

1978 WL 35279 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1978

*1 The Honorable Ryan Johnson,
Deputy Commissioner
S. C. Real Estate Commission
2221 Devine Street
Suite 530
Columbia, SC 29205

Dear Ryan:

Recently you have requested an Opinion from this Office concerning whether or not a particular individual could perform certain activities without complying with South Carolina's Real Estate Licensing Law, [Code of Laws of South Carolina, 1976, § 40-57-10](#), et seq.

The particular individual wishes to perform services for a flat fee payable in advance. In exchange for this fee the agency would make several photographs of the real property for sale, as well as a floor plan of any structures thereon. Copies of the photographs and plans will be given to the owner for his own use and the photographs and plans will be exhibited at a central office with pertinent information about the premises as well as the name and phone number of the owner.

The agency in question would advertise property for sale in the classified section of the newspaper and the advertisements would include a photograph and description of the property. Anyone interested in the property would contract the agency to obtain the name and address and phone number of the owner. The agency will take no further action thereafter to consummate the sale.

Under the literal language of [Code Section 40-57-10\(1\)](#), the above procedure would be subject to regulation by the South Carolina Real Estate Commission. Your attention is referred to the following language from Paragraph (1).

The term 'broker' shall mean . . . [and] it also includes any person who engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose, or for referral or information concerning such real estate to brokers.

It is the Opinion of this Office that a person engaging in the conduct described above would come within the definition quoted above, and therefore such person would be subject to regulation by the South Carolina Real Estate Commission. The reason for this is that the individual described above is charging a fee for promoting the sale of real estate by listing the real estate in a publication (real estate classified ads) issued primarily for the purpose of selling real estate, and the person is also referring information concerning real estate sales to real estate brokers.

I hope this information will be helpful to you. Should you require any additional information on this question, please let me know.

Sincerely,

George C. Beighley
Assistant Attorney General

13-5 Definitions.

As used in R13-6 through R13-13 of this Chapter:

A. 'Accommodations' means any hotel or motel room, condominium unit, cabin, lodge, apartment, or any other private or commercial structure designed for occupancy by one or more individuals, without regard to whether such structure is attached to real estate.

*2 B. 'Business Entity' means individuals, corporations, firms, associations, joint adventurers, partnerships, trusts, estates, business trusts, syndicates, fiduciaries, and all other groups or combinations which engage in acts or practices in any trade or commerce.

C. 'Contract' means any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security, or other muniment conferring on the purchaser the rights, benefits, and obligations of the vacation time sharing plan.

D. 'Facilities' means any structure, service, or property whether improved or unimproved made available to the purchaser for recreational, social, family, or personal use.

E. 'Seller' means any business entity, including but not limited to agents, dealers, distributors, franchisees, subsidiaries, assignees, resellers, broker, or any other representatives thereof operating, managing, promoting, advertising, listing, or otherwise offering for sale or selling the vacation time sharing plan, and shall include but not be limited to the person or business entity providing the accommodations or facilities, or both.

F. 'Unfair or Deceptive Act or Practice' means any unfair or deceptive act or practice within the meaning of [§ 39-5-20 Code of Laws of South Carolina \(1976\)](#).

G. 'Vacation Time Sharing Plan' means any arrangement, plan, scheme, or similar device, whether by membership agreement, tenancy in common, sale, lease, deed, rental agreement, license, use agreement, security, or by any other means, whereby a purchaser receives a right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

13-6. Disclosure.

It shall be an unfair or deceptive act or practice for the seller of a vacation time sharing plan to fail to furnish the buyer with a fully completed copy of any contract pertaining to such sale at the time of its execution which contract shall disclose:

A. The actual date the contract is executed by all parties;

B. The name and address of the seller;

C. In immediate proximity to the space reserved in the contract for the signature of the buyer and in bold-face type of a size of 10 points the following statement:

'YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN FIFTEEN (15) DAYS FROM THE DATE OF EXECUTION HEREOF.'

'YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS AND FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THE CONTRACT.'

‘YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL BY SENDING NOTICE TO (NAME OF SELLER) AT (SELLER’S ADDRESS);’

D. The following warning to potential assignees in 10 point bold-face type:

‘THIS CONTRACT OR DOCUMENT IS FOR A VACATION TIME SHARING PLAN AND PUTS ALL ASSIGNEES ON NOTICE OF THE CONSUMER’S RIGHT TO CANCEL UNDER SOUTH CAROLINA’S FAIR TRADE PRACTICES RULE;’

*3 E. The existence of any lien on the accommodation or facility which could affect the rights of the purchaser or his assignee.

F. The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject, including but not limited to per diem, season, reservation, maintenance, management, recreation or utility charges.

G. Any individual or business entity which has or may have the right to alter, amend, or add to charges to which the purchaser may be subject, the terms and conditions under which such charges may be imposed, and the maximum to which those charges may be raised.

H. The nature and duration of each agreement between the business offering the vacation time sharing plans for sale and the individual or business entity providing the accommodations and other facilities.

I. In immediate proximity to the space reserved in the contract for the signature of the buyer, and in bold-face type of a size of 10 points a statement as follows:

‘NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THE CONTRACT.’

However, inclusion of this statement shall not impair the buyer's right to bring any legal action based upon any cause of action arising from written or oral statements.

J. The date of availability of each component of the offered accommodations and facilities.

K. The specific number of years that constitutes the term of the contract.

L. The specific unit week(s) assigned to the purchaser under the terms of the contract.

18-8. Misrepresentation of Right of Cancellation.

It shall be an unfair or deceptive act or practice for any seller of vacation time sharing plans, or his assignees to misrepresent in any manner the buyer's right to cancel provided by these rules.

13-9. Refund After Cancellation.

It shall be an unfair or deceptive act or practice for a seller of vacation time sharing plans to:

A. Fail to refund any and all payments made by the buyer under the contract and return any negotiable instrument executed by the buyer in connection with the contract within ten (10) days after receipt of notice of cancellation during the fifteen (15) day period of cancellation as provided in Rules 13-6 and 13-7.

B. If the buyer has received any benefits pursuant to the contract, fail to refund within thirty (30) days after receipt of notification of cancellation made pursuant to Rules 13-6 and 13-7 any and all payments made by the buyer to the seller which exceed a pro rata portion of the total price, representing the proportion of any contract benefits actually received by the buyer during the time preceding cancellation.

13.10. Establishment of an Escrow Account

It shall be an unfair or deceptive act or practice for a seller of a vacation time sharing plan to fail to protect the buyer's right to refund after cancellation by establishing an escrow account in a bank doing business in South Carolina and depositing therein one hundred percent of all monies received from a purchaser of a vacation time sharing plan on the date of execution of the contract and during the fifteen day period of cancellation. The terms of said escrow account shall provide:

*4 A. Its purpose is to protect the buyer's right to refund after cancellation during the fifteen day cancellation period as provided in Rule 13-9;

B. The buyer shall be entitled to a full refund of all monies transferred to the seller on the date of execution and during the fifteen day cancellation period;

C. After expiration of the fifteen day cancellation period, the seller may withdraw from said escrow account all monies received from the purchaser which have been deposited therein.

13-11. Provision of Non-disturbance Release

It shall be an unfair or deceptive act or practice for any seller of vacation time sharing plans to fail to provide the purchaser with:

A. A non-disturbance release or consent from every lienholder who has a recorded lien against the property upon which the accommodations to be used by the purchaser are situated. The non-disturbance instrument shall provide that in the event of foreclosure of such lien, the succeeding owner shall take title to the property subject to the contract for possessory rights of the purchaser; and

B. An instrument, in recordable form, providing notice to all subsequent creditors of the seller of the existence of the vacation time sharing plan rights of the purchaser. Such instrument shall be provided to the purchaser by the seller at the time of the signing of the contract. When recorded, such instrument shall serve to protect the purchaser's interest in the seller's accommodations from any claims by subsequent creditors of the seller.

13-12. Insurance.

It shall be an unfair or deceptive act or practice for any seller of vacation time sharing plans to fail to maintain fire, windstorm, casualty and liability insurance on the accommodations and facilities in an amount at least equal to the replacement value of such accommodations and facilities. Any damage to the accommodations or facilities shall be repaired with proceeds from such insurance. Should the seller decide not to repair substantial damage to the accommodations and facilities, proceeds from insurance may be applied toward outstanding indebtedness on the accommodations and facilities, and any excess shall be distributed pro-rata among purchasers of time sharing interests

in the accommodations or facilities. However, distribution of excess insurance proceeds to purchasers shall not in and of itself be deemed full satisfaction of seller's obligation to provide pro-rata refunds to purchasers after cancellation as provided in Rule 13-9B.

13-13. Prohibited Practices.

It shall be an unfair or deceptive act or practice for any seller of vacation time sharing plans to:

A. Use any promotional device, including but not limited to sweepstakes, vacation certificates, gift awards, premiums, or discounts without fully disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time sharing plans and without fully disclosing the chances of winning any prizes, awards or other benefits offered under the promotional device;

*5 B. Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time sharing plans;

C. Fail to honor inducements, representations or promises made in advertisements or promotional devices;

D. Sell any vacation time sharing plan the duration of which exceeds the period during which the availability of the offered accommodations and facilities can be guaranteed;

E. Misrepresent the amount of time or period of time the accommodations and facilities will be available to any purchaser;

F. Misrepresent or deceptively represent the location or locations of the offered accommodations and facilities;

G. Misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations and facilities;

H. Misrepresent the nature or extent of any services incident to the accommodations and facilities;

I. Make any misleading or deceptive representations with respect to the contents of the contract, or the buyer's rights, privileges, or benefits thereunder;

J. Fail to honor and comply with all provisions of the contract with the purchaser;

K. Misrepresent the conditions under which a customer may exchange his rights to an accommodation in one location for rights to an accommodation in another location;

L. Include in any contract any provision purporting to waive any right or benefit provided for purchasers under these rules or to seek or solicit such a waiver;

M. Fail to make available sufficient accommodations or facilities to purchasers at the times purchasers are entitled thereto;

N. Do any other act which constitutes fraud, misrepresentation, or failure to make a disclosure of a material fact.

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