



SCR Standard Forms Committee
In person meeting at SCR Annual Conference
(Greenville Hyatt Regency, Gardenia Room)
August 30, 2017
10:00 a.m.

- AGENDA -

August 30, 2017

Acting Chair

Pledge, invocation, introductions

Forms committee was first committee to 100% RPAC participation (even ahead of the RPAC trustees!).

2017 License law impact on forms:

Primary impact in 2017 license law is addition of transaction brokerage (customer level service through closing).

Earnest money – contractual disbursement, Charleston BIC won his case on disbursing per the contract's financing contingency at LLR. Thereafter, a Myrtle Beach BIC was targeted by LLR for contractual disbursement of earnest money. And LLR announced they would continue targeting BIC's on contractual disbursement of earnest money despite the Charleston BIC's win on contractual disbursement of EM.

June 14, 2017 SCR Forms Committee meeting made forms recommendations.

June 15, 2017 SCR Executive Committee meeting reviewed forms recommendations and made decisions.

July Broker Bulletin was mailed to all brokers in SC with message on forms updates.

July 27, Forms Chair Liz Loadholt forms webinar broadcast (now archived at SC REALTORS® You Tube channel with over 2,000 views). Liz went over potential 2017 emergency updates for 9/1 and 2018 updates.

July/August SCR rough drafts posted to screaltors.org form member comments/feedback.

August 16, 2017, CEO Nick Kremydas email to every member has forms update message and link to drafts and requests for member feedback.

August 17, 2017 SCR Executive Committee meeting

Review of Commercial Forms update project:

Commercial forms have been updated online and zipForms. Thanks CTAR's Bob Nuttall and task force.

Licensing of Forms project:

SCR plans to license forms to member brokers who can then contract with vendors.

This SCR to Broker licensing in lieu of SCR to Vendor licensing is used because Dotloop/Zillow refused to change their licensing language that controlled information entered into SCR forms and indemnification.

SCR has a relatively new non-exclusive agreement with zipForms: Unlimited e-signatures, finger signing, vault, management system, mobile, and update to zipForms plus.

Review LLR rough draft forms project:

On August 28, 2017; SCR requested that LLR update the online trust account guide.

<http://www.llr.state.sc.us/POL/REC/RECPDF/TrustAccountBook.pdf>

SCR Executive Committee/Leadership/CEO tasking for SCR forms committee:

On June 15, the SCR Executive Committee directed for September 1: Revert forms to "old school pre 2012" earnest money language (SCR300, SCR310, SCR311). Lock down earnest money (SCR311 due diligence, financing contingency, appraisal contingency, repair procedure, CL100 repair procedure, SCR391 permit contingency and backup clause, SCR393 short sale contingency, SCR504 sale of other real estate contingency, 30 days without a written dispute, 5 years unclaimed). Require disbursement agreement signed by all the parties or a judge (SCR518 release, SCR517 disbursement agreement, mediation self settlement agreement, magistrate interpleader, other interpleader, lawsuit with disbursement order). Make the CL100 section checkbox contingent or not contingent in lieu of striking section (suggested by Adair Smith Senn and Julie Whitesell of the SCR EC)(Rod Smith warns there are two kinds of properties, those that have had termite damage and those that will have termite damage.). Add explanations to repair procedure and due diligence to cover common unprofessional behavior from lack of forms training, etc. (repair procedure has hard deadlines and only requires seller to make 9 classes of basic repairs, best practice is to notate repairs requested as one of those 9 classes of basic repairs or not one of those 9 classes of basic repairs and to include supporting documentation, parties expect that professional repair personnel will be hired, repair addendum does not change contract deadlines)(due diligence has a very hard deadline so buyer side REALTORS® should take timely steps to get inspections and leave time for sellers to get estimates and negotiate and leaving time to terminate, repair addendum does not change due diligence deadline).

Owen Tyler and David Kent (SCR EC and Leadership Team) requested SCR look at the format of repair procedure and due diligence. Differentiate due diligence so that sellers do not assume it must be repair issues due to placement in form near repair procedure...due diligence termination can be for any reason or no reason. Seller can protect themselves by limiting the time frame of due diligence and increasing the due diligence termination fee (paid only if terminate) SCR EC rejected the forms committee recommended due diligence only contract in favor of having choice (repair procedure or due diligence...since both have pro's and con's).

On August 17, the SCR Executive Committee developed an optional SCR620 earnest money disclosure form to help BIC's explain to upset buyers that the buyers agreed to a lockdown on earnest money requiring a disbursement document signed by the parties or a judge. SCR EC also developed Rod Smith's SCR610 wire fraud disclosure. SCR EC ordered removal of all contractual disbursement trigger language from (SCR 300, 310, 311, 391, 393, 504, and 525) initially left in the contract outside the updated earnest money section to enable a judge to have language to award the earnest money (SCR EC felt the language would confuse consumers).

Residential forms:

Review SCR's four residential agency agreements.

Other business (old/new):

Adjourn until next forms committee meeting.



- MINUTES -

August 30, 2017

Rod Smith Acting Chair

Present:

Rod Smith
Peggy Gainey, 2016 Chair
Amanda Hamet
Jay Rinehart
Brie Bender

SCR Staff:

Byron King
Austin Smallwood

Guests (audience and forms advisory council):

David Crigler LLR SCREC Chair
Candace Pratt LLR SCREC
Mike Johnson
Len Fletcher
Carol Matthews
Carol Robbins
Renny Diedrich
Joyce Valahil
Lynda Sams
Teresa Cox, 2015 forms chair
Milton Ozmit
Donna Sue Jones
Candace Du Soules
Chris Glavenna
Bill Still
David Poole
Faith Funderburk
Lisa Smith
Jim Smith
Dianna Brouthers
Laura Stevens
Jodi Viehman
Lisa Alexander
Cricket Allen

Chair Rod Smith called the in-person meeting to order at 10:00 a.m.

Pledge, invocation, chair opening remarks, introductions

Discuss forms update for September 1 (primary reason for mid year forms update is earnest money lock down to pre-2012 procedures – self settlement – mediator assisted self settlement – SCR518 release and disbursement – SCR517 disbursement without release – magistrate interpleader \$7500 max – interpleader – party lawsuit - disbursement agreement/order) on forms 300, 310, 311, 391, 393, 504, 525...and the August 17, 2017 SCR Executive Committee created form SCR620 earnest money disclosure.

SCR610 wire fraud addendum is in the forms library as of June 15. Rod Smith spear headed this form's creation.

SCR lawyers and group discussed photos, copyright, surveillance, ADA website compliance, mediation, and potential Board of Directors discussion on earnest money.

Update as of the later 8/30/17 BOD meeting, SCR CEO Nick Kremydas responded to REALTOR® Director and Past President Charlie Ray's discussion of his concern about BIC's no longer having SCR forms pre-printed contractual disbursement of earnest money (especially in commercial transactions) by outlining that the SCR legislative group may have to take action in 2018.

During the SCR BOD meeting, Charlie Ray complimented the forms committee for their hard work in 2017.

Discussed the new program to license brokerages with 100% membership to upload SCR forms into alternative forms vendors.

Review four residential agency agreements for January 2018 update project. 130, 135, 210, 200.

Forms committee and audience and forms advisory council made several recommendations to the current rough drafts of these four forms. Primary, work on the flow of these four forms so that a conversation with a potential client flows smoothly.

Commissioners Crigler and Pratt discuss BIC Tim Rash's no violation finding at SCREC for contractual disbursement of earnest money and how the facts might create a different result in future cases where a BIC claims a defense of disbursing per the contract.

Chair Crigler states that SCREC would be very unlikely to discipline a BIC for holding earnest money "too long" (e.g. buyer files LLR complaint because BIC is holding earnest money indefinitely).

License law provides for contractual disbursement of earnest money based on a reasonable interpretation of the contract by the parties.

SCR focuses on "reasonable interpretation" especially when seller makes no other reasonable interpretation of the contract and SCR points out that "why would the legislature have provided for this provision if not so BIC's could make decisions?" The legislature could simply have made the law read that a BIC must have a disbursement document signed by all the parties or a judge.

SCR focuses on the undefined in license law term "dispute" and SCR forms defined dispute to be a legal action filed within 30 business days of a failed closing.

LLR focuses on "by the parties" and requires parties to document their "reasonable interpretation" by signing a disbursement agreement.

SCR forms will update on September 1 to remove contractual disbursement language from the SCR residential forms.

Jay Rinehart discussed that SC unclaimed property statute requires some steps before sending earnest money held over five years to the SC Treasurer, so for risk management reasons it may be prudent for BICs to hold earnest money indefinitely until a disbursement document is signed by all the parties or a proper judge.

Mike Johnson of the forms advisory council invented a forms change that will implement September 1, print the revision date of the form on all the form's pages.

SCR Executive Committee/Leadership/CEO tasking for SCR forms committee:

January 2018 forms update.

Other business (old/new):

There being no further business, the meeting was adjourned at 12:00 pm

Respectfully submitted,

Byron King

SCR SVP&GC

September 5, 2017

Approved: _____