby releases Landlord and Agent for any and all damage to person and property. C. No reliance on security devices or measures:

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Tenant acknowledges that security devices or measure may fail or be thwarted by criminals or by electrical mechanical malfunctions. Therefore, Tenant acknowledges that he or she should not rely on such devices or measures and should take steps to protect himself or herself and his or her existing property as if these devices or measures did not exist. Tenant agrees to immediately notify Landlord or Agent of any malfunctions involving locks.

36. **SMOKE DETECTOR:** Landlord has installed at least one smoke detector in the Premises and that said detector(s) is in good condition and proper working order as of the beginning of the Lease term. Tenant agrees not to obstruct or tamper with said detector(s) or otherwise permit the detector(s) to be obstructed or tampered with for any reason whatsoever. Tenant further agrees to test the detector(s) periodically and to report any malfunction therewith promptly to Landlord. Tenant assumes all liability to test the detector(s) and hereby waives and exonerates Landlord from any and all liability resulting from any defective detector(s) which Tenant shall not have specifically reported to Landlord.

37. **ENTIRE AGREEMENT:** This Lease contains the entire agreement between Landlord and Tenant, and can only be changed in writing, signed by both parties.

38. **TERMINATION OF LEASE:** Landlord reserves the right to terminate lease or declare the Lease to be in default as provided by North Carolina law. Landlord reserves the right at any time to make changes to this Lease Agreement and Rules and Regulations as Landlord shall in its judgement determine to be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order, comfort and benefit of residents in general and for the efficient operation of the apartment community.

EXHIBIT A

RULES AND REGULATIONS

TENANT AGREES NOT TO:

1. **APPLIANCES:** Install any washing machines, dryers, dishwashers, air conditioners or other appliances in the Premises.
2. **FURNITURE:** Keep any water-containing furniture in the Premises.
3. **WALLS AND WOODWORK:** Drive nails into the woodwork or walls of the Premises.
4. **WALLPAPER, PAINT AND MIRRORS:** Apply contact paper, wallpaper or mirrors to the Premises and will not change the type or color of paint within the Premises from that utilized by Landlord.
5. **PORTABLE HEATERS:** Store, install or operate, in or about the Premises, unvented, portable, kerosene-fired or electric heaters.
6. **LOCKS:** Change the locks on the doors of the Premises or install additional locks, chains or other fasteners without the prior written permission of the Landlord. Upon termination of the tenancy, all keys to the Premises must be returned to the Landlord. If Tenant shall fail to comply with this Rule, Tenant shall pay Landlord \$50.00 for reimbursement of the cost of changing or re-keying the locks. Notwithstanding the above, Tenant shall provide to the Landlord a copy of the key(s) necessary to gain access to the Premises if locks have been added, altered or changed by the Tenant from the date of this Lease Agreement.
7. **KEYS:** Duplicate, distribute or loan apartment, unit/lot or mailbox keys. Improper handling of keys will be subject to a \$50.00 fine, as well as any lock change costs associated with such mishandling.
8. **SCREENS:** Remove window screens. The screens covering the windows have been installed as permanent fixtures - they are not to be removed for any reason. Discarding or throwing objects from a window constitutes a safety hazard and will be dealt with accordingly. A fee will be assessed for the replacement or reattachment of screens in addition to other penalties.
9. **FURNISHINGS:** Dismantle or remove the provided furnishings from the apartment. Desks, closet doors, bedding sets, dressers, etc. are part of the Premises. A fee will be assessed if it is necessary for our staff to move, repair, or replace any items in order to return the Premises to its original condition or to return any room items placed by the Tenant in public areas, either during the term of the contract or after. Furnishings should not be placed on the balconies or porches at any time.
10. **ENTRANCE:** Enter another Tenant's apartment or unit/lot without permission.

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11. **PARTIES:** Host parties. Any gathering where noise is audible outside of the apartment, where more than 10 guests are present inside the apartment or such that other residents are disturbed is considered a party. Other reasonable guidelines may be used to determine whether a gathering is creating a disturbance. Tenants in violation of this policy will be subject to judicial action and a \$50.00 fine.
12. **BUILDING EXTERIOR:** Climb on exterior walls, balcony rails and roofs.
13. **ALCOHOL:** Store or possess kegs, beer balls or other large quantity containers. Alcohol in any open container is prohibited on balconies and in common areas including, but not limited to: stairways, breezeways, entranceways, volleyball courts, swimming pool, clubhouse, courtyards and parking lots.
14. **PERSONAL BELONGINGS:** Leave any personal belongings (including lawn furniture) in the parking areas, public halls, sidewalks, lawn areas or other common areas of the apartment community.
15. **APPLIANCES & UTILITIES OBSTRUCTIONS:** Misuse or overload appliances or utilities furnished by the Landlord. In addition, Tenant shall properly use and operate all electrical and plumbing fixtures and shall keep all plumbing fixtures as clean and sanitary as their condition permits.
16. **OBSTRUCTIONS:** Obstruct or use for any purpose other than ingress and egress the sidewalks, entrances, passages, courts, vestibules, stairways and halls.
17. **ADVERTISING:** Display any advertisement, sign, or notice, inside or outside the Premises.
18. **FIRE RISK:** Store in the Premises or any storage area any material of any kind or description that is combustible, or would increase the risk of fire.
19. **LITTER:** Litter or obstruct the public halls or grounds.
20. **LAWS AND INSURANCE:** Do anything that would violate any law or increase the insurance rates on the building in which the Premises are situated.
21. **THROWING OF ARTICLES:** Throw, or allow to be thrown, anything out of the windows or doors or down the passages of the building, or from the balconies or patios.
22. **WINDOW SILLS:** Place anything on the outer edges of the sills of windows.
23. **COMMON AREAS:** Permit Tenant or Tenant's family, employees, agents or guests to play in public areas, stairways, elevators (if any) or storage areas.
24. **AUTOMOBILES:** Hose wash automobiles.
25. **OBSTRUCTION OF WINDOWS, ETC.:** Cover or obstruct the windows, doors and skylights that reflect or admit light into passageways, or into the common areas of any of Landlord's buildings.
26. **CLEANING OF RUGS, MOPS, ETC.:** Shake, hang or clean any tablecloths, rugs, mops or other articles in any of the public halls or from any of the windows, doors, patios, balconies or landings of any of Landlord's buildings.
27. **CANVASSING:** Cause the distribution in common areas of the apartment community or under apartment doors, of handbills, circulars, advertisements, papers or other matter which if discarded would tend to litter such area. Canvassing, soliciting and peddling in the apartment community are prohibited. The foregoing shall not prohibit Tenant from using direct mail solicitation or advertising in the regular communications media.
28. **CHARCOAL GRILL:** Use or store any charcoal or gas grills or other open flame cooking devices, or do any open cooking on balconies or patios.
29. **DAY CARE CENTER:** Provide, for consideration, in or about the Premises, substitute parental or guardianship care or supervision to children not related to the Tenant by blood.
30. **CLOTHES LINES:** Install, erect or utilize exterior clotheslines within the apartment community.

TENANT AGREES TO:

31. **GUESTS:** Be responsible for the conduct of all guests. The privacy and right to normal use of the Premises by Tenant's roommates must be strictly respected in the entertaining of guests. Long-term visitation (over 72 hours or more than fifteen total days per Term) by any individual is not allowed unless agreed upon by all roommates and the Landlord grants written permission. Guests may not be present in or enter the apartment unless the Tenant is also present. Guests who refuse to abide by these rules are subject to being denied access to the Premises or the Property.
32. **GARBAGE & RUBBISH:** Place Tenant's garbage and rubbish for disposal only as Landlord directs and to dispose from the Premises all rubbish, garbage and other organic and flammable waste in a clean and sanitary manner. Garbage & rubbish is forbidden to be placed or stored in breezeways or on balconies/patios, at anytime.
33. **BALCONIES AND PATIOS:** Keep balconies and patios free of all personal belongings (including bicycles), except that Tenant may maintain lawn furniture thereon provided the same is maintained in a neat and orderly manner. Apartment furniture must remain inside the apartment and may not be used outdoors. Bird, animal and insect feeders are prohibited. Garbage & rubbish is forbidden to be placed or stored on

Initials

Lease Agreement

Windy Hill Family Park

balconies/patios, at any time. Alcohol is prohibited on balconies and patios.

34. **SMOKING:** Extinguish and dispose of all cigarettes and cigars in appropriate containers; at no time should cigarettes or cigars be thrown off balconies, out windows, off stairwells or into mulch as this creates a serious fire hazard. Violators are subject to a \$50.00 fine.

35. **USE OF FACILITIES:** Use all facilities which Landlord provides for Tenant's comfort, such as a swimming pool, parking areas, volleyball, fitness center, clubhouse and computer center (none of which facilities are included in the rent) solely at Tenant's own risk, and Tenant agrees that Landlord shall not be responsible for any injury to person or loss or damage to property arising out of Tenant's use thereof, unless the same is caused solely by Landlord's fault, omission, negligence or other misconduct. The Landlord may revoke use of any of these facilities without affecting the remainder of this Lease.

If Landlord should provide a seasonal outdoor swimming pool for Tenant's use in common with others, Tenant agrees to comply with, and to cause Tenant's family and guests to comply with, all rules and regulations relating to the use thereof, which Landlord posts at or near the pool or mails to Tenant (in accordance with Section 25 of this Lease Agreement). A failure to comply with said rules and regulations may result, at Landlord's option, in Landlord revoking Tenant's use of the pool.

36. **CONDITION OF PREMISES:** Keep the Premises in a neat, clean, good and sanitary condition.

37. **DRAPERIES:** Only use draperies and window shades provided by Landlord and which present a white exterior coloration.

38. **LOCK-OUT:** Landlord shall have no obligation to provide any Tenant with assistance in gaining entry into such Tenant's unit in the event that such Tenant does not have his/her key. In such event, Tenant shall use the services of a professional locksmith in order to gain entry, and shall not cause any damage to any door or window of the unit.

Acknowledgment

Tenant hereby acknowledges that he or she has read this Lease, the agreement application, addendum(s), and the Rules and Regulations. Tenant understands that the Rules and Regulations may be amended from time to time. Amendments are for the purpose of protecting the Premises, Unit and Facility and providing for the safety and well being of all the occupants of the Premises, Unit and Facility, and affirms that Tenant will, in all respect, comply with the terms and provisions of the agreement.

TENANT ACKNOWLEDGES THAT THIS AGREEMENT IS A LEGAL DOCUMENT AND IS INTENDED TO BE ENFORCEABLE AGAINST TENANT.

IN WITNESS WHEREOF the parties hereto have executed this Lease Agreement the day and year first above written.

TENANT:

BY: Chris Holcomb
(PRINT NAME)

Christy E. Holcomb
TENANT SIGNATURE/DATE

Christy E. Holcomb / 11-26-08
TENANT SIGNATURE/DATE

LANDLORD:

BY: _____
(PRINT NAME)

LANDLORD SIGNATURE/DATE

Home Financed By:

BY: Greene
(PRINT NAME)

Mailing Address

Fleetwood
Year Make of Home

Mobile Home Dealer

C.H.
Initials

Lease Agreement

Windy Hill Family Park

Windy Hill Mobile Park
P. O. Box 51343
Piedmont, SC 29673
(864) 363-3915

Resident Name: Chris Holcomb

From: Windy Hill Management

Date: 6/24/14

Re: Lease Renewal Addendum

Your lease is expiring / expired 7/31/14. We value your residency and would like to renew your lease agreement at this time.

Please review the terms below and sign in the appropriate location. There are two options: 1) Renew for a twelve month period 2) a month to month agreement at a higher monthly rate.

ADDENDUM TO LEASE

This addendum is entered into between Windy Hill Family Park and Chris Holcomb as tenant, residing at 138 Brookline Drive, Easley, SC 29642.

By signing this addendum you are continuing to agree to the same terms and conditions of your initial lease, except rent could be adjusted at this time:

Please return a signed original with your next months rent payment.

Monthly Rental Amount: \$ 180

New Lease Dates: 8/1/14 to 7/31/15

New Monthly Rental Amount: \$ 180 (no change)

2nd request

If you choose to go month-to-month, please contact management for the correct form and new rental amount that will include a \$50 month-to-month fee.

THE ABOVE ADDENDUM IS HEREBY AGREED AND UNDERSTOOD THIS 24 DAY OF June, 2014.

Resident

Chris Holcomb

Resident

Karen Wapner

Windy Hill Management

Date

8/10/14

Date

6/24/14

Date

Windy Hill

Ex D

To: Chris Holcombe
From: Windy Hill Management
Date: July 30, 2015
Re: Phone Call Follow-Up to Windy Hill Violations Notice

This letter is a follow-up to our conversation on July 25, 2015 regarding the violation notice you were sent on July 20, 2015.

Since this notice was sent to you, your son continues to drive his four wheeler on the property grass and disregard the previous notice sent. I personally witnessed Matthew driving the four wheeler on the grass.

We agreed that it is in the best interest of Windy Hill if you vacate the property and I told you that Windy Hill would not be renewing your lease. I informed you that I would be sending you notice. I offered you a 60-day notice to vacate. You stated that you thought you would need more time and I said I would consider a month-to-month lease to assist you in the transition if you agreed to make sure that the issues were resolved and did not continue.

The issues were as follows:

- Shooting a gun on the property
- Driving on the grass to avoid the speed bumps
- "Gunning" his truck to fling mud
- Driving around your home over the drain field to the back of your home leaving drive marks on the grass and damaging drain field
- Driving a four wheeler around the green building and dragging mud on the new seal coating
- Cutting a path into the woods to drive the four wheeler
- Driving the rebel flag on the back of your truck through the property
- Storage of trash at the back door resulting in trash blowing onto the property
- Plastic bottles being thrown on the property
- Stairs to your deck require repair, replacement, or removal
- Skirting on the backside of your home requires repair/reinstalled.

We need to resolve the following items on or before August 10th, and if we resolve these with no other issues occurring, we can discuss your month to month lease.

1. No trash to be stored at your back door
2. Remove all trash and debris around your home
3. Reinstall your missing skirting
4. Repair your stairs or remove them completely

Please contact me once the items are complete so that we can discuss finalizing your month-to-month or issuing you the Non-Renewal Notice.

Sincerely,

Karen

Windy Hill

Ex B

To: Jean Ambrose
From: Windy Hill Management
Date: March 21, 2016
Re: Notice of non-renewal

This letter is to inform you that Windy Hill will not be renewing your lease which expires on 7/31/16. If you choose to move earlier then the date requested there will be no penalty to you. We just need to be informed on the move date.

Windy Hill has decided that we will be installing Park owned homes on the lot you now rent. Please note that the home must be moved and lot cleaned up of all decks, skirting, water pipes, sewer lines and debris on or before this date of 7/31/16.

Management must be notified on the move date so someone can be there to monitor the move. Once this is complete and the lot cleaned we will need a forwarding address to return your deposit.

Should you need a mover I can provide you with that information.

Thank you for your immediate attention in this matter.

Sincerely,

Karen

Windy Hill
P.O Box 51343
Piedmont, SC 29673

To: Chris Holcombe
From: Windy Hill Management
Date: March 22, 2016
Re: Removal of your Home

This letter is to inform you that Windy Hill has made the decision to install a park owned home on the lot you are currently renting. Please note that the home must be moved and the lot cleaned up of all decks, skirting, water pipes, sewer lines and debris on or before this date of 7/31/16.

If you choose to move earlier then this date requested there will be no penalty to you as long as the rent is current up to the last month.

Management must be notified on the move-out date so someone can be there to monitor the move. Once this is complete and the lot cleaned we will need a forwarding address to return your deposit.

Should you need a mover I can provide you with this information.

Thank you for your immediate attention in this matter.

Sincerely,

Karen

ELECTRONICALLY FILED - 2017 Jul 17 7:36 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402064

Windy Hill

P.O Box 51343
Piedmont SC 29673

To: Wendell Grimes
From: Windy Hill Management
Date: June 22, 2016
Re: Notice of removal of your home

This letter is to inform you that Windy Hill has decided that we will be installing Park owned homes on the lot you now rent. Please note that the home must be moved and lot cleaned up of all decks, skirting, water pipes, sewer lines and debris on or before this date of 10/30/16.

If you choose to move your home earlier then this date management must be notified on the move date so someone can be there to monitor the move. Lot rent will still be due the first of every month until the home is moved. Once this is complete and the lot cleaned we will return your deposit.

Thank you for your immediate attention in this matter.

Sincerely,

Karen Wagner

ELECTRONICALLY FILED - 2017 Jul 17 7:36 PM - ANDERSON - COMMON PLEAS - CASE#2016CP0402064

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C/A: 2016-CP-04-02064
	)	
	)	MAGISTRATE'S CASE NO.
Windy Hill MHP, LLC,	)	2016CV0410700527
	)	
Plaintiff/Respondent,	)	
	)	
vs.	)	ORDER
	)	
Chris Holcombe,	)	
	)	
<u>Defendant/Appellant.</u>	)	

Christopher E. Holcombe ("Holcombe") appeals the magistrate's court Writ of Ejectment issued on August 31, 2016 after a bench trial on the same date. Holcombe contends that Windy Hill MHP, LLC failed to grant him reasonable accommodations pursuant to the Fair Housing Amendments Act of 1998 at 48 U.S.C. § 3604 ("FHA") and the South Carolina Fair Housing Law at SC Code § 31-21-40 ("SCFHL") and that the trial court failed to properly assess Holcombe's situation in issuing the Writ of Ejectment. I affirm.

FACTUAL/PROCEDURAL BACKGROUND

Mr. Holcombe is disabled and bound to a wheelchair. Windy Hill is managed by Karen Wagner ("Wagner"). Windy Hill and Holcombe entered into a written lease agreement governed by the South Carolina Residential Landlord and Tenant Act ("RLTA") whereby Windy Hill leased the ground to Holcombe on which Holcombe placed a mobile home that he owns. That lease terminated by its terms on July 31, 2015.

As the end of the lease term approached, Wagner sent Holcombe a letter on July 20, 2015 outlining concerns, mainly involving the actions of Mr. Holcombe's son, who is not disabled and who lived with Mr. Holcombe. On June 24, 2015, Mr. Holcombe purchased a 2.14 acre parcel of land in Anderson County, South Carolina.

Wagner had a phone conversation with Holcombe on July 25, 2015 regarding the violations. She followed up that conversation with a letter on July 30, 2015. That letter again outlined the ways that Holcombe, through his son, was being a bad neighbor and states that Wagner and Holcombe mutually agreed that it would be best if he vacated at the end of his lease and that Windy Hill would not renew the lease. The letter also states that she offered him the reasonable accommodation of 60 days past the end of the lease term to vacate. Wagner also indicated that she might allow a month-to-month accommodation if the issues outlined in the letter were resolved.

Seven months after Mr. Holcombe's lease terminated, on March 22, 2016 Windy Hill sent Mr. Holcombe a letter stating that it desired to put its own home on the property and stated that Mr. Holcombe must be out by July 31, 2016. July 31, 2016 was a full year after the end of his lease term. On June 21, 2016 Windy Hill sent Mr. Holcombe another letter reminding him that he had to be out by July 31, 2016.

Mr. Holcombe did not vacate the property and Windy Hill filed ejectment proceedings. The ejectment hearing was held on August 31, 2016. At the hearing Mr. Holcombe admitted that he had made no preparation to move and argued that he should be reasonably accommodated because of his disability and that accommodation should be that he would be allowed to remain indefinitely.

The trial court considered his discrimination/accommodation argument and found that Windy Hill had made "due accommodations" and that Holcombe failed to "show any discriminatory policy" in the ejectment. The trial court therefore granted a Writ of Ejectment giving Holcombe 20 days to move his mobile home from Windy Hill's property. Holcombe appeals the issuance of this Writ.

STANDARD OF REVIEW

"Section 18-7-170 of the South Carolina Code (1985) articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact." Bowers v. Thomas, 644 S.E.2d 751, 373 S.C. 240 (Ct. App. 2007).

Sections 18-7-140 and 18-7-170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984). "The appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses, and the grounds of exception made, without the examination of witnesses in court. The appeal shall be heard on the original papers and no copy thereof need be furnished for the use of the court." SC Code § 18-7-130.

LAW/ANALYSIS

The written lease between Windy Hill and Holcombe terminated by its terms on July 31, 2015. Thereafter Windy Hill had the right to recover possession of the premises by ejectment proceedings. SC Code §§ 27-40-750 and 27-40-760.

Holcombe argues that the FHA and SCFHL require that he, as a disabled person, be given reasonable accommodations for moving at the termination of his lease. He argues that this time is necessary because his lower income and lack of mobility mean that he needs more time to prepare for and afford the relocation of his mobile home, even to a lot he already owns. Holcombe offers no binding precedent for the proposition that reasonable accommodations must be made when a written lease terminates by its own terms. However, assuming that the FHA and SCFHL require such an accommodation, the "reasonable accommodation must be (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing." An indefinite delay in vacating property is not a reasonable accommodation. See *McQuestion v. Crawford*, 765 N.W.2d 822, 2009 WI App 35 (Wis. App., 2009) ("To suggest that those found eligible for emergency assistance can remain indefinitely in housing from which they have been evicted could lead to serious abuse."); *Andover Housing Authority v. Izrail Shkolnik*, 443 Mass. 300, 820 N.E.2d 815 (2005) ("This court has rejected the idea that indefinite requests for "more time" to address a disabling condition are reasonable."); *Groner v. Golden Gate Gardens Apartments* 250 F.3d 1039 (6th Cir. 2001) ("Such an indefinite arrangement, moreover, would likely have imposed an undue administrative burden on the Golden Gate staff. Accordingly, Groner has failed to demonstrate that such an accommodation was reasonable."); *Von Beltz v. Bentley Homes, LLC* (Cal. App., 2014) ("Von Beltz's request that defendants accommodate her by indefinitely delaying her eviction was not reasonable as a matter of law."). The trial court found, as does this Court, that the original 60 days, then ultimately one year, that Windy Hill allowed Holcombe to remain on the property after the written lease terminated was a reasonable, if necessary, to afford Holcombe an equal opportunity to relocate the mobile home he already owns to the lot of land he already owns.¹

Holcombe also argues that the trial court failed to make an individualized assessment of his needs. This Court disagrees. The trial court allowed Mr. Holcombe to both testify and summarize his position about his lack of income and the heightened requirements for relocating a mobile home customized for his disability. The trial court clearly considered these issues, along the facts that Windy Hill was entitled to repossession after ejectment proceedings based on the termination of the written lease, the year that Windy Hill had accommodated Holcombe past the termination of the written lease and the fact that Mr. Holcombe purchased a lot a year prior to the ejectment hearing. After considering Holcombe's arguments and the facts and the law, the trial court concluded, as does this Court, that Holcombe had been reasonably accommodated and there was no discrimination of Holcombe for failure to accommodate.

¹ The Court notes that because of this appeal Holcombe had now had an additional 15 months, for a total of 27 months past the termination of the written lease, to make arrangements to move his mobile home.

CONCLUSION

Based on the above analysis, the magistrate's court Writ of Ejectment is AFFIRMED and Mr. Holcombe has 20 days from the date of this ORDER to voluntarily vacate the property.

IT IS SO ORDERED!



Anderson Common Pleas

Case Caption: Christopher E Holcombe VS Windy Hill Mhp Llc

Case Number: 2016CP0402064

Type: Order/Other

S/R. LAWTON McINTOSH

S/R. LAWTON McINTOSH

Electronically signed on 2017-11-07 17:37:15 page 5 of 5.

Order of November 8, 2017

Order of August 31, 2016

Writ to Eject

Eviction Notice

Transcript of Magistrate Court

Transcript of Civil Court

Defendant's Medical Documentation

Defendant's Exhibit 1

Defendant's Exhibit 2

Defendant's Exhibit 3

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 6, 2018

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

RECEIVED
SEP 10 2018
SC Court of Appeals