



**South Carolina Bar**  
Continuing Legal Education Division

## **2026 SC BAR CONVENTION**

**Real Estate Practice Law Section**

**“Who Says Dirt Law is Boring?”**

**Saturday, January 24**

*SC Supreme Court Commission on CLE Course No. 260144*

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# South Carolina Bar

Continuing Legal Education Division

## Dirt Law Fundamentals Panel-Tips and Tricks for Deeds, Easements and Plats

*Stephanie Weissenstein  
Professor Dylan Malagrino  
&  
Bradley Richardson*

## Don't Do Dirty Deeds Dirt Cheap

In South Carolina, real property (a.k.a. “real estate”, a.k.a “dirt”) can be held one of five ways. How the property is *titled*<sup>1</sup> affects how it can be sold, inherited, and leveraged. In other words, if you, Non-Dirt Lawyer or New Attorney, are asked by a friend or family member to help them out by drafting a “quick quit claim deed”, think twice before you agree to draft a dirty deed, cheaply.

### I. Property Ownership 101

- 1) Individual owns 100% of the property in *fee simple*.
- 2) Two or more *persons* own the property as **tenants in common**. This is the original way title in South Carolina was conveyed. The *Grantor* would convey to the *Grantees* as follows: “to Harry and Sally, their heirs and assigns forever”.
  - a. When one co-tenant dies, their share must go through probate
  - b. The percentage of ownership can be unequal (e.g. 60/40 or 90/10 or 75/25/25)
  - c. Creditors of one owner can only reach that owner’s interest (generally)
  - d. May be *partitioned* by agreement or court order; or a party can sell their share of the property
- 3) **Tenants in common with rights of survivorship** is the “indestructible” way of holding title with someone else. In this deed, the *Grantor* would convey to “Harry and Sally, for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever in fee simple.” (See, *Smith v Cutler*).
  - a. When one owner dies, their share goes to the surviving owner OUTSIDE of probate
  - b. There can be 2 or more owners, in unequal shares
  - c. Creditors of one owner can only reach that owner’s interest (generally)
  - d. This ownership may not be partitioned; no one owner can convey his or her interest without the consent of the other owner(s)
- 4) **Joint tenants with rights of survivorship**, or JTROS, is the way most married couples take title, and it is generally the way most closing attorneys will draft a deed. This ownership is new, by jurisprudence standards, and was created by statute (§27-7-40). In this deed, the *Grantor* would convey title to “Harry and Sally as joint tenants with rights of survivorship and not as tenants in common.”
  - a. When a co-owner dies, their share goes to the surviving owner(s) outside of probate
  - b. Every owner must have equal ownership (e.g. 50/50 or .25/.25/.25)
  - c. May be partitioned or severed by death, divorce, sale, or conveyance of a party’s interest without agreement by the other owner(s). If this happens, then despite the joint tenancy language in the deed, the owners now hold the property as “tenants in common”

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<sup>1</sup> Italicized words are defined at the end of the materials

5) A **life estate deed** is a way to convey title outside of probate while the Grantor retains ownership. In a life estate deed, the Grantor would convey the property to Grantee(s) as, “to Harry and Sally, their heirs and assigns, forever, reserving however unto the said Grantor a life estate”. With this deed, Harry and Sally are the *remaindermen* and they receive an equitable interest in the property at the time of conveyance. In terms of estate planning, this can be a useful tool because:

- a. It keeps the property out of probate
- b. It could keep the “heirs” (i.e. the remaindermen) from the big capital gains liability they may have if Grantor just did a quit claim deed because the value of the property would be assessed based on when the remaindermen take actual “ownership”, and not be based on the equity/value realized by the Grantor
- c. This conveyance shouldn’t impact Grantor’s property tax assessment
- d. But, with a life estate deed, the Grantor cannot mortgage or sell the property without consent of the remaindermen.

[shhhhhh. We’re not taking about lady bird deeds in this section today..... S.C. House Bill 4264)

## **II. Types of Deeds**

When conveying title, South Carolina lawyers can prepare a deed in one of three ways:

- 1) With a **warranty deed**, the Grantor conveys the title to the Grantee(s) in a manner as set forth above and promises to “warrant” or defend that the title is good and marketable from the beginning of time (known or unknown) through the date the deed is executed. The Grantor’s warranties can survive closing and include anyone claiming interest under the Grantor. This is the most common deed- particularly in a real estate purchase.
- 2) A **special warranty deed**, or **limited warranty deed**, warrants that the Grantor will defend against any title defects (known or unknown) that arose during THAT Grantor’s ownership. This type of deed is typically used by builders, out of REO/foreclosure, and after probate (by the heirs). This type of deed is still insurable by title insurance and shouldn’t affect the Grantee’s ability to get a mortgage.
- 3) A **quit claim deed** conveys only whatever interest the Grantor has in the property with no promises that the Grantor even has an interest and does not offer any protection of the title against defects. In the author’s opinion, a quit claim deed should only be used in special circumstances like to cure title defects, to satisfy a family court order, or to convey property that was bought at a tax sale, for example. There is zero protection in place for a Grantee who receives property by quit claim deed.

## **III. Drafting Deeds**

WORDS MATTER in a deed, and this is why it might be dangerous for you, Non-dirt Attorney and New Attorney, to do a favor for the friend or family member. For example, what if the parties

agree to a quit claim deed, but the form you downloaded or “borrowed” has warranty language in it? What if the language you use (or don’t use) creates an ambiguity?

In all deeds, for example, there is the *granting clause* and the *habendum clause*. If these don’t match, your deed is ambiguous. Each deed will also have a *property description*, and if that isn’t right, then the Grantee does not receive the property they were intended; under the property description, the deed must have a *derivation clause*. Finally, **the deed must be properly witnessed to be recorded**.

Here’s an example of a quit claim deed:

STATE OF SOUTH CAROLINA	)	
	)	<b>QUIT CLAIM DEED</b>
COUNTY OF LEXINGTON	)	(Title Not Examined)

Recommended  
< disclaimer

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that ROBBIE REINER, (hereinafter “**Grantor**”), in the State aforesaid, for and in consideration of the sum of FIVE AND 00/100 DOLLARS (\$5.00), unto him in hand paid at and before the sealing of these presents by HARRY CRYSTAL AND SALLY CRYSTAL (hereinafter referred to as “**Grantee**”), in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed, and by these Presents does remise, release and forever quit-claim unto the said Grantee, as joint tenants with rights of survivorship and not as tenants in common, the following described property:

All that certain piece, parcel or lot of land situate, lying and being on the North side of South Carolina Highway No. 69, within the corporate limits of the Town of Acme, County of Lexington, State of South Carolina, and having such shape, metes, courses and distances as more particularly shown and delineated on that certain plat prepared for Megan Ryann by Dennis Quaid, LS, dated November 1, 1982, and recorded on November 17, 1982, in Plat Book 80 at Page 28 in the Office of the Register of Deeds for Lexington County, South Carolina.

< Property  
Description

Derivation  
clause >  
This being the identical property conveyed to ROBBIE REINER by deed of Nora Ephron, as trustee of *The I'll Have What She's Having Trust* dated August 18, 1982, dated April 8, 2016, recorded April 11, 2016, in Deed Book 697 at Page 1234 in the Office of the Register of Deeds for Lexington County.

(For information only) TMS#: 000-01-00-000  
Grantee’s Address: 123 Friends Street, Acme, South Carolina 29000

This tells the Assessor  
< where to mail the tax  
bill

This conveyance is made subject to easement and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

**Habendum  
Clause >**

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Harry Crystal and Sally Crystal, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, forever, so that neither the said Grantor nor Grantor's successors or heirs, nor any other person or persons, claiming under Grantor, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof forever.

WITNESS the undersigned Hand and Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Signed, Sealed and Delivered

In The Presence Of:

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1<sup>st</sup> Witness

**ROBBIE REINER**

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2<sup>nd</sup> Witness/Notary

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

**ACKNOWLEDGMENT**

I, the undersigned notary public, do hereby certify that Robbie Reiner personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, and acknowledged the due execution of the foregoing instrument.

**Two witnesses (not the spouse of grantor) and a notary, who may be the second witness in S.C.**

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(LS)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

"The language in a deed is ambiguous if it is reasonably susceptible to more than one interpretation." Penza v. Pendleton Station, LLC, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013) (quoting Proctor, 398 S.C. at 573 n.8, 730 S.E.2d at 363 n.8). Generally, if the granting clause and habendum clause match, the deed is not ambiguous.

In Hunt v. Forestry Comm'n, 358 S.C. 564, 566-67, 595 S.E.2d 846, 847 (Ct. App. 2004), the Court referred to the following language in a deed as the "granting clause:"

The First Carolinas Joint Stock Land Bank of Columbia . . . [has] granted, bargained, sold and released, and by these presents [does] grant, bargain, sell and release unto the said [SCFC] and their successors in office all that certain piece . . (emphasis removed)

The granting clause of the deed is what indicates the grantor's intention to transfer ownership to the grantee. Phrases such as "conveys," "grants," or "transfers" are commonly used to demonstrate this intention. In our sample deed, the granting clause states the grantor's intent to "remise, release and forever quit-claim unto the said Grantee as joint tenants with rights of survivorship and not as tenants in common. . ." the real estate.

Moreover, the habendum<sup>2</sup> clause in the example deed sets forth "to have and to hold, all and singular the premises before mentioned unto the said Harry Crystal and Sally Crystal, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, forever-so that neither the said Grantor nor Grantor's successors or heirs, nor any other person or persons, claiming under Grantor, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof forever." (See also, Smoak v. McClure, 236 S.C. 548, 549, 115 S.E.2d 55, 55 (1960) ("The

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<sup>2</sup> The Latin phrase "habendum et tenendum" means "to have and to hold." Black's Law Dictionary 716 (7th ed. 1999).

habendum clause is regular in form, as follows: ‘To have and to hold, all and singular, the said premises before mentioned unto the said Ben Garris, and his Heirs and Assigns forever.”’).

The habendum “is the clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee.” 26A C.J.S. Deeds § 36 (2001). Accordingly, in South Carolina, “the estate conveyed by the deed must be determined from the whole deed including the habendum clause.” Batesburg-Leesville Sch. Dist. No. 3 v. Tarrant, 293 S.C. 442, 445, 361 S.E.2d 343, 345 (Ct. App. 1987). In the example deed, the habendum is not repugnant to or inconsistent with the granting clause. Therefore, the deed is not ambiguous.

But, what if in our example deed the habendum clause had simply said, “to have and to hold, all and singular, the said premises before mentioned unto the said Harry and Sally Crystal, their heirs and assigns forever”? Then, we have a quit claim deed with warranty language AND language indicating title was given as tenants in common! This habendum doesn’t match the granting clause and could create ambiguity.

### **Avoid Drafting Dirty Deeds By:**

- Ensuring you know *how* the Grantee wants to take title
- Ensuring your client understands that changing their title to real estate could affect their property taxes, their mortgage, their estate plan, etc.
- Ensuring you know how the Grantor wishes to convey title (i.e. warranty v quit claim), and whether the Grantee will accept the title being offered by Grantor
- Ensuring you know how to verify the property description is correct (even if you’re not doing a title search)

Example of Warranty Deed with Deed Affidavit Next

Prepared by:

Space Above Line Reserved for Recording Information

**STATE OF SOUTH CAROLINA** )  
 )  
**COUNTY OF AIKEN** )

**WARRANTY DEED  
TITLE TO REAL ESTATE**

**KNOW ALL MEN BY THESE PRESENTS**, that \_\_\_\_\_ (hereinafter referred to as "Grantor"), in the State aforesaid, for and in consideration of \_\_\_\_\_ (\$\_\_\_\_\_.00) Dollars, unto them in hand paid at and before the sealing of these presents by \_\_\_\_\_ (hereinafter referred to as "Grantee"), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, their heirs and assigns, the following described property:

All that certain, piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, in Giddy Swamp School District No. 15, with said property being more fully shown and delineated as \_\_\_\_\_ containing \_\_\_\_\_ acres, more or less, on a plat prepared for \_\_\_\_\_ by Ben Whetstone Associates, dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of the Register of Deeds for Aiken County; the subject parcel having such boundaries and measurements as shown on said plat, all being a little more or less.

This being a portion of the same property conveyed to \_\_\_\_\_ (Grantor herein) by deed of \_\_\_\_\_ dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in the Office of the Register of Deeds for Aiken County in Book \_\_\_\_\_ on Page \_\_\_\_\_.

TMS: \_\_\_\_\_ (for informational purposes only)

Property Address: \_\_\_\_\_ (for informational purposes only)

Grantees Address: \_\_\_\_\_

TOGETHER with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE is made subject to easements, conditions, and restrictions of record, including matters appearing on plats of record and plats referenced herein.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, their heirs and assigns forever.

AND THE GRANTOR does hereby bind him/herself, their heirs, executors, administrators and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, their heirs, successors, and assigns against the Grantor and the Grantor's heirs, successors, and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Grantor's Hand and Seal this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 20\_\_.

Signed, Sealed and Delivered  
in the Presence of:

Grantor

\_\_\_\_\_  
Witness #1

: \_\_\_\_\_

Witness #2/Notary

**THE STATE OF SOUTH CAROLINA**

**COUNTY OF \_\_\_\_\_**

)

**ACKNOWLEDGMENT**

)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Grantor, \_\_\_\_\_.

**SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(L.S.)

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Commission Expires:

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit, and I understand such information.
2. The property being transferred is: a portion of \_\_\_\_\_ [address], bearing Aiken County Tax Map Number \_\_\_\_\_ and was transferred by \_\_\_\_\_ to \_\_\_\_\_ on \_\_\_\_\_.
3. Check one of the following: The deed is
  - a. \_\_\_\_\_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - b. \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - c. \_\_\_\_\_ exempt from the deed recording fee because (see information section of affidavit): (If exempt, please skip items 4-7 and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see information section of this affidavit):
  - a. \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$\_\_\_\_\_
  - b. \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \_\_\_\_\_
  - c. \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty after the transfer. If "yes" the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_
6. The deed recording fee is computed as follows:
  - a. Place the amount listed in item 4 above here: \$\_\_\_\_\_
  - b. Place the amount listed in item 5 above here: \$\_\_\_\_\_
  - c. (If no amount is listed, place zero here) \$\_\_\_\_\_
  - d. Subtract line 6(b) from line 6(a) and place result here: \$\_\_\_\_\_
7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is \$\_\_\_\_\_
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: \_\_\_\_\_ [Grantee, Grantor or Attorney]
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

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[Printed name]

Responsible Person Connected to Transaction

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

## (Unofficial) Definitions

*Derivation* – A statement that explains how the current owner/Grantor acquired their title to a property. It should include the name of the previous owner, the date of the title transfer and/or the date the title was recorded, and the book and page number where the current owner/Grantor’s deed is recorded.

*Fee simple* – total ownership of the land and all the buildings or improvements on the land

*Grantor* – The person who transfers all or some of their right to property

*Grantee* – The person who receives an ownership or equitable interest in property

*Granting clause* -Conveys the property owner’s intent to convey the property. Includes phrases such as “conveys,” “grants,” “bargains”, “sold” or “transfers”, for example

*Habendum clause* – Defines the extent of the ownership conveyed; it begins with the phrase, “To have and to hold”

*Partition* - The dividing of lands held by joint tenants or tenants in common into distinct portions, so that they may hold them in severalty. Often, we hear reference to a “partition action”, which is a lawsuit asking the court to order the property be divided between the co-owners or that the property be sold and the proceeds be divided between the co-owners

*Persons* – Individual, business, corporation, limited liability company, or trust (for example). Note, a trust cannot receive or convey title; the Trustee must do it.

*Property description*- This is the part of the deed that defines what is being transferred/conveyed/sold REGARDLESS the intentions of the parties. It may refer to a plat/plats, it may set forth the metes and boundaries, or it may just uselessly describe the bordering properties as “now or formerly of \_\_\_\_”.

If the Seller means to convey “Lot 4 in Phase II of the subdivision” as shown on a specific plat, but the deed erroneously states, “Lot 40 in Phase I”, then Grantees have zero interest in Lot 4.

*Remainderman* – This person(s) holds an interest in the property IN THE FUTURE, after the life tenant dies.

*Smith v Cutler*; 366 S.C. 546, 623 S.E.2d 644 (2005)

*Title* - The mean whereby a person’s right to property is established; the document establishing title is usually called the “Deed” or “Title to Real Estate”.

## Dirt Law Fundamentals Panel – Tips & Tricks for **Easements**

Dylan Malagrino

Associate Dean for Faculty Research &  
Development and Professor of Law  
Charleston School of Law

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## Land Use Controls

- Managing and controlling land use
  - Nuisance
  - Servitudes
  - Zoning
  - Takings
- Servitudes (Private Law Land Use Controls)
  - Nonpossessory interests in land belonging to someone else

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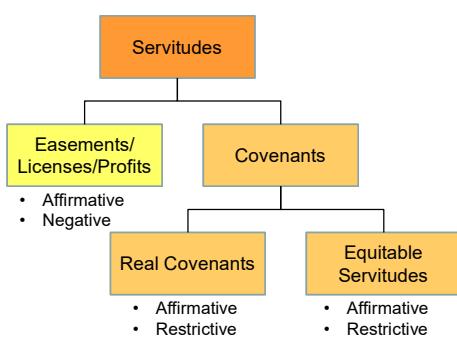


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## Servitudes




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## Easements

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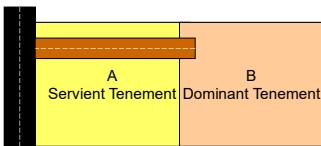


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## Easements

- Easements
  - Appurtenant
    - Dominant Tenement
    - Servient Tenement
  - In gross
    - Servient Estate

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## Creation of Easements

- Express
  - Grant
  - Reservation
  - Exception
- Implied
  - Implication
    - Estoppel
    - Prior Use [Quasi-Easement]
  - Necessity
  - Prescription
  - [Quasi-Easement]

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## Implied Easements: A Note About Licenses

- Generally Revocable
- Exceptions: Irrevocable Licenses
  - Licenses coupled with an interest (i.e.: profit)
  - Estoppel
    - A license can “ripen” into an easement.
    - **Reasonable reliance** on the existence of an easement, and would suffer **detriment** if not recognized.
    - [Look for change in position in reliance, and a justified, substantial investment.]

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## Implied Easements: Easements by Prior Use, Necessity, and Prescription

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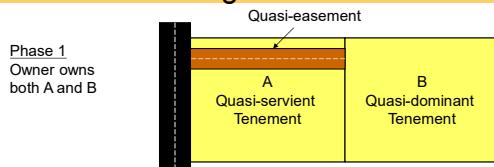


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## Easements Implied Through Prior Use




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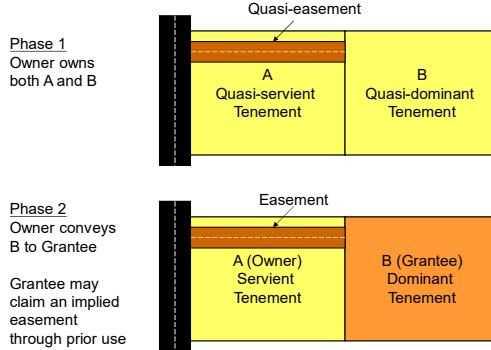


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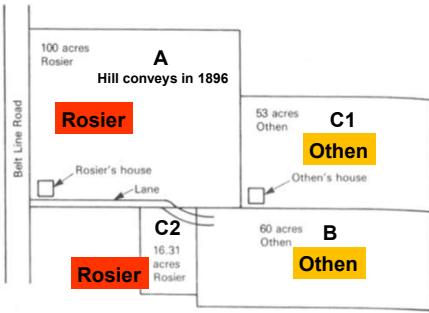
## Easements Implied Through Prior Use



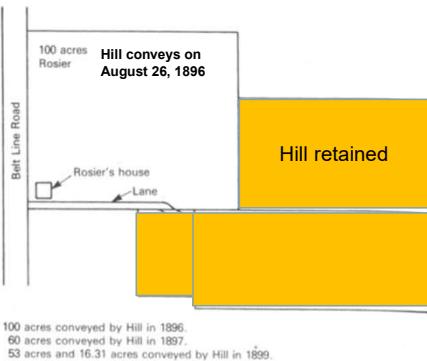
## Easements Implied Through Prior Use

- Elements:
  - 1) Multiple lots were part of a single tract
  - 2) There was an apparent and continuous use on one tract (quasi-servient tenement)
  - 3) This use is reasonably necessary for the enjoyment of the conveyed tract (quasi-dominant tenement)
  - 4) Parties can be presumed to have intended the use to continue after the division

## Easements Implied by Necessity



## Easements Implied by Necessity



## Implied Easements by Prescription

- Open & Notorious
  - Open: Visible or Apparent
    - Look for acknowledgement
  - Notorious: Generally Known or Knowable
- Continuous
- Uninterrupted
- Adverse
- Without the Permission of the Owner
  - Look for acquiescence
- Under Claim of Right
- Beneficiary Believing they have the Right
- For the Statutory Period
- Jurisdiction Specific

## Assignability of Easements

## Assignability of Easements

- Easement In Gross
  - **Majority Rule:** Cannot be Created by Prescription
  - Assignable/Devisable?
    - Common Law: Easements In Gross are NOT assignable
    - Modern Majority Rule: Parties' Intent
      - Commercial Use -vs- Personal Use
  - Divisible?
    - Common Law: Easements In Gross are NOT divisible
    - Modern Majority Rule: Divisible unless contrary to Parties' Intent
      - Overly Burden the Servient Estate?
      - "One Stock" Rule.

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## Assignability of Easements

- Appurtenant Easements:
  - Dominant Estate
    - Benefit Automatically Transfers
  - Servient Estate
    - Burden Automatically Transfers unless the burdened party is a bona fide purchaser without notice.
  - "Unity of Title" Rule

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## Scope of Easements

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## Scope of Easements




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## Scope of Easements

- Causes of Action re: Easements
  - Breach -vs-
  - Trespass -vs-
  - **Surcharge**
- Scope of Easements
  - A matter of “construction”
  - Necessity -vs- Intensity
  - Liability Remedy (Damages) -vs- Property Remedy (Equity)
    - Doctrine of Laches
  - Standard of Review

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## Scope of Easements

- Reasonable Development/Reasonable Use
  - Subdivisions? Reasonable Foreseeability?
  - Scope of Implied Easements by Prescription
    - Note 7, pg. 822.
- Location of an Easement (Note 6, pg. 821).
  - Common Law: Fixed
  - Modern Rule: Somewhat Flexible
- Duties of Servient Estate Holder and Beneficiary of Easement
  - Use of Servient Tenement
  - Use of Easement
  - Duty to Repair or Maintain Easement

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## Termination of Easements

- Release
- Expiration
- Defeasible Easements
- End of Necessity
- Merger
- Estoppel
- Abandonment
- Condemnation
- Prescription

## Negative Easements

## Negative Easements

- Common Law recognized only 4 Types of Negative Easements:
  - Can't Block Your Windows
  - Can't Interfere with Air Flow to Your Land
  - Can't Remove Support of Your Building
  - Can't Interfere with Flow of Water in an Artificial Stream
- American Additions to the Common Law:
  - Easements of Unobstructed View
  - Solar Easements
  - Easements to Preserve Skiing in Historical Areas
  - Conservation Easements

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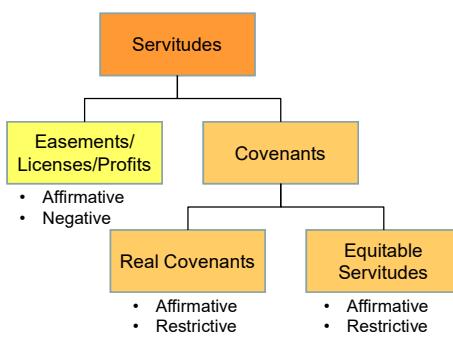


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## Servitudes




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## **Tips & Tricks for Deeds, Easements and Plats**

### **Plat Discussion**

#### **I. Types of Plats/Surveys**

As we go through this morning's discussion keep the following definitions in mind. When training new staff/associates I find it helpful they learn these definitions.

**Boundary Survey:** Generally, the most common type of survey. This type of survey delineates the legal borders of parcel, lot or tract of land. It should provide you with the precise location of the property lines. A boundary survey will not reflect the location of any improvements. Boundary surveys may disclose the existence of easements, right -of -ways, flood zone lines and other matters of record.

**Subdivision Survey:** These are similar to boundary surveys but will reflect all lots in a subdivision or a specific phase of a subdivision or development. This type of survey also delineates the legal borders of parcel, lot or tract of land and should provide you with the precise location of the property lines. A subdivision survey will generally not reflect the location of any improvements. Subdivision surveys may disclose the existence of easements, right -of -ways, flood zone lines and other matters of record.

**As-built Survey:** As-built survey provide the same information as a boundary survey but adds the location of all improvements located within the property lines of the parcel.

**ALTA Survey:** Generally speaking, an ALTA survey will contain all of the same information as boundary surveys and as-built surveys but also specifically locates and identifies all matters of record that the title insurer/closing attorney has taken exception to in the title commitment. These surveys also will include the legal description for the parcel that is being insured. Commonly these surveys will be certified to the title insurer, purchaser/owner and the lender.

**Other survey types to be aware of are Topographical Surveys, Foundation Surveys and Flood Zone Surveys.**

#### **II. Advising your client on surveys**

*TIP:*

It is my opinion that you should always have a discussion or written exchange with your client regarding surveys well in advance of closing. As part of the engagement process my firm asks the client if they would like to order a survey. The engagement letter further asks if the client would like to be contacted to discuss survey options. If a client has asked us to contact them to discuss the survey or their options I generally wait until my title abstract has been completed before contacting the client.

If the abstract only reflects a boundary or subdivision survey and you are certain the parcel is improved, I suggest that you advise your client to obtain a new survey prior to closing.

### **III. Reviewing Surveys**

Reviewing surveys is one of the most critical roles we provide as real estate attorneys. Numerous issues can be revealed in a brief but thorough review of any existing or recently performed surveys.

*Tip:*

Whether using electronic means or printed copies establish a method for reviewing surveys. Regardless of the method employed, remain consistent with your method of review. Personally, I start at the top left corner of a survey and work clockwise. Remaining consistent will save you time, eliminate mistakes and gives your staff a better understanding of your review. As I move through the boundaries I note or “markup” any matters of note or concern. This “markup” guides my staff as to matters we need to take exception to on our title commitment and identifies issues that may need to be addressed before closing.

Be aware that matters that should be considered or taken exception to may be found outside of the boundaries of the property shown upon the survey. Take care to note blanket exceptions or surveyor’s notes.

After reviewing the surveys found in the chain of title you are in much better position to have a meaningful exchange with your client. While closing deadlines that were established at the onset of the contract will sometimes limit the option to order a new survey you will have at least advised your client so he or she may make an informed decision before closing.

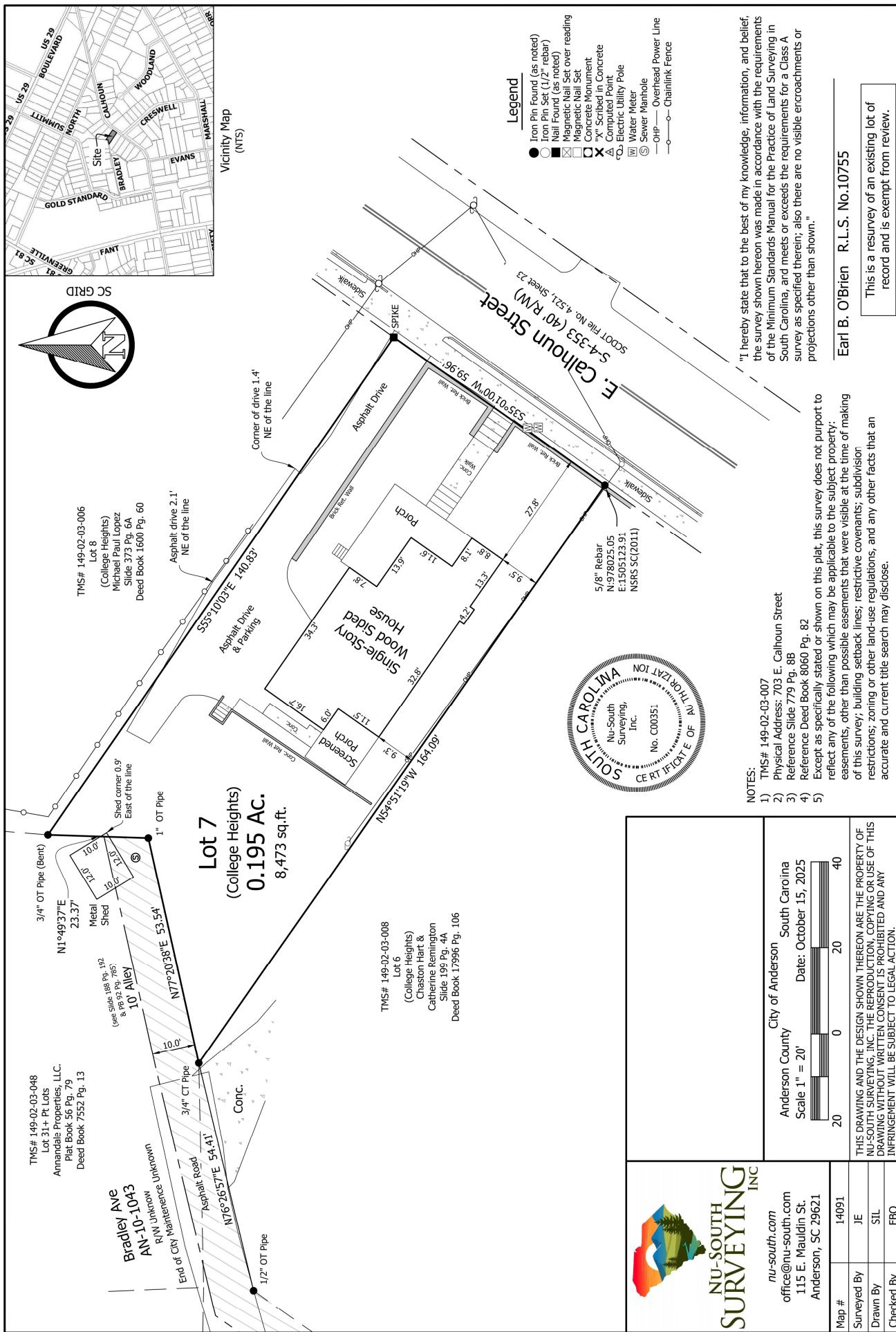
## PRACTICAL REVIEW HERE

### **IV. Surveys at Closing**

*Tip:*

As part of my closing process, I will review the most recent survey of record with the client at the closing table or include a copy of the survey in the package for review. Furthermore, I ask that the client sign and date the survey described in the deed of conveyance. If the survey indicates matters of concern such as an encroachment or a gap area I will include a note on the face of the survey stating that the client has specifically reviewed this matter, is aware of the issue and has elected to proceed with closing.

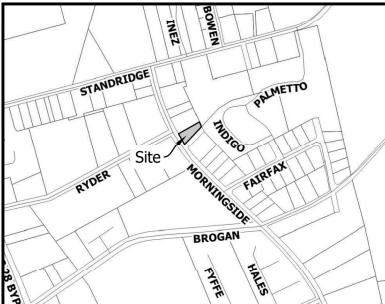
I find this method beneficial as it insures that the client has been fully advised of any potential matters found on the survey; it gives the client an opportunity to ask questions or raise concerns that you are unaware of and properly documents your file for future reference.











NOTES:

- 1) TMS# 123-07-05-009
- 2) Physical Address: 428 Morningside Drive
- 3) Reference Plat Book 23 Pg. 94
- 4) Reference Deed Book 18P Pg. 487
- 5) Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.

Vicinity Map  
(NTS)

TMS# 123-07-05-011

Lot 4 - Blk B  
(Crayton Place)

MC Property Management #1, LLC.  
Plat Book 23 Pg. 94  
Deed Book 14911 Pg. 107

1/2" Rebar

70.13'

70.13'

N23°29'47"N

Ryder Lane  
C-9-236A

Morningside Drive  
C-9-236

TMS# 123-07-05-010

Lots 2 + 3 - Blk B  
(Crayton Place)  
Katty Patino  
Plat Book 23 Pg. 94  
Deed Book 16670 Pg. 44

N59°40'58"E 188.84'

QHP

Asphalt Drive

Gravel Parking

OHP

Single-Story Dwelling

8.7' x 12' x 8' x 8' Deck

12' x 16' x 17' 0" Deck

95.47' x 95.47' N31°24'04"N

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**South Carolina Bar**  
Continuing Legal Education Division

## Dirt Law Legislation and Case Law Update Panel

*Jennifer Stone  
Rob Davis*

# 2025 Caselaw and Legislative Update



CHICAGO TITLE  
INSURANCE COMPANY®

Jennifer Rubin,  
Rob Davis, and  
Jennifer Stone

1

U.S. Bank, N.A. v. Mack, Sup. Ct., Opinion 28255, Filed January 23, 2025 

- Mortgage foreclosure on Mack's home in Orangeburg County
- Mortgage was originally closed in 2001
- Mack answered the foreclosure, asserted counterclaims, including one for dec. judgment that mortgage was closed without an attorney, barred from foreclosure
- Matrix Financial v. Frazer, 394 S.C. 134 (2011)



2

## U.S. Bank, N.A. v. Mack, cont'd . . .



- Also Hambrick v. GMAC Mort. Corp., 370 S.C. 118 (Ct. App. 2006)
- Key holdings:
  - Hambrick overruled on limited issue whether circuit courts lack subject matter jurisdiction to hear actions involving allegations of UPL (they do not.)
  - Matrix bar on mortgagees' exercise of their equitable remedies (e.g. foreclosure) only applies prospectively (viz. to mortgages recorded on/after August 8, 2011)



3

## Rivers v. Smith, Sup Ct., Op. No. 28260, Filed January 15, 2025



- Smith filed successful eviction action in Mag. Ct.
- Rivers defended: Smith did not hold title
- Rivers filed civil action, alleging Smith
  - Used invalid POA as agent
  - Breached fiduciary duty to principal
  - Acted in self-serving manner – unauthorized self-dealing
- Master dismissed Rivers action:
  - No standing re breach of fiduciary duty
  - Statute of frauds – prohibition against oral transfer or real property
- Rivers appealed – Magistrate's ruling to evict
  - Argued Mag Ct Judge exceeded jurisdiction addressing question of title to land
- Trial Ct, Ct App and Sup Ct found Mag ct had authority to evict based on factual determination that landlord-tenant relationship existed



4

## Marlowe v. SCOTD, Sup. Ct., Opinion No. 28271, Filed March 26, 2025



- Marlowe's home on Hwy 378 in Florence County
- Severe flooding in 2015, 2016
- Marlowe's expert testified flooding was impacted by Hwy 378 expansion, ongoing at the time
- Marlowes' claims:
  - Negligence
  - Inverse Condemnation
  - Stormwater Act



5

## Marlowe v. SCOTD, cont'd . . .



- At trial ct., SCOTD prevailed on SJ
- Ct. App. affirmed trial ct. on negligence, reversed on inverse condemnation and Stormwater Act.
- Sup. Ct. agreed with Ct. App. on Stormwater Act.
- Sup Ct. did not agree that the Marlowes' expert testimony supported the factual standard needed to determine that the new highway construction had caused the flooding



6

## Isaac v. Onions, Sup. Ct., Op. No. 28274, Filed April 23, 2025



- Isaacs listed property for sale through realtor, Kopchynski
- Onions completed SC Residential Property Disclosure Form: no wood or insect problems
- Home inspection found elevated moisture readings, suggested repairs and dehumidifier; Onions hired handyman
- June CL-100 report showed cont'd elevated wood moisture & presence of non-active wood destroying fungus but July CL-100 was normal
- Isaacs purchased then heavy rainfall occurred – standing water in and around crawlspace
- Inspection 1 week later: standing water, excessive moisture, active and non-active wood destroying fungus, visible and possibly hidden damage to wood
- Isaacs sued for fraud and misrepresentation, and for violation of the Disclosure Act
- *No liability if could have ascertained through own due diligence*
- *Disclosure Act does not create private right of action against realtors*



7

## Gulfstream Café, Inc. v. Georgetown Cty., Sup. Ct., Op. No. 28303, Filed Oct. 29, 2025



- Gulfstream Café has joint & non-exclusive easement for parking from Marlin Quay Marina owner
  - Conceptually anticipated that marina users park during day and restaurant goers park at night for 30 years
- Developer purchased marina and parking lot, demolished marina store to construct restaurant
- Council approved plan but Gulfstream obtained judgment against developer for interference with easement rights & Ct. held that footprint of new development must not exceed old marina store footprint
- New restaurant, The Quay, was approved and constructed within former footprint, but could also accommodate unseated patrons outside
- Gulfstream sued County & Council: Ordinance allows improvements that overburden the parking lot, resulting in taking & inverse condemnation & diminution in value



8

## Gulfstream Café, Inc. v. Georgetown Cty., Sup. Ct., Op. No. 28303, Filed Oct. 29, 2025



- Gulfstream alleges exclusive parking rights over all parking spaces at night
- No *per se* taking unless can show “extraordinary circumstance when no productive or economically beneficial use of land is permitted.” Dunes W. Golf Club, LLC v. Town of Mt. Pleasant, 737 S.E.2d 601, 609 (2013) (citing Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1017 (1992)).
- Gulfstream retains same easement and operates restaurant – increased difficulty parking does not give rise to a *per se* taking
- Regulatory Taking? Penn Central test used when not all economic use of land denied. Evaluates
  - (i) character of gov’t action; (ii) economic impact; & (iii) extent of interference with distinct investment-backed expectations



9

## Gulfstream Café, Inc. v. Georgetown Cty., Sup. Ct., Op. No. 28303, Filed Oct. 29, 2025



- Here, gov’t advanced legit land use with safer building
- No evidence County is exploiting parking for own use or economic gain – character of ordinance not in line with regulatory taking
- No evidence that Gulfstream will lose parking easement and expert testimony for diminution in value was based on full loss – economic impact does not support finding of regulatory taking
- Gulfstream “cannot have an investment-backed expectation of full use of the parking lot where the easement does not grant” such use – lack of interference with investment-backed expectations does not support regulatory taking



10

## Gulfstream Café, Inc. v. Georgetown Cty., Sup. Ct., Op. No. 28303, Filed Oct. 29, 2025

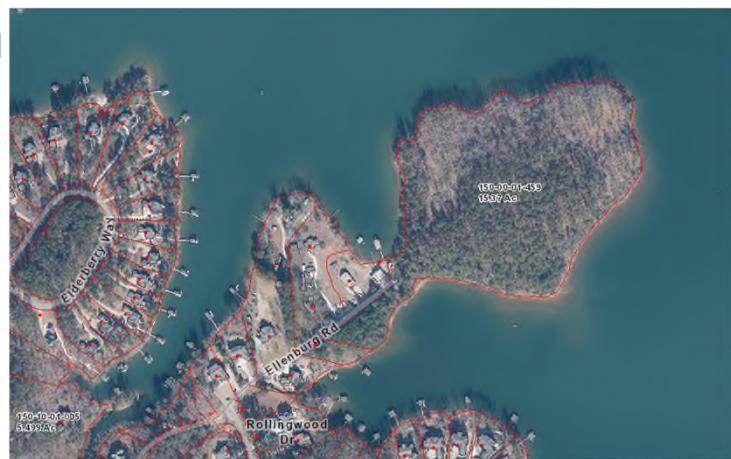
- Inverse Condemnation? Gov't takes private property without exercising eminent domain powers. *Hawkins v. City of G'ville*, 594 S.E.2d 557, 562 (Ct. App. 2004).
  - Can be physical taking or gov't imposed restriction on private property
- For inverse condemnation, must show: (i) affirmative conduct (ii) that effects taking (iii) for public use (iv) with some degree of permanence.
- For regulatory inverse condemnation, need only show affirmative conduct by the government that results in a taking. *Byrd v. City of Hartsville*, 620 S.E.2d 76, 79 (2005).
- Ct. agreed ordinance was affirmative action of County but failed Penn Central test to show taking occurred



11

## John's Marine Service v. Oconee Co. BZA, Ct. App., Opinion No. 6101, Filed February 19, 2025

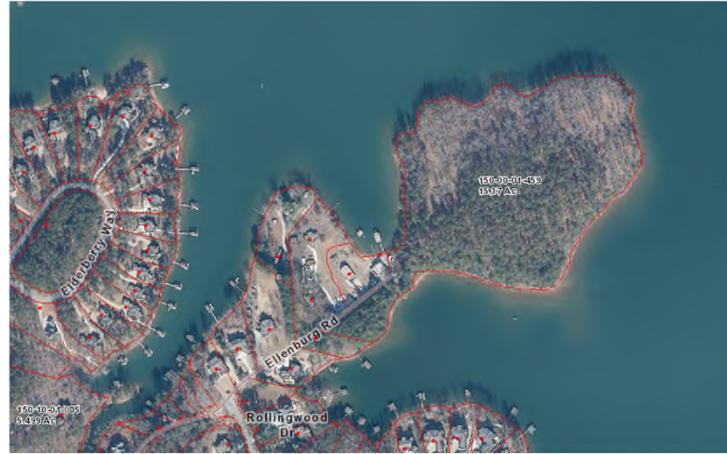
- Proposed new residential development on Lake Keowee – “Arrowhead Point”
- Ellenburg Road
- “Pinch point” only 31.9’ wide
- Zoning baseline 50’ ROW requirement for private road



12

## John's Marine Service v. Oconee Co. BZA, cont'd . . .

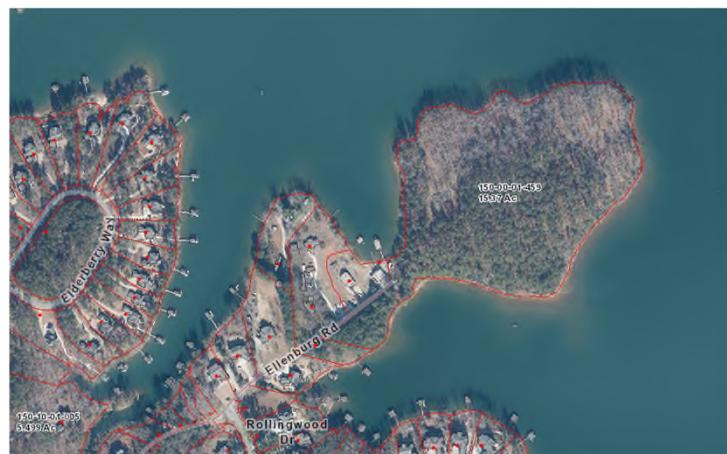
- Developer requests zoning variance for proposed access road extension
- Neighboring business opposes the request
- BZA conducts multiple hearings, considers factors



13

## John's Marine Service v. Oconee Co. BZA, cont'd . . .

- Ultimate issue: whether BZA properly considered & approved the variance request
- Lots of interesting real estate issues "under the surface" including an old (now underwater) roadbed



14

## Click Properties, LLC v. Thomas S Prop., LLC, Ct. App., Op. No. 6105, Filed March 12, 2025

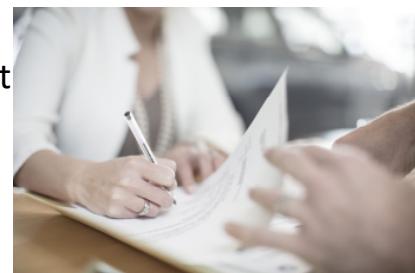
- Adjacent lots purchased by reference to survey
- Survey shows driveway and turn around
- Court found Prescriptive Easement existed in favor of Click
  - Identity of thing enjoyed
  - Use is open, notorious, continuous, uninterrupted and contrary to owner's rights for 20+ years
- *Open*: not secret or stealthy
- *Notorious*: actually and widely known
- *Continuous*: reasonable frequency based on property
- *Uninterrupted*: Use not stopped
- *Adverse*: Not permissive
- *20 years* – can tack to previous use but must also be adverse



15

## Anderson v. Pearson, Ct. App., Opinion No. 6104, Refiled April 16, 2025

- Anderson (buyer) and Pearson (seller) sign contract for land in Spartanburg County
- “20 Acres or contingent on new survey” language in brokerage agreement, but not in K
- Pearson completed new survey, did not provide to Anderson
- Anderson did not engage a surveyor
- Contract expired, Pearson declined to extend it



16

## Anderson v. Pearson, cont'd . . .



- Turns out . . . Pearson got a better offer from a developer. (As in \$500K better.)
- Anderson sues for specific performance
- Trial before Master in Equity
- Master ultimately enters order granting specific performance in Anderson's favor
- Pearson appeals the Master's rejection of his Statute of Frauds defense



17

## Anderson v. Pearson, cont'd . . .



- Master had found equitable estoppel applied to Pearson's asserting Statute of Frauds
- Ct. App. Disagreed, found Anderson's reliance on Pearson's communications w not reasonable
- Also found no detrimental reliance
- Additional ground: clear K language did not require Pearson to provide survey



18

## Anderson v. Pearson, cont'd . . .



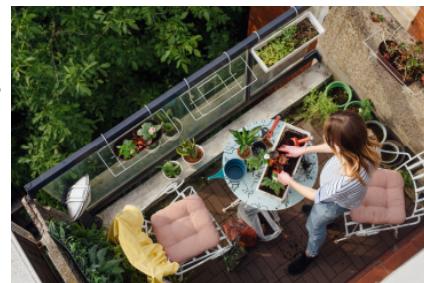
- Ct. App. reversed MIE's order for specific performance
- Takeaways: Statute of Frauds is Real!
  - Contract drafting is important!
  - Key terms of the deal should be in the K!
  - Good example case to use in educating real estate agents on pitfalls of filling in form K



19

## Griffin v. Giovino, Ct. App., Op. No. 6117, July 16, 2025

- Dispute over roof terrace as either private or common element
- Griffin had used penthouse unit & "balcony" exclusively since 1983 and made improvements (\$20K+ in tiling) at own expense
- HPR Ass'n Board decided terrace was a common element, open to all residents and established rules & regs
- Board had Griffin's furniture and tiling removed
- Jury found terrace was not a common element, awarded \$20K in actual damages & \$200K (reduced to \$160K) in punitive damages



20

## Griffin v. Giovino, Ct. App., Op. No. 6117, July 16, 2025



- Was Master Deed ambiguous?
  - “all balconies adjacent to each dwelling, including the railing attached thereto, are part of that dwelling and not common areas....”
- Court stated “[i]nconceivable that the roof terrace was intended to be common.”
  - All exterior walls being glass ~ no privacy
  - 1992 Board minutes: terrace to be treated as balcony
  - 1982-2018 – treated as part of unit without question
- Court found that actual and punitive damage awards were supported by evidence



21

## TCC of Chas., Inc. v. Concord & Cumberland, LLC, Ct. App., Opinion No. 6106, March 19, 2025



- HPR hired GC TCC to perform work
- June 10, 2016, TCC filed Notice of ML and Statement of Account against HPR and unit owners
- Statement: last day of work - March 17, 2016
- TCC filed amended LP June 16, 2022
- Unit owner, Beatty served LP & ML June 22, 2016
- HPR MSJ re ML – can’t file against HPR under HPR Act
- Beatty filed partial MSJ re ML – was not served within 90 days of last day of work (was 127 days)



22

TCC of Chas., Inc. v. Concord & Cumberland, LLC, Ct. App., Opinion No. 6106, March 19, 2025 

- TCC motioned to amend statement of account
- Master denied: cannot change last day of work in Verified Statement of Account
- Master held lien not perfected for failure to serve all owners within 90 days per statute & dismissed ML COA as to HPR
- On appeal TCC argued evidence in record shows last day of work as Jan. 23, 2017 & service upon HPR constitutes service upon unit owners
- §29-5-90 – Statement of Account to be served and filed within 90 days after ceases work
- §27-31-230(a) – after Master Deed, liens only affect units and undivided interests in common elements
- Notice of lien is for work stated to have already been performed, so date must be before lien is filed. *Preferred Sav. & Loan Ass'n, Inc., v. Royal Garden Resort, Inc.*, 368 S.E.2d 78, 80 (Ct. App. 1988)
- Ct held Master did not err in dissolving lien for failure to serve 90 days from stated last date of work – TCC bound by date asserted in statement of account
- No evidence in the record that TCC served any unit owners within 90 days of date asserted in ML



23

Viviano v. Jeffers, Ct. App., Opinion No. 6120, Filed August 20, 2025 

- Covenants and easements in an equestrian subdivision in Aiken County
- Later, additional Lot 51 added to subdivision
- Neighbors, HOA, Lot 51 owner disagree about proposed changes to riding trail easement
- “[E]motion has to give way to reason to resolve difficult disputes.” –Judge Thomas Cooper, Jr. (Ret.)



24

## Viviano v. Jeffers, cont'd . . .



- Parties mediated and signed settlement agreement
- Subsequently, Viviano changed his position and declined to sign releases to complete settlement
- Motion to Enforce Settlement filed
- Viviano argued that petition to add Lot 51 was invalid under the CCRs for lack of signatures
- Claimed there was a “smoking gun” email that had been concealed from him



25

## Viviano v. Jeffers, cont'd . . .



- Ct. App. rejected Viviano's argument
- “Smoking gun” email had been produced in discovery
- CCR amendment was public record
- Courts are not inclined to undo written settlements
- Real estate takeaway: amending CCRs is complex and worth taking time to get it right!



26

## News from the trial courts . . .



- Toussaint Holdings, LLC v. Matthew J. O'Hara, Michele L. O'Hara, 2024CP3204979, Lexington County
- O'Haras' home in Lexington County titled in both Matthew and Michele with the language from Smith v. Cutler, 623 S.E.2d 644 (S.C. 2005)
- Matthew owed money to a creditor who obtained a judgment in Aiken Co.
- Judgment transcribed to Lexington Co.



27

## Trial courts, cont'd . . .



- Judgment creditor files Lis Pendens and foreclosure on O'Hara home
- O'Haras move to dismiss, citing Smith v. Cutler, arguing that creditor cannot acquire a greater right in the home than the judgment debtor has, and that consent of all co-tenants is required to encumber the co-tenants' interests
- Creditor argues that Smith v. Cutler applies in its explicit language only to cotenants' attempts to partition as among themselves, not to third party creditors



28

## Trial courts, cont'd . . .



- MIE heard the motions to dismiss
- Parties consented at hearing: deed language is Tenants in common with an indestructible right of survivorship ("TICWIRS")
- MIE focused on: whether a co-tenant's creditor may partition when the co-tenant cannot; meaning of "indestructible"; and interplay of the TICWIRS survivorship interest with foreclosure



29

## Trial courts, cont'd . . .



- MIE granted O'Haras' motions to dismiss
- "The law of this state precludes the residence from partitioning without consent of both [TICWRIS co-tenants]."
- "[Creditor] has a contingent future interest, through the life of the judgment, and such future interest does not become a present interest until the Wife's interest is extinguished or the Wife consents to such partitioning."



30

## Judicial Employee and Law Enforcement Privacy Act



- *Who and What?* See S.C. Code Secs. 30-2-500 (Law Enforcement) and 30-2-700 (Judicial):
- Personal contact information: home address & personal cellphone number of the eligible requesting party.
- Eligible Requesting Party: active or former federal, state, or local certified law enforcement officer or judge
- Original Act:
- Any personal contact information as defined under this article must be **redacted** from any public document otherwise eligible to be released under any other provision of law.
- Fix Bill:
- Add TMS # to Personal Contact Information
- Disclosed Record: records accessible by a database or an image of an official record, that are placed on a publicly available internet website maintained by or operated on behalf of a state or local government agency
- An eligible requesting party's personal contact information in a **disclosed record** shall be **restricted**.
- Allows access to a title insurer, title agent, or SC licensed attorney

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## Hot off the Press!



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Teri Callen, Esq. - Freshly Squeezed SC  
Legislation & SC's Homegrown Easement  
Issues

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[Jennifer.Rubin@ctt.com](mailto:Jennifer.Rubin@ctt.com)  
[Rob. Davis@ctt.com](mailto:Rob.Davis@ctt.com)  
[Jennifer.Stone@ctt.com](mailto:Jennifer.Stone@ctt.com)



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# South Carolina Bar

Continuing Legal Education Division

Dirt Law Ethics: Don't be a Dirtbag Dirt Lawyer-Recognizing and Responding to Wholesaling, Fraud, Trust Accounting Issues and other Mis-deeds

*Barbara Seymour  
Gary Pickren*

**Relevant Provisions of the SC Rules of Professional Conduct, Rule 407, SCACR:**

**RULE 1.1: COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**COMMENT: Maintaining Competence**

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

**RULE 1.2: SCOPE OF REPRESENTATION**

(a) Subject to paragraph(d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**COMMENT: Criminal, Fraudulent and Prohibited Transactions**

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but

then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a sham transaction such as, for example, a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

## **RULE 1.4: COMMUNICATION**

(a)(5) A lawyer shall consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

## **RULE 1.16: DECLINING OR TERMINATING REPRESENTATION**

(a)(1) [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law;

(b) [A] lawyer may withdraw from representing a client if:

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

## **COMMENT: Mandatory Withdrawal**

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

### **COMMENT: Optional Withdrawal**

[7] A lawyer may withdraw from representation in some circumstances. ... Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

### **RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS**

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

### **COMMENT: Misrepresentation**

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

### **COMMENT: Statements of Fact**

[3] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

### **COMMENT: Crime or Fraud by Client**

[4] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and

to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so unless the disclosure is prohibited by Rule 1.6.

#### **RULE 8.4(d): MISCONDUCT**

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

# IS REAL ESTATE WHOLESALING ILLEGAL IN SOUTH CAROLINA?

## 1. Introduction.

In May 2024 Governor Henry McMaster signed into law the revised *Real Estate Practice Act* SC Code §40-57-5 et seq. The statute contains several references to the practice known as “**wholesaling**”. Since the passage of the statute multiple questions concerning the application of the new law as it pertains to wholesaling have arisen. The issues at hand include:

- a. Does the SC Real Estate Commission have jurisdiction over the practice of wholesaling?
- b. Does the statute prohibit a real estate licensee from participating in or assisting in the practice of wholesaling?
- c. Is there a distinction between wholesaling and assigning a contract?
- d. Does the statute prohibit an unlicensed person from participating in the practice of wholesaling?
- e. What are the limitations of marketing a contract under the statute?

## 2. Investor Platforms Prior to May 2024

- a. Subject To
- b. Close, Fix and Flip
- c. Novations
- d. Installment Contracts
- e. Wholesaling
- f. Which platformed survived SC Code §40-57-10 rewrite

## 3. Status of Wholesaling in SC Prior to May 2024

- a. Real Estate Commission (REC) Case No. 2020-444
  - i. “The Commission acknowledges that wholesaling is a serious, ongoing concern in the state that is occurring with greater frequency to the detriment of the public, especially in the context of unlicensed individuals engaging in wholesaling.”
- b. REC Cease and Desist Orders. Too numerous to list!
- c. “In June of 2022, Respondent marketed and listed for sale a home in downtown Spartanburg, South Carolina. Respondent was not then and is not now licensed as a real estate broker or salesperson in South Carolina.

Respondent did not have legal title to the property advertised for sale, and had at most an assignable contractual interest.”

- d. Fall of 2023 request to SC Real Estate Commission for Rewrite of §40-57-10.

**4. Revised SC Code §40-57-30 (44)**

- a. Defined: "Wholesaling" means having a contractual interest in purchasing residential real estate from a property owner, then marketing the property for sale to a different buyer prior to taking legal ownership of the property. Advertising or marketing real estate owned by another individual or entity with the expectation of compensation **falls under the definition of "broker" and requires licensure.**
- b. "Wholesaling" does not refer to the assigning or offering to assign a contractual right to purchase residential real estate.
  - i. Example: Spouse to Spouse
  - ii. Individual to legal entity
- c. The elements of Wholesaling are thus as follows
  - i. Contractual interest to purchase residential real estate from property owner
  - ii. Marketing or advertising the property for sale prior to taking ownership
  - iii. Expectation of compensation in the transaction typically an assignment or secondary contract.
  - iv. An instrument transferring the interest a third party for the compensation.
- d. Wholesaler argument pertaining to §40-57-30 assignment language and why it fails.
- e. Thus, the statute effectively prohibits Real Estate Licensees from being a wholesaler, representing a wholesaler or assisting a wholesaler in any fashion.

**5. What is the distinction between wholesaling and assigning a contract?**

- a. S.C. Code Ann. § 40-57-30(44). The sentence 'Wholesaling' does not refer to the assigning or offering to assign a contractual right to purchase residential real estate" cannot be read as a stand-alone provision but must be read as part of the overall definition.
- b. Assignments are not wholesaling but rather one element of wholesale.
- c. Wholesaling cannot happen without an assignment of the contract interest or similar instrument.
- d. Conversely all assignments are not wholesaling. Assignments are but one element. For example, if one spouse assigns the contract to the other spouse or a person assigns the contract to their company or corporate entity this is not wholesaling. However, if one enters into a contract to purchase property and then markets and advertises that property to another and then assigns the

contract to a third party that is most definitely wholesaling and involves an assignment.

- e. Therefore, the sentence cannot be read as saying that all assignments are wholesaling or that no assignments are wholesaling. In order to be wholesaling all of the elements of wholesaling must be met.

#### **6. Revised SC Code §40-57-350**

- 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. Pursuant to the aforementioned duties owed to a client, a real estate brokerage firm and its subagents are **prohibited** from engaging in, representing others in, or assisting others in the practice of wholesaling.
- b. Effectively prohibits Real Estate Licenses from being a wholesaler, representing a wholesaler or assisting a wholesaler in any fashion.
- c. An unlicensed individual cannot market or advertise property they do not own without a license and secondly cannot attempt to assign the contract for compensation without a license.
- d. Being that the elements of wholesale include the marketing and advertising of property you do not own and doing so with the expectation of compensation. Thus, wholesaling as defined herein requires a licensee. So any unlicensed person who wholesales is in violation of the real estate practice act.

#### **7. Jurisdictional Issue revisited**

- a. §40-57-10 governs the practice of real estate by real estate licensee
- b. How the 2024 statute created jurisdiction
- c. REC jurisdiction over wholesaling as well as ability to sanction

#### **8. SC Code §40-57-135 (E)**

- a. (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. . .
- b. E (1) Continued. The advertising and marketing of real property is to be distinguished from the advertising and marketing of a contractual position in a sales agreement to purchase real estate. An advertisement that markets a contractual position to acquire real property from a person with either equitable or legal title and *does not* imply, suggest, or purport to sell, advertise, or market the underlying real property is permissible under this section.

- c. The statute allows one to advertise or market a contractual position to acquire real property from a person with equitable or legal title.
- d. However, the entire provision must be read as one complete sentence. The conjunction used is “and” meaning both sections of the sentence must be complied with. The second part of the provision says the person may not imply, suggest, or purport to sell, advertise, or market the underlying real property.
- e. “Practically this is an impossibility. Consumers do not purchase contracts without knowing what the underlying item being sold is. It unlikely that one can advertise a contract that someone would purchase without it being implied or known to the buyer that the contract is for real estate. In short there is no market to purchase random contracts for unknown items”.
- f. The SC REC held on multiple occasions held that marketing and advertising not only includes the MLS, but also social media, print, Facebook groups, private email groups, verbal etc.
- g. Therefore, if the unlicensed person includes the following in marketing or advertising this would violate the provision of implying, suggesting or purporting to sell advertise or market the underlying property.
  - i. A picture of the property
  - ii. A plat or survey
  - iii. A description of the property including the number of rooms/bedrooms/bathrooms
  - iv. The condition of the property
  - v. The address of the property
  - vi. Rental income history
  - vii. The neighborhood or subdivision
  - viii. Any details that relates to the real property
  - ix. This is not an exhaustive list but rather an illustration.
- h. Marketing and advertising would be widely construed to be any effort to make the offering of the property known to others.
- i. SC REC has stated that compliance with this statute is very limited. For example, one may comply with this statute if the person is approached about contracts it may hold on properties in a particular area. That person has made no effort to market or advertise the property for sale.
- j. “If one could simply state through disclaimer or header that they are only selling a contract and not real property then there would have been no need to define wholesaling because nothing would be wholesaling.”

## 9. Wholesalers Claims

- a. We sell contracts, not property. SEMANTICS addressed in statute.
- b. Don’t care what SC REC says

- c. Ignoring the duty of the lawyer not to turn a “blind eye.”
- d. Examples of what Wholesalers are doing now.
- e. What the REC say about wholesaling in past gives us indication where it goes now.
- f. Most lawyers are not doing wholesaling anymore.

#### **10. Type of Closings at Risk**

- a. Wholesale vs. assignments
- b. Novations
- c. Back-to-back closings (buy then sell)
- d. THE WHOLE ISSUE IS MARKETING THE PROPERTY!!!!



South Carolina  
Department of Labor, Licensing and Regulation



Real Estate Commission

110 Centerview Drive  
Post Office Box 11847  
Columbia, SC 29211-1847  
Phone: (803) 896-4400  
FAX: (803) 896-4427

Henry D. McMaster  
Governor

Emily H. Farr  
Director

November 14, 2024

## Advisory Opinion on Exceptions to Wholesaling Under Real Estate Practice Act SC Code §40-57-10 et seq.

In May 2024 Governor Henry McMaster signed into law the revised *Real Estate Practice Act, SC Code § 40-57-5 et seq.* which includes a prohibition on the practice known as “wholesaling.” Since the statute’s passage, the Real Estate Commission (REC) has received numerous inquiries regarding possible statutory exceptions to this law. This advisory opinion aims to provide guidance about those exceptions, focusing on the following issues:

1. Distinction between Wholesaling and Assigning a Contractual Interest.
2. Limitations on “Marketing a Contract” under the statute.

### **Is there a distinction between wholesaling and assigning a contract?**

To address this question, we must first examine how the statute defines wholesaling. According to *South Carolina Code Ann. § 40-57-30(44)* wholesaling is defined as:

“Having a contractual interest in purchasing residential real estate from a property owner, then marketing the property for sale to a different buyer prior to taking legal ownership of the property. Advertising or marketing real estate owned by another individual or entity with the expectation of compensation falls under the definition of “broker” and requires licensure. ‘Wholesaling’ does not refer to the assigning or offering to assign a contractual right to purchase residential real estate.”

Thus, the elements of wholesaling are:

1. **Contractual interest.** Having a contractual interest in purchasing residential real estate from a property owner.
2. **Marketing or Advertising:** Marketing or advertising the property for sale prior to taking ownership.
3. **Compensation.** Expecting compensation in the transaction.
4. **Legal Instrument.** Using a legal instrument, such as an assignment, to transfer the interest to a third party for the compensation.

The REC emphasizes that the entirety of the definition of wholesaling is controlling. The provision concerning assigning or offering to assign a contractual interest cannot be read in isolation but must be considered as part of the overall definition. The REC thus holds that assigning a contractual interest is not

automatically considered wholesaling. Instead, it is one element in the definition of wholesaling. Conversely, wholesaling inherently involves an assignment of a contractual interest. Thus, a transaction involving the assignment of a contractual right can still be considered wholesaling if other elements are present.

### **Clarification Through Examples:**

#### **1. Non-Wholesaling Assignments:**

- If a spouse assigns their contractual interest to their spouse, or if a person assigns their contractual interest to their corporate entity, or another person. This is not considered wholesaling under the statute. *There is no marketing, advertising, or expectation of compensation in such transactions.*

#### **2. Wholesaling Assignments:**

- If an individual contracts to purchase a property, markets and advertises that property, or uses the facts of the property (example: the property address) and assigns the contract to a third party with the expectation of compensation, this is considered wholesaling. The involvement of an assignment does not exempt the transaction from being classified as wholesaling.

### **Conclusion**

The statute cannot be interpreted to mean that all assignments of contractual interests are deemed wholesaling, nor can it be read to exclude all transactions involving assignments from the definition of wholesaling. If the assignment involves marketing and advertising the property for sale before taking ownership with the expectation of compensation, it qualifies as wholesaling and is prohibited by the statute.

### **What are the limitations of “marketing a contract” under the statute?**

*South Carolina Code §40-57-135 states: “An advertisement that markets a contractual position to acquire real property from a person with either equitable or legal title **and** does not imply, suggest, or purport to sell, advertise, or market the underlying real property is permissible under this section.”*

Simply put, you may market a contractual position as long as you do not imply, suggest, or purport to sell, advertise, or market the underlying real property.

The conjunction "and" indicates that compliance with both parts of the provision is required. The REC notes that advertising or marketing a contractual position without implying, suggesting, or purporting to sell, advertise, or market the underlying real property is practically impossible. Consumers typically do not purchase contracts without knowing the nature of the underlying property. The REC finds it unlikely that someone would buy a contract without knowing its contents. In short, there is no market for purchasing random contracts for unknown items.

The REC has repeatedly held that marketing and advertising include MLS, social media, print media, Facebook groups, private email groups, verbal communication, etc.

Therefore, if an unlicensed person includes any of the following items in marketing or advertising a "contractual position" for sale, it would likely violate the provision of implying, suggesting, or purporting to sell, advertise, or market the underlying real property. These items include, but are not limited to:

1. A picture of the real property, land, or house
2. A plat or survey of the property
3. Any description of the property, including the number of rooms/bedrooms/bathrooms or square footage of the house
4. The year the house was built or rehabilitated
5. The condition of the property and its improvements
6. The address, tax map number, or whole or partial legal description of the property
7. Rental income history
8. The neighborhood or subdivision where the property is located
9. Any details related to the real property or its improvements

This list is not exhaustive but serves as an illustration.

Marketing and advertising are broadly construed to include any effort to make the offering of the property known to others. The REC believes that compliance with this statute is very limited. For example, one may comply with this statute if the person holding the contractual position is approached about contracts they hold on properties in a particular area, without making any effort to market or advertise the property for sale.

However, if someone could simply state through a disclaimer or header that they are only selling a contract and not real property, then there would have been no need to define wholesaling because nothing would be considered wholesaling.

### **Final Thoughts**

The revised Real Estate Practice Act SC Code §40-57-5 et seq. seeks to regulate the practice of wholesaling by distinguishing it from legitimate assignments of contractual interests and by setting clear limitations on the marketing of contracts. Real estate professionals and unlicensed individuals must ensure compliance with these provisions to avoid legal repercussions and maintain the integrity of real estate transactions within South Carolina. For specific situations and further guidance, individuals are encouraged to consult legal professionals or reach out directly to the Real Estate Commission.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**DARRON DELTON WOODS,  
License No. REL.87501**

**Case No.: 2020-444**

**Respondent**

**FINAL ORDER**

This matter came before the South Carolina Real Estate Commission (“Commission”) on November 17, 2021, for a Final Order hearing to consider the Memorandum of Agreement and Stipulations of Fact (“MOA”) signed by Respondent on October 19, 2021. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. Commissioner John D. Rinehart was recused. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended), to determine whether sanctions should be imposed upon Respondent. Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by J.D. Rinehart, Jr., Esquire.

In the MOA, Respondent admitted to the facts presented in the MOA but did not admit that the facts constituted misconduct. At the hearing, Respondent testified on his own behalf, and, through counsel, presented argument regarding the alleged violations. No witnesses testified on behalf of the State.

After consideration, the Commission voted to accept the MOA, found that Respondent had violated the aforementioned statutory provisions, and imposed the sanction as specified in this Final Order.

**EXHIBITS<sup>1</sup>**

State's Exhibit 1	Notice of Hearing and Certificate of Service dated October 20, 2021
State's Exhibit 2	MOA with the following attached exhibits: Exhibit 1: Offer to Purchase or Wholesale Agreement between Owner Wife and Guaranteed Homes LLC dated September 16, 2019 Exhibit 2: Listing agreement between Guaranteed Homes LLC and Rinehart Realty Corp.

<sup>1</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the Final Order hearing, but are not attached hereto.

	<p>Exhibit 3: Contract to Buy and Sell Real Estate between SFR3 LLC as Buyer and Guaranteed Homes LLC as Seller signed by Respondent as “Seller Agent” dated October 4, 2019 (“Contract #1”)</p> <p>Exhibit 4: Contract to Buy and Sell Real Estate between SFR3 LLC as Buyer and Owners as Sellers signed by Respondent as “Seller Agent” dated October 4, 2019 (“Contract #2”)</p> <p>Exhibit 5: Affidavit of Owner Wife dated August 28, 2020</p> <p>Exhibit 6: Acknowledgement of Request for Mail-Away Closing and Telephone Consultation signed by Owner Husband dated November 5, 2019</p> <p>Exhibit 7: Addendum to Contract #1 dated October 16, 2019</p> <p>Exhibit 8: Addendum to Contract #2 dated October 17, 2019</p> <p>Exhibit 9: Limited Power of Attorney dated October 29, 2019</p> <p>Exhibit 10: Settlement Statement dated November 4, 2019</p> <p>Exhibit 11: Respondent’s statement to the Commission dated November 12, 2020</p> <p>Exhibit 12: Four letters in support of Respondent’s professionalism</p>
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## **FINDINGS OF FACT**

Based upon the preponderance of the evidence in the record before the Commission, including Respondent’s admissions in the MOA, the above-referenced exhibits, and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is duly licensed by the Commission as a real estate salesperson in South Carolina and was so licensed at all times relevant to this matter. Respondent was first licensed on February 4, 2014. Respondent is a salesperson with Rinehart Realty Corp. (REO.3825 OFC) in Rock Hill, South Carolina. Respondent has no prior discipline with the Commission. The Commission has jurisdiction over Respondent and the subject matter of this action.
2. Owner Wife, along with Owner Husband (collectively “Owners”), were the legal title holders of the residence at 249 Berry Street, Rock Hill, South Carolina (“Subject Property”). Owners were interested in selling the Subject Property. Owners then entered into discussions with representatives of Guaranteed Homes LLC (“Guaranteed Homes”) to that end.
3. On September 16, 2019, Owner Wife signed an “Offer to Purchase or Wholesale” agreement with Guaranteed Homes. Under the agreement, Guaranteed Homes was the “Buyer,” and Owner Wife agreed that Guaranteed Homes would market, wholesale, buy, or assign the Subject Property for a contract price of \$43,000.00. The agreement also provides that Guaranteed Homes could market the Subject Property on the internet and MLS. The State contends that the agreement itself did not transfer or assign any ownership interest of the Subject Property from Owners to Guaranteed Homes. Respondent contends that the agreement granted or transferred equitable title to Guaranteed Homes.
4. Guaranteed Homes retained Respondent to list and market the Subject Property. Owners did not sign any agency agreement, brokerage disclosure form, or any listing agreement.

Respondent had Guaranteed Homes sign those documents based on its “Offer to Purchase or Wholesale” agreement.

5. On September 20, 2019, Respondent and Guaranteed Homes signed a listing agreement for the Subject Property.

6. On October 4, 2019, a contract of sale (“Contract #1”) was entered whereby Guaranteed Homes was the seller and “SFR3 LLC” was the buyer of Subject Property, with a purchase price of \$63,000.00. Respondent is designated in Contract #1 as Guaranteed Home’s agent.

7. On October 4, 2019, another contract of sale (“Contract #2”) was entered whereby Owners were the seller and “SFR3 LLC” was the buyer of Subject Property, with a purchase price of \$63,000.00. Respondent is designated in Contract #2 as Owners’ agent. The contract also bears the purported signature of Owners. However, Owner Wife disputes ever signing the contract.

8. Respondent avers that he was not a witness to the signing of Contract #2 by Buyer or Owners. Respondent avers that Contract #2 was intended to replace Contract #1 and was executed at the request of Buyer’s attorney. Except for the sellers, the contracts are the same.

9. On October 17, 2019, an addendum to Contract #1 was entered, whereby the sales price was reduced to \$58,000.00. Guaranteed Homes signed the addendum as seller.

10. On October 17, 2019, an addendum to Contract #2 was entered, whereby the sales price was reduced to \$58,000.00. Signatures purported to be those of Owners appear on the addendum.

11. Respondent avers that Respondent was not a witness to Buyer or Seller signing Contract #2’s addendum. Respondent further avers that, except for the sellers, the two contract addendums are the same.

12. On October 29, 2019, a Limited Power of Attorney (“POA”) was executed, granting one Dawan Feely the power to sign all closing documents on behalf of Owners. Dawan Feely was a representative of Guaranteed Homes.

13. The State avers that this POA did not grant authority to sign sales contracts for Owners. State further avers that Owner Wife disputes that the POA was properly executed. Respondent avers he was not involved in the negotiation, discussion, or execution of the POA.

14. On November 4, 2019, the transaction closed. According to the Settlement Statement, Owner Wife received \$30,921.06 and Owner Husband received \$10,000.00. Guaranteed Homes received \$10,500.00 as a “consulting fee.” Respondent’s brokerage received a commission of \$1,000.00.

15. Respondent listed the Subject Property for sale with a listing agreement signed by Guaranteed Homes, but not by Owners.

16. Respondent avers that the second contract was to be novation of the first and was required by the closing attorney.

17. The State avers that Respondent was representing two sellers in two different contracts for the same property, and that there is no document disclosing the full written knowledge or consent of all parties to this dual representation. Respondent avers there were not two contracts for the same property, that there was no dual representation, and that Owners were never represented in any transaction by Respondent. The Commission finds that Respondent did identify himself as the seller agent on two different contracts of sale for the same Subject Property despite only having a signed agreement with Guaranteed Homes.

18. Respondent submitted a statement to the Commission in response to the Notice of Complaint by Commission Investigator and also submitted letters in support of his professionalism for the Commission's review. In his response, Respondent provided that he "was the listing agent for the wholesaler," that the assignment contract included a clause giving Guaranteed Homes the right to list the property on the multiple listing service and on other internet sites, and that Guaranteed Homes hired him to list the Subject Property on the MLS since they are not licensed in South Carolina. Respondent further provided that "the assignment contract that was signed by [Owner Wife] gave Guaranteed Homes, LLC the right to hire me to sell the property."

19. At the hearing, Respondent testified that he offered to represent Owners in the transaction, but Owner Wife<sup>2</sup> refused his representation and provided that everything needed to go through Guaranteed Homes. When asked why he felt it was necessary to obtain a listing agreement with Owners if he believed that listing an equitable interest pursuant to the Offer to Purchase or Wholesale Agreement was proper, Respondent provided that having a listing agreement with Owners would help make communications regarding the transaction more seamless. When asked how he could enter into a listing agreement with Owners while a listing agreement was already in place between Respondent and Guaranteed Homes, Respondent provided that Guaranteed Homes would terminate its listing agreement.

## **CONCLUSIONS OF LAW**

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter under S.C. Code §§ 40-1-115 and 40-57-60(2), and, upon finding that a Respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or probation of a license to practice and prescribe conditions to be met during probation, restriction or suspension, including but not limited to the satisfactory completion of additional education,

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<sup>2</sup> Respondent testified that he never spoke to Owner Husband at all during the transaction, and only heard from Owner Husband when he called to thank Respondent after the closing occurred.

continuing education programs or a supervisory period. Additionally, the Commission may assess a fine and impose a public reprimand. Upon a determination by the Commission that discipline is not appropriate, the Commission may issue a non-disciplinary letter of caution. S.C. Code Ann. §§ 40-57-150 and 40-1-120.

2. The State met its burden of proving Respondent violated the following:
  - a. S.C. Code Ann. § 40-57-710(A)(16) (Supp. 2017) in that Respondent represented more than one party in a real estate transaction without the full written knowledge and consent of all parties. Specifically, Respondent identified himself on two different contracts of sale as the seller's agent for the same Subject Property.
  - b. S.C. Code Ann. § 40-57-710(A)(21) (Supp. 2017) in that Respondent violated a provision of this chapter or a regulation promulgated under this chapter, specifically:
    - i. S.C. Code Ann. § 40-57-135(E)(1) (Supp. 2017) in that Respondent advertised, marketed, or offered 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 which the licensee is associated. Here, Respondent marketed Owners' Subject Property despite never entering into a listing agreement with them. Respondent's sole listing agreement in the entire transaction was with Guaranteed Homes, who did not own the Subject Property.
    - ii. S.C. Code Ann. § 40-57-135(I)(1) (Supp. 2017) in that Respondent did not properly complete an agency agreement. Respondent identified himself as Owners' selling agent for the Subject Property on Contract #2 despite never having an agency agreement signed between himself and Owners.
    - iii. S.C. Code Ann. § 40-57-350(C)(1)(c) (Supp. 2017) in that Respondent did not exercise reasonable skill or care in discharging the licensee's agency duties.

3. This matter directly involves the issue of "wholesaling" residential real estate. Wholesaling in this context refers to the practice of individuals or companies ("wholesalers") first entering into assignable contracts to purchase homes from their legal owners. Then, the wholesalers market the contracts to the public for the purchase of the homes. This marketing of the contracts is either done through a licensee of the Commission or wholly done without any licensee involvement.<sup>3</sup> In this matter, Respondent marketed the property on behalf of the

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<sup>3</sup> The Commission would be remiss to fail to address wholesaling by unlicensed individuals. This often involves the equitable title argument made by Respondent, through counsel, at the hearing. The advertising of real property owned by another with the expectation of compensation falls under the statutory definition of "broker" in S.C. Code Ann. § 40-57-30(3) and requires licensure. Pursuant to S.C. Code Ann. § 40-57-240(1), the licensing requirements of the Commission do not apply to the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the

wholesaler, here Guaranteed Homes, as provided for in the listing agreement entered into between Respondent and Guaranteed Homes. Guaranteed Homes was not the legal owner of the Subject Property. Pursuant to S.C. Code Ann. § 40-57-135(E)(1), Respondent must have a listing agreement with the legal owner of the property before marketing the property.

4. The Commission acknowledges that wholesaling is a serious, ongoing concern in the state that is occurring with greater frequency to the detriment of the public, especially in the context of unlicensed individuals engaging in wholesaling.

5. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

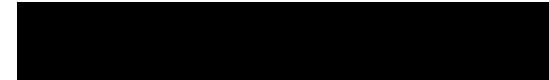
6. The action by the Commission is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.
2. Respondent is hereby issued a public reprimand.
3. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**



**William Anderson “Andy” Lee  
Chair**

July 22, 2022

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real estate if the interest being sold, leased, or rented is identical to the owner's *legal* interest. Importantly, an individual having an equitable interest is not the equivalent to an owner's legal interest and does not place that individual in the same position as the owner. A wholesaler that only has an equitable interest via agreement in the property is not the property's legal owner for the purpose of qualifying for the aforementioned exemption.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**Mariana Mesa,  
f/k/a Mariana Mesa Rodon**  
500 E North Street Suite E  
Greenville, SC 29601

Case Nos.: 2022-350, 2022-709

**ORDER TO CEASE AND DESIST**

**Respondent.**

**TO: Mariana Mesa Rodon**

Pursuant to S.C. Code Ann. § 40-1-100(A) (2011, as amended), when the South Carolina Real Estate Commission (the "Commission") has reason to believe that a person is violating or intends to violate a provision of the practice act administered by the Commission or a regulation promulgated by the Commission, the Commission may order the person to cease and desist from engaging in that conduct. The Commission has received and investigated evidence supporting a finding that the above-named Respondent has violated or intends to violate laws or regulations with respect to the practice of a profession or occupation regulated by the Commission, as described below:

1. Applicable regulated profession or occupation: **Real Estate Broker, Salesperson**
2. Respondent has engaged in the following specific prohibited practices, activities, or conduct ("Prohibited Conduct"). In July of 2021 and thereafter, **Respondent marketed and listed for sale real estate in Greenville, Pickens, Anderson, Spartanburg and Laurens counties to which neither Respondent nor the entities with which Respondent is affiliated (REI Junkies, LLC and The Creative Property People) had legal title. Respondent's ownership interest in the property marketed for sale, if any, was not identical to the legal interest being sold for purposes of qualifying for an exemption from licensure under S.C. Code Section 40-57-240(1). Respondent was not then, and is not now, licensed by the Commission.**
3. The Prohibited Conduct constitutes a violation pursuant to the following statute(s) and/or regulation(s): S. C. Code §§ 40-57-20, 40-57-30(3) and (26), and 40-57-240(1).

**THEREFORE, YOU (THE RESPONDENT) ARE HEREBY NOTIFIED AND EXPRESSLY ORDERED** to immediately cease and desist from the Prohibited Conduct until such time, if ever, as you may be properly authorized by the Commission in accordance with the law.

**VIOLATIONS MAY BE PUNISHED BY THE IMPOSITION OF CIVIL PENALTIES IN AMOUNTS UP TO \$10,000.00 FOR EACH VIOLATION AND CRIMINAL PENALTIES WHICH MAY INCLUDE FINES OR IMPRISONMENT, AS PROVIDED BY LAW.**

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA REAL ESTATE COMMISSION**

May 22, 2023

William Anderson "Andy" Lee  
Chairman

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**Will Boyle d/b/a New South Home Buyers**  
[REDACTED]

Case No: 2022-393

Respondent.

**ORDER TO CEASE AND DESIST**

**TO: Will Boyle d/b/a New South Home Buyers**

Pursuant to S.C. Code Ann. § 40-1-100(A) (2011, as amended), when the South Carolina Real Estate Commission (the "Commission") has reason to believe that a person is violating or intends to violate a provision of the practice act administered by the Commission or a regulation promulgated by the Commission, the Commission may order the person to cease and desist from engaging in that conduct. The Commission has received and investigated evidence supporting a finding that the above-named Respondent has violated or intends to violate laws or regulations with respect to the practice of a profession or occupation regulated by the Commission, as described below:

1. Applicable regulated profession or occupation: **Real Estate Broker, Salesperson**
2. Respondent has engaged in the following specific prohibited practices, activities, or conduct ("Prohibited Conduct"). **In June of 2022, Respondent marketed and listed for sale a home in downtown Spartanburg, South Carolina. Respondent was not then and is not now licensed as a real estate broker or salesperson in South Carolina. Respondent did not have legal title to the property advertised for sale, and had at most an assignable contractual interest. Respondent's ownership interest in the property marketed for sale, if any, was not identical to the legal interest being sold for purposes of qualifying for an exemption from licensure under S.C. Code Ann. § 40-57-240(1). The Commission has interpreted that exception as not applicable when a person is marketing for sale only that person's equitable interest in real property, such as an interest obtained under an assignable contractual right to purchase the property from the legal owner with a right to market.**
3. The Prohibited Conduct constitutes a violation pursuant to the following statute(s) and/or regulation(s): S. C. Code Ann. §§ 40-57-20, 40-57-30(3) and (26), and 40-57-240(1).

**THEREFORE, YOU (THE RESPONDENT) ARE HEREBY NOTIFIED AND EXPRESSLY ORDERED** to immediately cease and desist from the Prohibited Conduct until such time, if ever, as you may be properly authorized by the Commission in accordance with the law.

**VIOLATIONS MAY BE PUNISHED BY THE IMPOSITION OF CIVIL PENALTIES IN AMOUNTS UP TO \$10,000.00 FOR EACH VIOLATION AND CRIMINAL PENALTIES WHICH MAY INCLUDE FINES OR IMPRISONMENT, AS PROVIDED BY LAW.**

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA REAL ESTATE COMMISSION**

By: [REDACTED]

January 31, 2023

**Chairman**