

CHAPTER 28

Department of Consumer Affairs

(Statutory Authority: 1976 Code §§ 37-3-503, 37-6-104, 37-6-403, 37-6-506, 37-11-80 and 40-68-20)

28-1. Authority for and Division of Rules.

A. The following Rules of organization and practice are adopted to describe the organization and methods of the Office of Administrator of Consumer Affairs and to establish rules of practice and to otherwise implement the South Carolina Consumer Protection Code, Title 37 of The Code of Laws of South Carolina, as amended, pursuant to authority of Sections 37-3-503, 37-6-104, 37-6-403, 37-6-506 and 37-11-80.

B. These Rules and Regulations should be cited by Chapter, Rule and Section; e.g., this provision is S.C. Code Ann. R.28-1B. of the Rules and Regulations to Implement the Consumer Protection Code.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-2. Organization.

A. Commission on Consumer Affairs: The Commission on Consumer Affairs is composed of nine members, one of whom is the Secretary of State serving ex officio and whose term coincides with the term of office. Four members are appointed by the Governor with the advice and consent of the Senate for terms of four years. Four members are elected by the General Assembly for terms of four years. The Commission elects its own chairman. The Commission is the policy-making and governing authority of the Department of Consumer Affairs, appoints the Administrator and is responsible for enforcement of the South Carolina Consumer Protection Code.

B. Council of Advisors on Consumer Credit: The Council of Advisors on Consumer Credit consists of sixteen members, who are appointed by the Governor for terms of four years. One of the advisors is designated by the Governor as chairman. The Council advises and consults with the Administrator concerning the exercise of his powers under the South Carolina Consumer Protection Code and may make recommendations to the Administrator. Members may assist the Administrator in obtaining compliance with the Code.

C. Office of Administrator of Consumer Affairs: The Administrator is appointed by the Commission on Consumer Affairs and serves at its pleasure. The Administrator is responsible to the Commission for faithfully administering and enforcing the South Carolina Consumer Protection Code.

D. Deputy Administrators and Deputy Consumer Advocates: The Administrator, with the approval of the Commission, may designate such Deputies as he determines necessary to assist him in performing the duties he is required to perform under the S.C. Consumer Protection Code and other statutes enforced by the Department.

E. Consumer Advocate: The Administrator of Consumer Affairs may be the Consumer Advocate or he may appoint the Consumer Advocate with approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all South Carolina courts with a minimum of three years practice experience.

F. Board of Financial Institutions: The Board of Financial Institutions is the governmental agency of the State of South Carolina which is referred to as "the Board of Bank Control" in Act 686 of 1976 amending the Consumer Protection Code and is sometimes referred to as "the Board" in the Rules, and which has responsibility for examinations and investigations (Consumer Protection Code Section 37-3-506) of institutions licensed or chartered by it, and through its Consumer Finance Division has

responsibility for matters pertaining to licenses (Consumer Protection Code Sections 37-3-503 and 37-3-504), and records and annual reports (Consumer Protection Code Section 37-3-505).

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28-3. General Purposes of Department of Consumer Affairs.

A. To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable costs.

B. To protect consumer buyers, lessees and borrowers against unfair practices by some suppliers of consumer credit having due regard for the interests of legitimate and scrupulous creditors.

C. To permit and encourage the development of fair and economically sound consumer credit practices.

D. To conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act.

E. To implement the South Carolina Consumer Protection Code in the State of South Carolina in accordance with its terms and provisions.

F. To establish programs for the education of consumers with respect to credit practices and problems.

G. To counsel persons and groups of their rights and duties under the South Carolina Consumer Protection Code.

H. To make appropriate studies to effectuate the purposes and policies of the South Carolina Consumer Protection Code and to make the results of such studies available to the public.

I. To report on the use of consumer credit in South Carolina and to report on the problems of persons of small means in obtaining credit.

J. To receive and process complaints of individuals pertaining to any consumer transaction arising out of the production, promotion or sale of goods and services.

K. To cooperate with and assist the Attorney General and all state, local and federal agencies performing consumer protection functions in carrying out their legal enforcement responsibilities for the protection of consumers.

L. To initiate and encourage programs to inform consumers of market practices and schemes which are fraudulent, deceptive, unfair or illegal; how to detect and avoid abusive consumer transactions; and of remedies and relief available to consumers.

M. To undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices and public responsibility in the production, promotion and sale of consumer goods and services.

N. To study the operation of consumer protection laws and recommend to the Governor and the Legislature new laws and amendments to laws which would promote the protection of legitimate interest of consumers within this State.

O. To provide legal representation of the consumer interest before the state and federal regulatory agencies or courts when such regulatory agencies undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies relating to rates or prices for consumer products or services.

P. To monitor existing regulations of such regulatory agencies of special interest to consumers and report to the public through the news media proposed changes under consideration and the effect of such changes on the lives of the citizens of South Carolina.

Q. To simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury.

R. To implement and enforce provisions of the Continuing Care Retirement Community Act.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-4. Method of Operations.

A. Functional Areas: The Department of Consumer Affairs is divided into four functional divisions. These are Administration, Consumer Services, Consumer Advocacy, and Legal.

(1) Administration: The Administration Division is responsible for providing administrative support to the Department of Consumer Affairs, and for the Information and Educational functions of the Department. In addition, the Division has responsibility for notification procedures, the receipt and processing of notification forms and fees, the supervision of notification files, and for Maximum Rate Schedule filing and fees, and other related filings. The Information and Education Section of the Administrative Division is responsible for developing and implementing consumer education and research programs and for disseminating information on consumer credit, protection and advocacy matters to the news media and the general public.

(2) Consumer Services: The Consumer Services Division is responsible for handling consumer complaints. Consumer complaint analysts receive, evaluate and process complaints arising out of the production, promotion or sale of consumer goods or services. The Consumer Services Division is required to take action designed to obtain voluntary compliance with the Consumer Protection Code. Complaints that fall within the jurisdiction of another state or federal agency are referred to such agency. Complaints not subject to the jurisdiction of any responsible agency are processed by the Department of Consumer Affairs in accordance with any applicable law.

(3) Consumer Advocacy: The Consumer Advocacy Division is responsible for evaluating rate and other requests submitted to various regulatory agencies, recommending intervention to the Consumer Advocate, preparing the presentation of the consuming public's case and representing the public in hearings and in court as appropriate. The Division is also responsible for monitoring regulations of regulatory agencies, reporting on their findings and evaluation of the impact of such regulations on the public, responding to requests for legislative assistance and implementing and enforcing provisions of the Continuing Care Retirement Community Act.

(4) Legal: The Legal Division is responsible for maintaining a constant review of consumer protection law and formulating recommendations for legislative proposals. It is also responsible for providing legal advice and information to the Administration and Consumer Services Divisions of the Department of Consumer Affairs, for rule-making, investigations and administrative hearings. It monitors rules, regulations, and interpretations of other Code state administrators and of appropriate Federal agencies and formulates appropriate rules, regulations, declaratory rulings and other interpretations of law. This Division is also responsible for conducting litigation and administrative enforcement actions under the provisions of the South Carolina Consumer Protection Code and other statutes enforced by the Department.

B. Public Access: The public has access to the Department of Consumer Affairs in three ways. These are through the complaint procedures, the information procedures and the formal rule-making and petition procedures.

(1) The public has access to the Department through the complaint procedure by virtue of a statewide toll-free WATS line, or by utilization of the regular telephone network of the Department. Telephone numbers for the WATS line and the regular system are published in the news media and other appropriate informational sources at regular intervals. Informal complaints may also be submitted to the Department in writing either utilizing the Department's regular complaint form or in an appropriate letter or other writing.

(2) Requests for information may be made to any appropriate division of the Department of Consumer Affairs. The appropriate division for inquiries relating to complaints is the Consumer Services Division. The appropriate division for inquiries of a legal nature or about investigations is the Legal Division. The appropriate division for inquiries relating to office management, personnel, consumer information and education, budget or notification and fees is the Administration Division. The appropriate division for inquiries relating to consumer advocacy matters or actions is the Consumer Advocacy Division. Any final order, decision, opinion, rule, regulation, written statement of policy or interpretation formulated, adopted or used by the Administrator on the discharge of his functions or any other matter to which the public has access by virtue of the Freedom of Information Act may be inspected at the Office of the Administrator at any reasonable time, during normal office hours. Voluminous requests or requests for material two years old or older may result in a longer

response time for retrieval, copying or sorting. Reasonable charges may be imposed to recover expenses of materials and time for retrieval, copying or sorting of information.

(3) All requests for information which require an answer in the nature of an interpretation, statement of official policy or position of the Department must be submitted in writing.

(4) Submissions or suggestions designed to improve the operation of the Department of Consumer Affairs should be submitted in writing to the Office of Administrator of Consumer Affairs, without regard to the division or activity to which they may pertain.

(5) Requests for publications which may from time to time be issued by the Department should be addressed to the Information and Education Section. Reasonable charges may be imposed to recover expenses of materials and time for retrieval, copying or sorting of publications.

(6) Requests, submissions or any other communication of any nature may be made in writing to the Office of the Administrator of Consumer Affairs.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-5. Files, Records and Communications.

All papers, records, files and other property of the South Carolina Department of Consumer Affairs shall be maintained and filed in the Office of the Administrator for a reasonable period of time. Thereafter, these materials may be forwarded to State Archives in accordance with State law.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-6. Application of the Federal Truth in Lending Act.

A. All persons upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that Act and in all respects comply with that Act.

B. The term "Federal Truth in Lending Act" means Title I of the Consumer Credit Protection Act [15 U.S.C. § 1601 et seq.] as amended from time to time and the regulations promulgated thereunder by the Federal Reserve Board, as amended from time to time.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-7. Definitions Applying to Rules of Practice.

A. "Administrator" means the officer appointed by the Commission on Consumer Affairs. Where the word "Administrator" is used in these Rules it shall be deemed, when applicable, to include his representatives. (See Also R.28-8H)

B. "Applicant" is a party applying for any right or authority under the Consumer Protection Code, and includes all partners in a partnership.

C. "Code" means the South Carolina Consumer Protection Code [Title 37 of The Code of Laws of South Carolina (as amended)].

D. "Complainant" is any party who complains to the Administrator of any act or omission allegedly committed by any person subject to the Code.

E. "Defendant" is a party against whom a complaint has been filed concerning any act or omission allegedly committed in violation of the Code or of any promulgated administrative order, rule or regulation.

F. "Intervenor" is a person who has been permitted to become a party to any proceeding before the Administrator.

G. "Party" means the Administrator, any person named or admitted as a party in a proceeding before the Administrator, or any person who is aggrieved by any action taken and seeks to be admitted as a party.

H. "Person Related To" with respect to an individual means:

- (1) the spouse of the individual;
- (2) a brother, brother-in-law, sister, sister-in-law of the individual;
- (3) an ancestor or lineal descendant of the individual or his spouse;

(4) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual.

I. "Person Related To" with respect to an organization means:

(1) a person directly or indirectly controlling, controlled by or under common control with the organization;

(2) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(3) the spouse of a person related to the organization;

(4) a relative by blood or marriage of a person related to the organization who shares the same home with him.

J. "Petitioner" is a person seeking relief not otherwise designated.

K. "Protestant" is any party other than a complainant, defendant or respondent who opposes the granting of an application, complaint, order, petition or other authority sought under the Consumer Protection Code.

L. "Respondent" is a party against whom an investigative proceeding or an order to show cause is directed.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-8. Notification and Fees Summary Procedures – Licensing.

A. Notification. Pursuant to the authority contained in Sections 37-6-201, 37-6-202, 37-6-203 and 37-6-204 of the Code, the following rules are adopted for notification to this Department of a person engaged in this State in making consumer credit sales, consumer leases, consumer rental-purchase agreements or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, rental-purchase agreements or loans.

B. Forms. Persons subject to the section as in A above shall file a notification form with the Administrator within thirty (30) days after commencing business in this State and thereafter on or before January thirty-first of each year on the prescribed form which shall state:

(1) Name of person;

(2) Name in which business is transacted if different from (1) above;

(3) Address of principal office giving street number, city, state and zip code (This may be outside the State of South Carolina);

(4) Addresses of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, consumer rental-purchase agreements or consumer loans are made, or in case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;

(5) If consumer credit sales, consumer leases, consumer rental-purchase agreements or consumer loans are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

(6) Type of business conducted;

(7) If consumer rental-purchase transactions are made at any location listed pursuant to (3) and (4) and cash or credit sales of merchandise are also made at those locations, an indication of that fact;

(8) Address of designated agent upon whom service of process may be made in this State.

C. Fees. A person required to file notification shall on or before January thirty-first of each year pay to the Administrator an annual fee of one hundred twenty dollars for that year, for each address in this State listed in the notification; provided, however, that the fee for any one person shall not be less than one hundred twenty dollars; provided, further, that a person who does not extend credit pursuant to written contracts and a person whose annual gross volume of business does not exceed one hundred fifty thousand dollars shall be exempt from any fee and from the notification requirements of the section as in A above.

D. Application for License to Make Supervised Loans: Applications for licenses to make supervised loans shall be made to the South Carolina Board of Financial Institutions on a form pre-scribed by the Board and shall contain the following:

- (1) name and address of applicant;
- (2) name in which and address for which the license is to be issued;
- (3) name and address in South Carolina of agent upon whom process may be served;
- (4) business, if any, other than making supervised loans, which will be conducted at the licensed address;
- (5) all organizations related to the applicant and the character of business conducted by each;
- (6) name, address and telephone number of person to be contacted for further information about this application;
- (7) name, business address, residence address, official title and other business or occupation, if any, of the applicant, the manager and, as applicable, each partner, officer and director;
- (8) name and address of any person(s) listed under the subsection D(7) above and of any person(s) related to the applicant who have engaged in the business of making consumer loans in any state during the last five years (give details for each person so engaged);
- (9) a statement of whether any person listed under the subsection D(7) above has been convicted of a crime involving moral turpitude during the last ten years (if so give details);
- (10) a statement of whether any person listed under the subsection D(8) above has been the subject of any proceeding either to cancel, suspend or revoke a lending license or in which a regulatory authority or law enforcement agency alleged a violation of state or federal law (if so give details);
- (11) a current accurate statement of the financial condition of the applicant showing that he has available for operation of business in this State assets of at least \$25,000 for each license issued to him;
- (12) an investigation fee of \$100 plus a license fee of \$200, paid separately (the license fee will be returned if the application is denied; the investigation fee will not be refunded in any event);
- (13) a copy of any corporate charter and certificate of authority to do business in South Carolina, if applicable;
- (14) the signature of the applicant which must be notarized.

E. Investigation of Application for License: Upon receipt of the completed application with appropriate fees, the Board will conduct an investigation as it deems appropriate to enable it to determine whether:

- (1) the character and fitness of the applicant, the members and the partners, officers and directors, where applicable, are such as to warrant belief that the business will be operated honestly and fairly;
- (2) the applicant has available for operation of his business in this State assets of at least \$25,000 for each license issued in this State.

F. Issuance or Denial of License: The Board shall within sixty (60) days after the application for license has been filed either grant the license or notify the applicant in writing by mail that the application has been denied and stating, in substance, the Board's findings in such a concise and explicit manner as to reasonably inform the applicant of the underlying facts supporting its findings and denial of the application.

G. Request for Hearing Upon Denial of License: Upon written request, the applicant is entitled to a hearing on his application if the Board has notified the applicant in writing that his application has been denied, or the Board has not issued a license within sixty (60) days after the application for the license was filed. The request for hearing must be in writing and must be made not later than fifteen (15) days after denial of the application, as provided in Section 37-3-503(3) of the Code.

H. Hearing Procedure: If the applicant timely requests a hearing to which he is entitled such hearing shall be scheduled and conducted in accordance with the provisions of the Administrative Procedures Act, S.C. Code Ann. Sections 1-23-310 et seq. (as amended). For purposes of this Rule the

term “Administrator” shall be deemed to include the Board of Financial Institutions, where the context so requires.

I. Annual License Fees: Each licensee shall on or before February 1 of each year pay to the Board an annual license fee for each licensed office based upon outstanding loan balances in such office as of December 21 of the preceding year according to the schedule published in South Carolina Board of Financial Institutions R.15–62.

J. Revocation, Suspension or Relinquishment of License: After a supervised lender’s license has been issued, the Administrator may revoke or suspend the license pursuant to S.C. Code Ann. Section 37–3–504 on the grounds listed in that section, although the Administrator will comply with the notice and procedure requirements of the Administrative Procedures Act, (as amended).

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993. Amended by State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–9. Other Cases - Summary Procedure.

A. Informal Complaint: Informal complaints may be made to the Administrator in writing and need not be in any particular form. Such matters may be disposed of by correspondence or other informal communication.

B. Record of Informal Complaints: A record shall be kept of each informal complaint listing the allegations and all action taken including any final disposition.

C. Investigation: If it appears from an informal complaint or other information brought to the attention of the Administrator that there is probable cause to believe that a person is committing or has committed an act or omission in violation of the Code, the Administrator may order an investigation to determine if the Act is being or has been committed. Such investigations may be instituted under the provisions of Code Section 37–6–106 or 37–6–118 as appropriate.

D. Summary Action: If, after investigation, the Administrator determines that a person is committing or has committed any act or omission in violation of the Code, he may take one or more of the following actions, as the situation may warrant:

(1) Accept an assurance in writing that the person in violation of the Code will not engage in that conduct in the future;

(2) Bring an administrative action;

(3) Bring civil action for injunctive relief as provided in Sections 37–6–110, 37–6–111 and 37–6–112 of the Code;

(4) Bring a civil action as provided in Section 37–6–113 of the Code;

(5) Bring an individual action for a consumer as provided in Section 37–6–117 of the Code.

E. Initiation of Formal Proceedings: The Administrator may initiate formal or investigative proceedings upon any matter arising out of an informal complaint.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–10. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor’s Note

Former R. 28–10 was titled “Place of Hearings” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–11. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor’s Note

Former R. 28–11 was titled “Case Numbers and Titles” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–12. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor’s Note

Former R. 28–12 was titled “Form and Size of Papers” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–13. Filing and Service.

A. Service: All notices, findings of fact, opinions and orders required to be served by the Administrator and all documents filed by any party may be served by mail, and service shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail.

B. Proof of Service: On all documents required to be served there may appear an acknowledgement or affidavit of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy in person to _____) (by mailing a copy thereof, properly addressed, with postage prepaid, to _____).

Dated at _____, this _____ day of _____, 20_____.

Signature

C. Alternative Service: In the alternative, service as permitted by the S.C. Rules of Civil Procedure.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–14. Procedure.

Applicability of Administrative Procedures Act: All parties to formal or investigative cases shall follow the notice and procedure requirements of the South Carolina Administrative Procedures Act, S.C. Code Ann. Sections 1–23–310 et seq. (as amended).

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–15. Witnesses.

A. All persons competent to testify in civil actions are competent witnesses before the Administrator.

B. The Administrator may issue subpoenas for the attendance of witnesses and the production of any paper, book, record, document or other evidence in any inquiry, investigation, hearing or proceeding before the Administrator.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–16. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor's Note

Former R. 28–16 was titled “Contents of Formal Complaint” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–17. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor's Note

Former R. 28–17 was titled “Answers” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–18. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor's Note

Former R. 28–18 was titled “Pleadings and Action” and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–18. Pleadings and Action.

A. Pleadings Enumerated: Pleadings before the Administrator shall be applications, complaints, petitions, answers and motions.

B. Time for Answer: Answers to complaints or petitions shall be filed with the Administrator and service thereof made to parties of record within thirty (30) days after service of said complaint or

petition. However, for good cause the Administrator may extend the time within which an answer need be filed.

C. Time for Motion: Any motion directed toward a complaint or petition must be filed before the answer is due. Otherwise, such objection must be raised in the answer. If a motion is directed toward an answer, it must be filed within ten (10) days of the service of the answer. Other motions must be timely filed.

D. Defective Pleadings: Upon the filing of any application, complaint, petition or other pleadings it will be inspected by the Administrator and if found to be defective or insufficient, it may be returned to the party filing it for correction.

E. Liberal Construction: All pleadings shall be liberally construed with a view to effect justice between the parties. At every stage of any proceeding, the Administrator may disregard any error or defect in the pleadings or proceeding which does not affect the substantial rights of the parties.

F. Amendments: The Administrator may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just; provided, that if any such amendment so alters or broadens the issues that it would serve the interest of justice, the Administrator may permit any party affected to have a reasonable time to prepare to meet the changed issues.

G. Signing of Pleadings: Every party who is not represented by an attorney shall sign his pleadings and state his address. Every pleading of a party represented by an attorney shall be signed by the attorney and shall show his address.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–19. Investigative Cases.

Commenced by Administrator: On his own motion the Administrator may institute an investigative case inquiring into any matters or the acts of any person which are subject to the Code.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–20. Hearings.

Hearings shall be conducted as set forth by the rules of the Administrative Law Court.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28–21. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor's Note

Former R. 28–21 was titled "Evidence" and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–22. Deleted by State Register Volume 37, Issue No. 5, eff May 24, 2013.

Editor's Note

Former R. 28–22 was titled "Close of Hearing" and was derived from State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–23. Decision of Administrator.

A. Report and Order: After the Administrator has reached a final decision upon any proceeding, he shall prepare an order and a report, containing his findings and conclusions with respect to such proceeding.

B. Service of Report and Order: A correct copy of such report and order shall be served upon the person against whom such proceeding is directed. Copies will be mailed by certified mail to other parties who appeared and participated in the proceeding and to all attorneys of record.

C. Effective Date of Order: The order shall take effect and become operative upon service unless otherwise provided in such order.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–24. Rehearing and Review.

A. Time for Filing: Petitions for rehearing must be filed by a party within twenty (20) days after being served with a copy of the order or decision.

B. Detail of Petition: The petition for rehearing shall set forth specifically and in detail the particulars in which it is claimed the Administrator's order or decision is unlawful, unreasonable, or unfair. If the petition for rehearing is based upon a claim that the Administrator failed to consider certain evidence, such petition shall include an abstract of that evidence relied upon by the petitioner.

C. Petition Based on New Evidence: The petition may be based upon newly discovered evidence. When such ground is used, the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the former hearing.

D. Action on Petition: Upon the filing of a petition for rehearing, the Administrator may set a time for the hearing of said petition, or may summarily grant or deny said petition in whole or in part.

E. Rehearings Limited: If an order is made granting the petition for rehearing, it shall be limited to the matter specified in such order. Upon rehearing of any proceeding the Administrator may confirm his former judgment or abrogate, change, or modify the same in any particular. Such order and decision shall have the same force and effect as the original order and decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original order and decision unless so ordered by the Administrator.

F. Judicial Review:

(1) A person who has exhausted all the administrative remedies available before the Administrator and who is aggrieved by a final decision in a contested case is entitled to judicial review.

(2) Judicial review shall be conducted pursuant and subject to the Administrative Procedures Act, (as amended).

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–25. Declaratory Rulings.

A. Petition for Declaratory Rulings: Any person may request in writing a declaratory ruling on the applicability of any administrative rule or regulation or Code provision.

(1) The petitioner shall include in his request the question to which an answer is sought and a list of reasons supporting or denying the applicability of the particular provision and/or rule or regulation involved.

(2) If the Administrator deems the matter to be of sufficient public importance, in the exercise of his absolute discretion he may schedule the matter for a public hearing pursuant to the procedures provided in the Administrative Procedures Act, (as amended).

B. Ruling by Administrator: The Administrator shall as soon as practicable issue his declaratory ruling. A copy of the ruling shall be mailed to the petitioner and to such other persons as shall request a copy.

C. Petition for Reconsideration: If the petitioner or any other person is aggrieved by the declaratory ruling of the Administrator, he may within twenty (20) days after the mailing of a copy of the declaratory ruling to the petitioner, petition the Administrator to reconsider his ruling. The petition for reconsideration shall set forth specifically and in detail, the particulars in which the petitioner believes the declaratory ruling of the Administrator to be in error.

D. Reconsideration: After reconsideration, the Administrator may confirm his ruling or abrogate, change, or modify the same in any particular.

E. Public Record of Declaratory Rulings: The Administrator shall keep available in his office for public inspection a copy of each of his declaratory rulings.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28–26. Administrative Interpretations.

A. Request for Administrative Interpretation: Upon the written request of any person, or upon his own initiative, the Administrator may issue an administrative interpretation of any provision of the Code or any Rule or Regulation issued pursuant thereto.

B. Contents of Request: Requests for administrative interpretation shall clearly state:

- (1) the precise questions posed;
- (2) the opinion of the person requesting the Interpretation;
- (3) the basis of such opinion including citation of all applicable statutory provisions, Rules, Regulations or other provision of law.

C. Request for Reconsideration: Administrative interpretations will be reconsidered upon the written request for any person. Such requests must conform to the requirements of the section as in B above.

D. Public Record of Administrative Interpretations: The Administrator shall keep available in his office for public inspection a copy of his administrative interpretations.

HISTORY: Amended by State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-27. Petition for Adoption of Rules.

A. Any interested person may petition the Administrator requesting the promulgation, amendment or repeal of a rule. The petition shall be in writing, be addressed to the Administrator and include a clear statement of the petitioner's proposal and may include any supporting data that may assist the Administrator in reaching a determination. The petition need not be of any particular form, but must contain the information required by this section.

B. If the Administrator deems the matter to be of sufficient public importance, in the exercise of his absolute discretion he may schedule the matter for a public hearing, pursuant to the procedures provided in the Administrative Procedures Act, (as amended).

C. Within thirty (30) days after submission of a petition, the Administrator either shall deny the petition in writing to the petitioner, stating his reasons for the denial, or shall initiate rule-making procedures in accordance with the provisions on procedures for adoption of rules in the Administrative Procedures Act, (as amended).

HISTORY: Added in State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-28. Meetings.

A. Commission on Consumer Affairs: The Commission will meet once each month. The meeting will be held at a time and place to be selected by the Commission. Public notice will be given of all meetings.

B. Council of Advisors on Consumer Credit: The Council will meet at least twice each year. Meeting time and place will be selected and announced by the Chairman of the Council. Public notice will be given of all meetings.

HISTORY: Added in State Register Volume 17, Issue No. 2, eff February 26, 1993.

28-29-5.204. Debtor's Right to Rescind Certain Transactions.

With regard to certain credit transactions in which a security interest is retained or acquired in an interest in land which is used or expected to be used as the residence of the person to whom credit is extended, the form and procedure for (1) the debtor to notify the creditor of his intention to rescind, (2) the creditor's disclosure to the debtor of the debtor's right to rescind the transaction, (3) the creditor's provision of an adequate opportunity to rescind the transaction, and (4) the waiver of the right to rescind in bona fide personal financial emergencies of homeowners, are set forth in Federal Reserve Board Regulation Z Section 226.9 (12 C.F.R. § 226) which implements the Federal Truth in Lending Act.

HISTORY: Added effective January 17, 1976.

28-30. Delinquent Notification Filing and Fee Payment.

(Statutory Authority: 1976 Code §§ 37-6-202, 37-6-203, 37-6-506)

A. Except in the case of willful or repeated violations of Sections 37-6-202 and 37-6-203, notification filings and fees which are not more than 30 days delinquent or which, in any event, are mailed or delivered to the Department before written demand is made therefor will be accepted without penalty.

B. Willful or repeated violations will be disposed of pursuant to the provisions of Section 37-6-113 (Civil Actions).

C. In all other cases delinquent filings must be accompanied by a penalty equal to the amount indicated as follows:

<u>Payment Received</u>	<u>Penalty</u>
31 to 45 days late	30% of delinquent fee
46 to 60 days late	45% of delinquent fee
61 to 75 days late	60% of delinquent fee
76 to 90 days late	75% of delinquent fee
91 to 100 days late	90% of delinquent fee
101 or more days late	100% of delinquent fee

HISTORY: Added effective April 11, 1980.

28-40. Consumer Rental-Purchase.

(Statutory Authority: 1976 Code §§ 37-2-702, 37-3-503, 37-6-104, 37-6-403, 37-6-506)

A. Definitions. Definitions shall be those contained in S.C. Code Ann. 37-2-701 (1976 as amended).

B. Recordkeeping

(1) All books, agreement and records, and all other sources of information with regard to the business of providing consumer rental-purchase services must at all reasonable times be available for inspection by the Department of Consumer Affairs for the purpose of assuring that the business is being transacted in accordance with the law and applicable regulations. Failure to provide or allow access to all books, agreements and records and all other sources of information with regard to the business of providing consumer rental-purchase services will be regarded as a violation of the South Carolina Consumer Protection Code.

(2) All locations must maintain a copy of all agreements for consumer rental-purchase services for as long as such agreements are in effect and for a period of one (1) year thereafter. Agreements for each calendar year must be filed in alphabetical order by the consumer's last name. If the center uses numbered agreements, a numerical sequence file may be used instead of an alphabetical file. If a business providing consumer rental-purchase services has two or more locations, records may be consolidated at a principal office in this State. The Department of Consumer Affairs must be given written notice prior to the enactment of a policy of consolidation of records.

(3) Records of Payment —A written record of any payment on an agreement must be made immediately upon receipt. Payments received must be posted on the business day received to the payment record. The payment record must show at least the following information:

- (a) Name or number of account;
- (b) The date (month, day, year) of payment;
- (c) The actual amount received and itemized as applied to:
 - (i) periodic payment including taxes to lessor necessary to acquire ownership of the property;
 - (ii) delinquency charges;
 - (iii) initial non-refundable fee;
 - (iv) security deposit;
 - (v) delivery charge;
 - (vi) payment pick up charge;
 - (vii) any other fees allowed by the rental-purchase statute.

(4) Records Maintained on Electronic Data Processing (EDP) Systems.

(a) Filing of Description of Systems and Programs —Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by these regulations if they contain equivalent information. Each such system must receive prior written approval from the Department. Lessors seeking such approval must file a complete and detailed written description of the system proposed to be utilized, including user

instructions and an enumeration of all features that do not meet the requirements of the regulations and a full explanation as to how the equivalent information is maintained with the proposed system. User instructions must provide a clear and concise section of procedures which must be followed to operate the system as contemplated by the Department in approving the system.

(b) Filing of Amendments —All changes to a lessor’s electronic data processing system must be filed with the Department at least 14 days in advance of use by a lessor.

(c) Withdrawal of Approval by the Department —If based on examinations and practical experience with an EDP system and its records, the Department finds that such system and records do not provide reasonable access to information required in B(1) and (3) above, approval may be withdrawn by the Department.

(5) Advertisements —All advertisements by a lessor must contain the name and an office address of the entity, which must conform to a name and address on record with the Department of Consumer Affairs.

HISTORY: Added by State Register Volume 18, Issue No. 2, eff February 25, 1994.

28–50–2.210, 3.210. “Rebate Upon Prepayment,” Simplification of the Calculation of the Unearned Portion of the Finance Charge, Allowance of the Use of Tables.

(Statutory Authority: 1976 Code §§ 37-2-210 and 37-3-210)

A. Any chart or table may be utilized for the purpose of determining the rebate provided:

(1) It is prepared in accordance with the actuarial method as required by Sections 2.210(5)(b) and 3.210(5)(b) of the Consumer Protection Code;

(2) It is based upon a calendar year (365 days) and takes into consideration days as well as months in computing refunds of unearned finance charge; and

(3) It bears the name and address of the person responsible for its production and an identification number assigned to it by that person which shall be the same for each chart or table so produced with like numerical content and configuration.

B. The rebate may be computed using the Annual Percentage Rate required to be disclosed to the consumer pursuant to law or at that rate rounded to the nearest one half of one percent.

C. If prepayment occurs during a deferral period the amount of any deferral charge earned at the date of prepayment shall also be computed. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the finance charge or shall be added to the unpaid balance.

D. Errors in calculations of rebates which occur because of a corresponding error in a chart produced and utilized in conformity with this rule shall not subject the creditor to any penalty imposed by any provision of the South Carolina Consumer Protection Code (Act 1241 of 1974 as amended) or any statute to which that Act refers [Section 6.506(3)]; provided that upon discovery of an error in a chart the creditor shall make no further rebates based on that chart and shall promptly notify the Department of Consumer Affairs in writing of the error and identify the inaccurate chart by giving the name and address of the person responsible for its production and its identification number.

HISTORY: Added by State Register Volume 3, eff April 13, 1979.

28–60. Unearned Finance Charge in “Extended First Payment” Transaction.

(Statutory Authority: 1976 Code §§ 37-2-210, 37-3-210, 37-6-506)

A. For purposes of this Rule “Extended First Payment” means that the interval to the due date of the first installment exceeds the computational period applicable to the transaction. “Computational period” means (1) the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, (2) if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise, one week.

B. With respect to a transaction having an extended first payment the creditor may not exclude the extra days in the first interval or the charge for such extra days, in computing the unearned finance charge when a rebate is required under Sections 2.210 or 3.210 of the Consumer Protection Code.

C. A creditor who makes a rebate not in compliance with this Rule in connection with a consumer credit transaction made after the effective date of this Rule shall be deemed to have received an excess charge for all purposes of the Consumer Protection Code.

HISTORY: Added by State Register Volume 4, eff April 11, 1980.

28-62. Adjustment of Dollar Amounts.

The dollar amounts referenced in Section 37-1-109(6) shall change by increasing 10% with the exception of Sections 37-2-203(2) and 37-3-203(2) which have a self-executing formula of 40%. These sections shall change by notice on July 1 of even-numbered years in accordance with Section 37-1-109.

HISTORY: Added by State Register Volume 17, Issue No. 4, eff April 23, 1993. Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 25, Issue No. 5, Part 1, eff May 25, 2001; State Register Volume 37, Issue No. 5, eff May 24, 2013.

28-70. Filing and Posting Maximum Rate Schedules.

A. Every creditor [Section 37-1-301(13)] other than an assignee of a credit obligation making consumer credit sales [Section 37-2-104] in this State, and intending to impose a credit service charge in excess of 18% per annum in this State, and every creditor [Section 37-1-301(13)] making supervised loans [Section 37-3-501(1)] or restricted loans [Section 37-3-501(3)] in this State, shall file with the Department of Consumer Affairs a rate schedule as shown on the Department's internet website. The original of the rate schedule shall be filed together with a fee of forty dollars per location.

B. Every creditor [Section 37-1-301(13)] other than an assignee of a credit obligation, making consumer credit sales [Section 37-2-104] and intending to impose a credit service charge in excess of 18% per annum in this State, and every creditor [Section 37-1-301(13)] making supervised loans [Section 37-3-501(1)] or restricted loans [Section 37-3-501(3)] in this State, shall post in one conspicuous place in every place of business in this State in which offers to make consumer credit sales, supervised loans or restricted loans are extended, a maximum rate schedule with rates that are identical to those listed in the rate schedule filed with the Department of Consumer Affairs pursuant to Section A. The posted rate schedule shall be reproduced in at least fourteen-point type, and the terms "credit service charge," "loan finance charge" and "annual percentage rate" will be printed in larger size type than other terms in the posted rate schedule.

A creditor that has issued seller credit cards [Section 37-1-301(26)] or a creditor that has issued lender credit cards or similar arrangements [Section 37-1-301(16)] shall not be required to post a required rate schedule for such transactions in any place of business which is authorized to honor such transactions; provided that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided for the debtor by the Federal Truth-In-Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change; provided further that a creditor that has issued lender credit cards or similar arrangements shall nevertheless post the required rate schedule for such transactions at its central office (if financial transactions with consumers take place at the central office) and branch offices other than branch offices which are free standing automatic teller machines.

No posted rate schedule shall contain any statement, stamp of approval, or any language or symbol which suggests or implies that the posted rate(s) are suggested, or individually approved by the Department of Consumer Affairs or any other agency of State or Federal government.

C. The rate schedule required to be filed and posted by Sections A. and B. shall contain a list of the maximum credit service charges [Section 37-2-109] (in the case of consumer credit sales) or maximum loan finance charges [Section 37-3-109] (in the case of supervised or restricted consumer loans) stated as an annual percentage rate, determined in accordance with the Federal Truth-In-Lending Act as amended from time to time, and Federal Reserve Board Regulation Z as amended from time to time,

that the creditor intends to charge for consumer credit transactions in each of the following categories of consumer credit:

- (a) Unsecured credit sales or loans;
- (b) Secured credit sales or personal loans, other than those secured by real estate;
- (c) Credit sales secured by real estate or real estate mortgage loans;
- (d) Open-end (revolving) credit;
- (e) All other

The creditor may include as many subcategories as it chooses under each of the specified categories in accordance with the instructions on the reverse side of Appendix A.

If a creditor with multiple locations wishes to charge different maximum rates for different locations, a separate maximum rate schedule shall be filed for each location which charges maximum rates which vary from the schedule filed and posted for the main or central location.

D. A rate schedule filed shall be effective for all consumer credit extended after the close of business on the day the certified schedule is received by the creditor or seven days after the date of submission postmark, whichever is earlier; provided, however, that certification by the Department of Consumer Affairs shall not make any maximum rate schedule effective where the creditor has not otherwise complied with Section 37-2-305, Section 37-3-305 and this Regulation, and such noncompliance is not apparent on the face of the certified rate schedule filed with the Department. An example of such noncompliance would be the posting of a schedule of rates which are lower than the actual maximum rates charged.

E. A rate schedule filed and posted as required by Section 37-2-305, Section 37-3-305, and this Regulation shall remain effective until January 31st of each year. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs a revised schedule together with a fee of forty dollars per location.

HISTORY: Added by State Register Volume 7, Issue No. 5, eff May 27, 1983. Amended by State Register Volume 37, Issue No. 5, eff May 24, 2013.

28-80. Motor Club Certificate of Authority.

(Statutory Authority: 1976 Code § 39-61-160, 39-61-30, 39-61-60, 39-61-70, and 39-61-120)

A. DEFINITIONS

Definitions shall be those contained in the South Carolina Motor Club Services Act, S.C. Code Ann. S. 39-61-10 et seq. (1976 as amended).

B. CERTIFICATES OF AUTHORITY

(1) All organizations wishing to provide motor club services in this State must first obtain a Certificate of Authority from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate will be made on the forms prescribed by the Administrator.

(2) Certificates of Authority will be renewed upon payment of an annual renewal fee of \$500.00 on or before October 31. The renewal period will be between September 1 and October 31 of each year. Renewal requests may be made by letter and must be accompanied by a copy of the club's most recent financial statement certified by two principal officers of the club, or in the case of partnerships or sole proprietorships, by a partner or the proprietor.

(3) Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing motor club services shall in any way represent that its services, payment schedules or terms of membership are approved by the State or any state agency.

C. CLUB REPRESENTATIVES

(1) Club representatives must be registered with the Administrator within 30 days of the date on which they are designated as a club representative. Each representative must submit an application for registration on forms prescribed by the Administrator.

(2) Clubs will consolidate all representative registration applications, prepare a motor club representative appointment summary form prescribed by the Administrator, and submit the summary, all application forms and a fee of \$20.00 for each representative listed on the summary form for approval by the Administrator.

(3) Club representatives will be issued an identification card which must be in their possession when they are directly soliciting, negotiating or renewing service contracts in the State of South Carolina.

(4) Club representatives registration will be renewed upon payment of an annual fee of \$20.00 per representative on or before April 30. The renewal period will be between March 1 and April 30 of each year. Renewal requests will be made on the motor club representative appointment summary form prescribed by the Administrator. Individual application forms are not required for the renewal of club representatives. The renewal summary form must be accompanied by a check for the total amount of fees due.

(5) When a club representative is terminated, the club must notify the Administrator by filing a representative registration cancellation form prescribed by the Administrator within 30 days of termination. The identification cards of all terminated representatives must accompany the application form. In the event the company is unable to furnish the identification card, a signed and notarized written statement explaining the inability may be sent in lieu of the card.

HISTORY: Added by State Register Volume 9, Issue No. 6, eff June 28, 1985. Amended by State Register Volume 14, Issue No. 4, eff April 27, 1990.

28–100. Physical Fitness Services Center—Certificates of Authority and Financial Responsibility.

(Statutory Authority: 1976 Code Sections 44–79–10, 44–79–80, 44–79–90, 44–79–100, and 44–79–120)

A. Definitions

Definitions shall be those contained in the South Carolina Physical Fitness Services Act (“the Act”), S.C. Code Ann. Section 44–79–20 et seq. and the following:

Cash price —The price at which goods or services are offered for sale by the seller to cash buyers in the ordinary course of business, and may include applicable sales tax and the cash price of accessories or related services. The cash price stated by the seller to the buyer in the physical fitness agreement is presumed to be the cash price. The term does not include any finance charge.

Time price differential —The difference between the price paid in installments (time-price) and the cash price. Discounts for the purpose of inducing payment by a means other than the use of credit will be considered finance charge. For example, a physical fitness services provider offers contracts of \$1,000.00 each. If the buyer pays cash, the price is \$900.00, but if the buyer pays for the contract with the physical fitness provider in installments over time, the price is \$1,000.00. The \$100.00 difference is a finance charge for those who buy the agreement on credit. This definition does not apply to the use of a credit card.

B. Certificate of Authority and Financial Responsibility

(1) All organizations wishing to provide physical fitness services in this State must first obtain a Certificate of Authority from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate will be made on the form prescribed by the Administrator and accompanied by a fee of \$50 per outlet.

(2) Certificates of Authority expire on December 31. Renewal applications will be accepted November 1 through December 31 of each year. Renewal applications shall be made on a form prescribed by the Administrator and accompanied by a renewal fee of \$50 per outlet. If a complete renewal application is not postmarked on or before December 31, the center shall be required to submit an initial application per item (1) above.

(3) Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing physical fitness services shall in any way represent that its services, payment schedules or terms of membership are approved by the State or any state agency.

(4)(a) Physical fitness centers presenting a surety bond or other evidence of financial responsibility in accordance with Section 44–79–80 of the Act must do so in accordance with the following value schedule:

Members	Amount
1,500 or more	\$50,000
1,000 to 1,499	\$40,000
500 to 999	\$30,000
100 to 499	\$20,000
1 to 99	\$10,000

(b) Any variation from the value schedule must be approved by the Administrator or a designee.

(5) Within 45 days of a membership or outlet increase that puts the physical fitness center(s) into a new financial responsibility category, the physical fitness center(s) must present financial responsibility in the new amount to the Administrator. Failure to provide amended evidence of financial responsibility as required by this subsection will be regarded as a violation of the Act.

(6) Each physical fitness center must notify the Administrator upon substantial change of its financial status within ten business days after the occurrence of any of the following events:

(a) the institution of a revocation, suspension, or other proceeding against the center by a governmental authority which is related to the center's physical fitness services in any state;

(b) the institution of a civil action against the center. The center shall advise the Administrator within thirty days of the action being dismissed, settled or otherwise resolved;

(c) the filing of bankruptcy, reorganization, or receivership proceedings by or against the center;

(d) the center's opening or closing of a new physical fitness center or outlet within the State; or

(e) felony indictments or convictions involving breach of trust, moral turpitude, fraud, or dishonest dealing.

C. Recordkeeping

(1) All books, membership contracts or agreements and records, and all other sources of information with regard to the business of providing physical fitness services must at all reasonable times be available for inspection by the Department of Consumer Affairs for the purpose of assuring that the business is being transacted in accordance with the law and applicable regulations. Failure to provide or allow access to all books, membership contracts or agreements and records and all other sources of information with regard to the business of providing physical fitness services will be regarded as a violation of the Act.

(2) All centers must maintain a copy of all agreements for physical fitness services for as long as such agreements are in effect and for a period of one (1) year thereafter. Agreements for each calendar year must be filed in alphabetical order by the consumer's last name. If the physical fitness provider uses numerically sequenced agreements, the agreements may be filed in numerical sequence instead of alphabetical order.

(3) Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by these regulations if they contain equivalent information and such information is accessible to the Department.

(4) On or before June 30 each year, physical fitness centers must submit to the Administrator an annual report. The report shall be made under oath and shall be on a form prescribed by the Administrator.

D. Agreements

(1) In the event an agreement includes a time-price differential, the cash price must be listed on the agreement separate from required Truth-in-Lending disclosures. A notice in substantially the following form complies with this regulation:

You have agreed to: (check one)

pay (name of physical fitness provider) the membership fee of \$_____ now, which is the CASH PRICE, or

pay to (name of physical fitness provider) the CASH PRICE in installments plus a FINANCE CHARGE in accordance with the schedule in this agreement.

(2) A contract for physical fitness services may include an automatic renewal option. A customer must select and initial the automatic renewal option at the time the initial contract is executed. Automatic renewal will be on a month-to-month basis. When the initial contract is near expiration, the center must send a written reminder to the customer of the automatic renewal. Prices under an automatic renewal may not change unless written notice is provided to the customer between 30 and 60 days prior to the change in price. Automatic renewal is an "opt-in" option. If the consumer fails to initial the opt-in provision, the contract shall not automatically renew.

E. Advertisements

(1) All advertisements by a physical fitness provider must contain the name and an office address of the entity, which must conform to a name and address on record with the Department of Consumer Affairs.

(2) All restrictions on use of special offers for memberships must clearly and conspicuously be disclosed in the advertisement. These restrictions include but are not limited to the time and day usage as well as equipment or area restrictions.

HISTORY: Added by State Register Volume 14, Issue No. 4, eff April 27, 1990. Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 36, Issue No. 5, eff May 25, 2012.

28-200. Pawnbroker Certificate of Authority.

(Statutory Authority: 1976 Code §§ 40-39-10 et seq.)

A. DEFINITIONS

Definitions shall be those contained in the S.C. Pawnbroker Act, S.C. Code Ann. Section 40-39-10 et seq. (1976 as amended).

B. CERTIFICATES OF AUTHORITY

(1) All organizations wish to provide pawnbroker services in this State must first obtain a Certificate of Authority from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate must be made on the form prescribed by the Administrator.

(2) Certificates of Authority expire each June 30 but may be renewed upon payment of a renewal fee of \$275.00 per location and submission of requisite financial responsibility declaration on or before June 30. The renewal period will be between May 1 and June 30 of each year. Renewal applications for the Certificate must be made on the form prescribed by the Administrator.

(3) Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing pawnbroker services will in any way represent that its services, payment schedules or terms are approved by the State or any state agency. Notwithstanding this, all pawnbrokers who are properly licensed and in good standing may indicate this fact to others. Each applicant must file such proof as is acceptable to the Administrator of his net worth which must be a minimum of \$35,000.00 until such time as liability insurance covering the pawn transaction inventory of the pawn location is secured by the pawnbroker. When the liability insurance is available, the amount of the liability insurance required must be at least enough to cover the pawn transaction inventory of each location operated by the pawnbroker. The liability insurance is to be comprehensive in nature.

(4) The Certificate of Authority must be made on a form prescribed by the administrator and must be posted in a conspicuous place at the business location. Certificates of Authority are not transferable or assignable.

(5) On application of any person and payment of the cost thereof, the Administrator will furnish a certified copy of any pawnbroker Certificate of Authority.

(6) Relocation of Pawnshops

(a) Notice to Department—The pawnbroker must forward written notice of the intended relocation to the Department not less than 30 days prior to the anticipated relocation date. The notice must include at a minimum the present name and address of the licensed pawnshop, the anticipated date of relocation and a sample copy of the notice to be mailed to pledgors on open pawn loans. A \$25.00 change of location fee must accompany these materials.

(b) Notice to Customers—Written notices must be mailed to all pledgors on open pawn loans at least 15 days prior to the date of relocation. Notices at a minimum must identify the pawnshop, identify both the old and new locations and the telephone number of the new location and date the location is effective. The Administrator or his designee may approve notification by signs in lieu of notification by mail if in his opinion no pledgors will be adversely affected.

C. RECORD KEEPING

(1)(a) Prescribed Form and Content—Each pawnbroker must file with the Department a sample of the pawn ticket to be used. In a manual records system, the pawn ticket must be at least a two part form on which entries to the top part are legible and simultaneously reproduced on the remaining parts. The ticket must contain all the information required in the South Carolina Pawnbroker Act, satisfy the requirements of the Truth-in-Lending Act and Regulation Z, and contain any additional information which the Department may prescribe by regulation.

(b) Distribution of Copies—The original must be maintained by the pawnbroker and made available to law enforcement and/or the Department of Consumer Affairs. A legible copy must also be given to the pledgor when a loan is made. A legible copy must be maintained in a file in numerical sequence. Voided tickets must be retained and filed with the numerical sequence file.

(c) Numerical Index of Redemptions—A legible copy of each pawn ticket returned to the pawnbroker for redemption must be filed in numerical sequence. In lieu of the copy of the ticket, other written evidence of redemption may be kept in numerical sequence. Separate lost ticket statement forms must be filed with the pawn tickets according to the number of the related ticket. If the pawnbroker or pledgor does not require a lost ticket statement, other written evidence may be used as a substitute. This file may be maintained separately or may be merged with the numerical index of loans.

(2) Records of Payment and Forfeiture—A written record of any payment on a loan must be made immediately upon receipt. Payments received must be posted on the day received to the back of the pawnbroker's retained copy of the pawn ticket. The payment record must show at least the following information:

(a) The date (month, day, year) of payment

(b) The actual amount received and itemized as applied to:

(i) principal (amount financed)

(ii) pawn finance charge

(iii) charge for lost ticket statement In lieu of (1)(c) and (2) above, the pawnbroker may maintain a ledger book containing the same information.

(3) Records Maintained on Electronic Data Processing (EDP) Systems

(a) Filing of Description of Systems and Programs—Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by these regulations if they contain equivalent information. Each system must receive prior written approval from the Department. Pawnbrokers seeking such approval must file a complete and detailed written description of the system proposed to be utilized, including user instructions and an enumeration of all features that do not meet the requirements of the regulations and a full explanation as to how the equivalent information is maintained with the proposed system. User instructions must provide a clear and concise section of procedures which must be followed to operate the system as contemplated by the Department in approving the system.

(b) Filing of Amendments—All changes or updates to a pawnbroker's electronic data processing system must be filed with the Department within 30 days after use by a pawnbroker.

(c) Withdrawal of Approval by the Department—If based on examinations and practical experience with an EDP system and its records the Department finds that such system and records

do not function and provide information as anticipated at the time of approval and are unsatisfactory, approval may be withdrawn by the Department. A pawnbroker will have 60 days to make modifications in accordance with directives of the Department concerning a satisfactory record system.

(4) Identification of Source of Pledged Goods in Pawnshop—All pledged goods must be tagged or otherwise marked to identify the source of the goods and/or the transaction through which the goods were obtained. Once ownership of the goods has lawfully passed to the pawnbroker, the goods no longer need to be so identified.

(5) Every pawnbroker must preserve and make available in this State such books and records relating to each of its pawn transactions for two (2) years from the date of the transaction, or one (1) year from the date of the final entry made thereon, which is later.

(6) Any person properly identifying himself as the original customer in the pawn transaction or as the assignee thereof; and presenting a pawn transaction memorandum (pawn ticket) to the pawnbroker will be presumed to be entitled to redeem the pledged goods described therein. The pawnbroker and customer may agree that the pawn transaction memorandum (pawn ticket) cannot be assigned by the customer. A statement to this effect must be conspicuous on the pawn transaction memorandum (pawn ticket).

Assignment of pawn tickets is achieved, if at all, by including a statement, written, printed or stamped, in close proximity to the pledgor's signature on the pawn ticket. The statement must be signed by the original pledgor. A statement in substantially the following form complies with this requirement.

Please give article(s) pawned by me to bearer of this ticket. Signed ____.

(7) If the pawn transaction memorandum (pawn ticket) is lost, destroyed or stolen, the customer may so notify the pawnbroker in writing, and receipt of the notice will invalidate such pawn transaction memorandum, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn transaction memorandum (pawn ticket), the pawnbroker may require the customer to make affidavit of the loss, destruction or theft of the memorandum.

(8) Any pawnbroker must make available records of any buy transaction for inspection by the court and its officials, law enforcement officers, the Administrator of the Department of Consumer Affairs, and their designees; provided, merchandise bought on invoice from a manufacturer or wholesaler with an established place of business is exempt from this reporting requirement. However, such invoice must be shown upon request to the court and its officials, law enforcement officers, the Administrator of the Department of Consumer Affairs, and their designees.

D. AGREEMENTS AND PRACTICES

(1) A pawnbroker must not accept a pledge or purchase property from a person under the age of eighteen (18) years or other unemancipated minor.

(2) Items purchased by a pawnbroker, except on invoice from a manufacturer or wholesaler with an established place of business, must be held for seven (7) days before being disposed of, sold, altered or moved from the location at which it was purchased in this State.

(3) A pawnbroker must upon request give a payor a written receipt for any payment on a loan.

(4) A pawnbroker must not use or permit any other person to use pledged goods.

(5) A pawnbroker must segregate pledged goods and purchased items that are being held during the seven day waiting period from public areas of the pawn shop, placing them in a back room or warehouse if one is available. If such an item is left in the public area because of size, value or other characteristics making it difficult or inappropriate to store outside the public area, the item will be clearly tagged as required by C. (4) above and identified as pledged goods, not for sale.

(6) A pawnbroker must segregate personal goods which are not for sale from public areas of the pawn shop, placing them in a back room or warehouse if one is available. If such an item is left in the public area because of size, value or other characteristics making it difficult or inappropriate to store outside the public area the item will be clearly tagged as required by C. (4) above and identified

as personal goods, not for sale. These goods do not include personal items used to carry on the business of the pawnbroker.

HISTORY: Added by State Register Volume 14, Issue No. 4, eff April 27, 1990. Amended by State Register Volume 18, Issue No. 4, eff April 22, 1994.

28-400. Licensing of Mortgage Brokers.

(Statutory Authority: 1976 Code Section 40-58-100 (as amended),
12 USC 5101 et seq., and 12 CFR Part 1008)

A. Definitions - Definitions shall be those contained in the Licensing of Mortgage Brokers Act, S.C. Code Ann. Section 40-58-10 et seq.; Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101 et seq.; S.A.F.E. Mortgage Licensing Act, 12 CFR Part 1008 and the following:

(1) Act - means the Licensing of Mortgage Brokers Act, S.C. Code Ann. Section 40-58-10 et seq.

(2) Co-brokering - means any sharing, regardless of percentage, of mortgage broker services or fees by two or more licensed mortgage brokers on behalf of a borrower.

(3) Day - means all calendar days including Saturdays, Sundays and legal public holidays.

(4) Employee for purposes of compliance with the federal income tax laws - means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person. (See IRS Publication 1779 and Form SS-8).

(5) Loan correspondent - means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan: underwrite the mortgage loan by their employees, approve the mortgage loan, and fund the mortgage loan utilizing an unrestricted warehouse or credit line. A loan correspondent is not a mortgage lender for purposes of compliance with S.C. Code Section 37-22-110 et seq.

(6) Loss mitigation - means the practice of offering to provide or providing, in a for profit context, a service, plan, or program that is represented expressly or by implication to assist the borrower to prevent, delay, or otherwise avoid foreclosure, including, but not limited to, loan modifications, short sales, and deeds in lieu of foreclosure. This definition does not include persons acting exclusively for or as a bona fide nonprofit organization as determined by the Department or mortgage lenders/servicers licensed pursuant to S.C. Code Section 37-22-110 et seq., when acting for mortgage loans they own or service.

B. Licensing of Independent Contractor Processors or Underwriters

(1) Independent contractor processors or underwriters, including those currently licensed as mortgage lenders/servicers pursuant to S.C. Code Section 37-22-110 et seq., shall comply with the Act, except for the following provisions:

(a) Section 40-58-65(A) maintaining a mortgage log;

(b) Section 40-58-65(B) maintaining an in-state office;

(c) Section 40-58-75 completing a mortgage broker fee agreement;

(d) Section 40-58-78 additional disclosures on mortgage broker fee agreement;

(e) Sections 40-58-120(A), (B) and (C) annual report for loans originated, however an annual report for gross revenue is required.

(2) Independent Contractor Processors or Underwriters shall not originate mortgage loans.

C. All South Carolina mortgage loans are subject to the provisions of all South Carolina and federal law related to mortgage loans, including, but not limited to, the Real Estate Settlement Procedures Act of 1974 (RESPA) 12 USC Section 2601 et seq.

D. Reports

(1) Mortgage log required pursuant to Section 40-58-65(A) shall:

(a) be completed electronically as required by the Department. The licensee is responsible for all costs associated with the electronic filing, and

(b) include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

(2) Annual report required by Section 40-58-120 shall be:

(a) completed as a mortgage call report (MCR) (See Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101 et seq.; Safe Mortgage Licensing Act, 24 CFR Part 3400 and Staff Commentary), and

(b) submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System and Registry (NMLS&R) by the mortgage broker for all locations and loan originators.

(3) The Department at its discretion may require or accept an Expanded Mortgage Call Report filed through the Nationwide Mortgage Licensing System & Registry (NMLS&R) or similar filing in lieu of the annual report required by Section 40-58-120.

E. Licensing for loss mitigation activities. Persons providing or offering to provide loss mitigation shall comply with the Act unless the Department has determined the person is exempt pursuant to Section 40-58-20(16) and Sections (A)(6) and (F) herein.

F. Bona fide Nonprofit Organizations (12 CFR 1008.103(e)(7)).

(1) The Department may consider an organization a bona fide nonprofit organization based on but not limited to the following minimum criteria:

(a) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides homeownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and

(f) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(2) Bona fide nonprofit organizations must file for an initial determination and annually for renewal of this determination by the Department. Annual renewals must be filed by December 31st using forms and procedures as required by the Department.

(3) Bona fide nonprofit organizations may use the Nationwide Mortgage Licensing System for initial and renewal filings; however, they will be required to pay any associated processing fees.

HISTORY: Added by State Register Volume 15, Issue No. 5, eff May 24, 1991. Amended by State Register Volume 18, Issue No. 3, eff March 25, 1994; State Register Volume 39, Issue No. 6, Doc. No. 4549, eff June 26, 2015.

28-500. "Lemon Law" Records.

A. DEFINITIONS

Definitions shall be those contained in the Enforcement of Motor Vehicle Express Warranty Act, S.C. Code Ann. 56-28-10 et seq. (1976 as amended)

B. RECORD KEEPING

(1) Between January 1 and January 31 of each year each manufacturer of new motor vehicles sold in this State shall provide a report, on a form provided by the Administrator, containing a written summary of all vehicles repurchased or replaced under Chapter 28 of Title 56 of the South Carolina Code of Laws. These reports shall contain at least the name and address of the customer, the make, model, color or colors, vehicle identification number, and sales price of the motor vehicle, as well as a short description of the nonconformity or nonconformities complained of by the customer.

(2) Upon request of the administrator, the manufacturer shall make available for the inspection of the administrator or his designee, any paperwork, reports or other information regarding automobiles repaired or replaced or otherwise subject to the provisions of Chapter 28 of Title 56 of the South Carolina Code of Laws. Such information shall include, without limitation:

- (a) repair orders or repair date logs;
- (b) parts receipts or invoices;
- (c) retail installment contracts;
- (d) written or electronic documentation of diagnostic testing;
- (e) reports of customers or regional representatives;
- (f) parts themselves that have been retained;

(3) Upon a manufacturer's failure to provide the reports required by B(1) above, or upon a manufacturer's failure to respond to or upon an incomplete or evasive response to the administrator's reasonable request pursuant to B(2) above, the administrator may fine the manufacturer a penalty of up to one thousand (1,000.00) dollars for each failure; after notice and a hearing conducted pursuant to the Administrative Procedures Act (Act 176 of 1977 as amended.) After notice to the manufacturer, each day in which the manufacturer is shown to have failed to comply will be deemed a separate violation.

HISTORY: Added by State Register Volume 15, Issue No. 5, eff May 24, 1991. Amended by State Register Volume 37, Issue No. 5, eff May 24, 2013.

28-600. Licensing Standards for Continuing Care Retirement Communities.

(Statutory Authority: 1976 Code Sections 37-11-10 et seq.)

A. Definitions and interpretations.

In addition to definitions contained in Section 37-11-20, the following definitions and interpretations apply:

- (1) "Act" as used in this regulation refers to State Continuing Care Retirement Community Act, Section 37-11-10 et seq.
- (2) "Administrator" means Administrator of the South Carolina Department of Consumer Affairs.
- (3) "Application processing fee" means those costs incurred by the operator in determining the financial, mental, and physical eligibility of an applicant for entrance into a facility.
- (4) "Binding financial commitments" for the purposes of the application of Section 37-11-140 means commitments from a financial institution or other similar entity for construction and long-term financing, or any other arrangement to achieve the same purpose.
- (5) "Binding reservation agreement" means an agreement for an acceptance of a binding reservation deposit. The agreement shall state, at a minimum:
 - (a) the amount of money received, and the total amount due;
 - (b) the rate of interest payable to the prospective resident, if any;
 - (c) the application of the deposit to the entrance fee, if any, when this reservation agreement is executed;
 - (d) a description of the living unit reserved;
 - (e) the location, name, and address of the facility or proposed facility, and the location, name, and address of the operator, if different;
 - (f) cancellation, penalties, and refund and escrow provisions.
- (6) "Binding reservation deposit" means a deposit with an operator of a sum of money in excess of One Thousand Dollars pursuant to a binding reservation agreement that assures a person a place in the facility.
- (7) "Continuing care contract" means a contract or a series of contracts or agreements to provide services under Section 37-11-20(2) and (6). A continuing care contract may have other writings incorporated by reference.

(8) "Continuing care retirement community" also includes an equity project as long as the services under Section 37-11-20(2) and (6) are provided or available to residents.

(9) "Debt service" means all interest, lease payments, and principal payments on debt due in the next fiscal year.

(10) "Entrance fee" means an initial or deferred transfer to an operator of a sum of money or property, made or promised to be made as a full or partial consideration for acceptance by an operator as a resident. It includes a fee which is refundable upon death, departure or option of the resident. However, neither an accommodation fee, admission fee, or other fee of similar form and application, nor a security deposit shall be considered an entrance fee. An application processing fee covering reasonable costs of processing the application shall not be considered an entrance fee.

(11) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(12) "Equity project" means a continuing care retirement community wherein the residents are given an equity interest in the facility property or in a membership in a resident association, including those arrangements involving fee simple or stock ownership.

(13) "Health-related services" means any of the following:

(a) at a minimum, a priority for admission to a nursing home, community residential care facility or a similar facility or accommodation with a degree of services not required to be licensed by the Department of Health and Environmental Control. The conditions of such admission may range from a full coverage of care in an on-site nursing home, community residential care facility or other facility or accommodation at no additional charge to a priority admission to a nursing home, community residential care facility or other facility or accommodation either on or off the facility with services offered on a fee-for-service basis;

(b) assistance in the activities of a daily living. For the purposes of Section 37-11-10 et. seq., daily living activities, at a minimum, mean assisted or supervised walking, bathing, shaving, brushing teeth, combing hair, dressing; eating; getting in and out of bed; laundry; cleaning the room; self-administration of medication; recreational and leisure activities; or other similar activities, regardless of whether such services are offered as a part of monthly basic fee or on a fee-for-service basis, and regardless of whether or not such services are offered at a facility licensed by the Department of Health and Environmental Control; or

(c) system of managed health care.

(14) "Medical services" means, but is not limited to, any of the following:

(a) availability of consulting or supervisory services of a nurse; or

(b) availability of a certain number of in-patient days in a licensed community residential care facility or a nursing home, regardless of whether included in a monthly basic fee or paid for separately, and regardless of whether the service is offered on site or off site; or

(c) availability of services of health care personnel from the on site health care facility or a nursing home or contracted for by the facility; or

(d) availability of therapeutical services, regardless of whether included in a monthly basic fee or paid for separately.

(15) "Monthly basic fee" means any periodic charge required of a resident pursuant to a continuing care contract.

(16) "Staff" means the staff of the South Carolina Department of Consumer Affairs.

B. Letter of Non-applicability.

(1) Any entity which believes it is exempt from or not subject to the provisions of Section 37-11-10 et seq., in whole or in part, or which is contemplating a facility to provide housing and services to residents which it believes may not be subject to the Act, must apply to the department for a Letter of Non-applicability. The application shall be in writing, shall list the reasons why the existing or proposed facility may be exempt or not subject to the Act, and shall be accompanied by current or proposed continuing care contracts, representative samples of promotional materials, and, if applicable, residential guides and residential policy manuals. In addition, the application shall be accompanied by a One Hundred Dollar non-refundable fee, subject to change.

(2) Any communications from the department regarding the status of any facility which were made prior to July 1, 1991, have no legal effect and cannot be used as a substitute for a Letter of Non-applicability under this Section.

(3) In the event the department shall determine that the facility is not subject to the Act, it shall issue a Letter of Non-applicability setting forth the facts upon which its determination is based.

(4) A Letter of Non-applicability issued under subsection (3) of this Section shall be valid only upon the facts submitted. Whenever there is any subsequent change in these facts that might affect the status of such facility, the facility must apply for a new Letter of Non-applicability.

(5) In the event the department shall determine that such facility is subject to the provisions of the Act, it shall deny the request for the Letter of Non-applicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings. The One Hundred Dollar nonrefundable fee will thereafter be applied towards the license application fee. Any person who is aggrieved by the determination by the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

(6) In the event the facility does not wish to contest the decision of applicability, the facility shall submit an application for an appropriate license within thirty days from the date the Letter of Applicability was mailed by the department.

C. Preliminary license.

(1) A continuing care retirement community which has not yet been in operation may not collect binding reservation deposits for continuing care or advertise as a continuing care retirement community without a preliminary license issued by the department. The application for a license will be on a form prescribed by the department. The application shall be accompanied by a feasibility study. If the operator cannot yet obtain a feasibility study, it shall instead submit a comparable substitute prepared by its consulting firm. In such a case the operator shall first inform the department of the unavailability of and the nature of the substitute study and apply with the department for an approval of such substitute.

(2) Operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application.

(3) The feasibility study or its approved substitute shall include at least the following information:

- (a) A statement of the purpose and need for the facility;
- (b) A description of the proposed facility, including the location, size, number of units to be constructed, anticipated completion date, and the proposed construction program;
- (c) An identification and evaluation of the primary market areas and assumptions as to the secondary market areas, as well as the proposed unit sales per month;
- (d) Projected revenues, including anticipated entrance fees; monthly service fees; nursing care rates, if applicable; and all other sources of revenue, including the total amount of financing required;
- (e) Projected expenses, including staffing requirements and salaries; cost of property, plant and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses;
- (f) Current assets and liabilities of the applicant;
- (g) Expectations of the financial condition of the facility, including the projected cash flow and a projected balance sheet and an estimate of the funds anticipated to be necessary to cover start-up losses;
- (h) The inflation factor, if any, assumed in the study for the proposed facility and how and where it is applied;
- (i) Financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies for continuing care retirement communities promulgated by the Actuarial Standards Board, and an independent evaluation and opinion by the consultant who prepared the study of the underlying assumptions used a basis for the forecasts or projections in the study. The study shall take into account facility costs, marketing projections,

resident fees and charges, the competition, resident contract provisions, and other factors which affect the feasibility of the study;

(j) An opinion letter prepared by the person who prepared the study as to the financial feasibility of the facility;

(k) The name, address and phone number of the person who prepared the feasibility study and the experience of such person in preparing similar studies or otherwise consulting in the field of continuing care;

(l) A statement of financial responsibility as required in R. 28-600Q.

(4) The department shall approve the feasibility study or its approved substitute when it determines that:

(a) A reasonable financial plan has been developed for constructing the facility;

(b) A market analysis supports the existence of the market and the need for the facility;

(c) The feasibility study was prepared by an authority acceptable to the department.

(5) In addition to the feasibility study or its approved substitute, the application for a preliminary license shall contain the following information:

(a) Items specified in Section 37-11-30(B)(1), (2), (3) and (4);

(b) Copies of the articles of incorporation, constitution and bylaws with all amendments thereto, if the operator is a corporation; copies of all instruments by which the trust is created or declared, if the operator is a trust; copies of the articles of partnership or association and all other organization papers if the operator is organized under another form. In the event the operator is not the legal title holder to the property upon which the facility is or is to be constructed, the above documents shall be submitted for both the provider and the legal title holder;

(c) An organizational chart describing the relationship between the applicant and its affiliates, indicating the state of domicile of the entity and the primary business of each;

(d) A statement concerning any litigation, orders, judgments or decrees which might affect the facility;

(e) A statement concerning any adjudication of bankruptcy during the last five years against the operator, its predecessor, parent or subsidiary company and any principal owning more than five percent of the interests in the facility at the time of the filing of the application for preliminary license. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

(f) A representative sample of advertisements and promotional materials for the facility;

(g) A copy of a continuing care agreement and any binding reservation agreement proposed to be used by the operator in the furnishing of continuing care or in taking reservations for continuing care; such agreements must meet the minimum requirements of Section 37-11-35 and this regulation;

(h) A copy of an agreement with providers for the provision of nursing care, health care, or other health-related services. If no agreement is executed at the time of the application for a preliminary license, these agreements may be submitted with the application for a final license;

(i) A copy of an entrance fee escrow agreement proposed to be used by the operator;

(j) If the operator collects or intends to collect binding deposits at the time of signing of a continuing care agreement or a continuing care reservation agreement, a copy of such deposit and/or reservation agreement and a copy of an escrow agreement for such deposits;

(k) A description of the proposed complaint system to resolve complaints by prospective residents who have deposited funds with the operator;

(l) A copy of a current or proposed disclosure statement conforming to the requirements of Section 37-11-60 and of this regulation and including a detailed description with terms concerning whether the facility will offer terms for payment of entrance fees and/or deposits;

(m) A list of all necessary permits, licenses and certifications received or applied for and their status at the time the application is submitted to the department;

(n) Such other reasonable data as the department may require with respect to the provider or the facility.

(6) The department shall issue a preliminary license if it determines that:

(a) The feasibility study or its substitute has been approved;

(b) The continuing care contracts to be used between the operator and the subscriber meet the requirements prescribed by Section 37-11-10 et. seq. and by this regulation;

(c) The operator's disclosure statement conforms to the requirements prescribed by Section 37-11-60 and by this regulation;

(d) The facility's advertising and promotional materials are not deceptive, misleading or likely to mislead;

(e) The facility has in effect its complaint system as described more fully in R. 28-600W;

(f) The applicant has demonstrated the willingness and potential ability to assure that the health care or health-related services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner assuring availability, accessibility, and continuity of service;

(g) The entrance fee escrow agreement and any binding reservation agreement state that, if required by Section 37-11-90, all deposits will be held in escrow until the issuance of a final license and thereafter released in accordance with Section 37-11-90 and this regulation.

(7) An operator who elects not to collect binding reservation deposits from prospective residents may apply for a final license pursuant to R. 28-600D(4).

(8) The application for a preliminary license shall be accompanied by a license fee of One Thousand Five Hundred Dollars, subject to change.

(9) The department shall decide whether to grant a preliminary license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a preliminary license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

D. Final license.

(1) An operator may not enter into continuing care contracts nor provide continuing care, except for good cause shown, until the issuance of a final license by the department. The application for a final license shall be on a form prescribed by the department. The application shall be accompanied by a license fee of Five Hundred Dollars, subject to change.

(2) The application for a final license shall contain at least the following information:

(a) Any material change with respect to the information required to be filed in the application for a preliminary license;

(b) An affidavit by the person who prepared the original feasibility study that there has been no material adverse change in status with regard to the feasibility study, such statement generally dated not more than twelve months from the date of filing the application for a final license. Should a material adverse change exist at the time of the submission, then sufficient information acceptable to the department and the feasibility consultant shall be submitted together with the proposed remedy;

(c) If instead of a feasibility study a substitute was submitted with an application for a preliminary license, then the feasibility study and the opinion letter shall be submitted with an application for a final license. However, operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application;

(d) Proof that the applicant has received written commitments for construction financing and for permanent long-term financing when the construction has been completed;

(e) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) an accountant's opinion; and

(ii) notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial conditions and operations;

(f) If the operator's fiscal year ended more than one hundred twenty days before the date the license application is filed, interim financial statements as of a date not more than ninety days before the date of filing of the application must be included but need not be certified;

(g) A statement of financial responsibility as required in R. 28-600Q;

(h) A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the operator, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;

(i) A projected annual budget for the facility for one year unless required otherwise by the department in case the facility might experience financial problems;

(j) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(k) Any resident's guide, policy manual or other material of similar application, whether current or proposed;

(l) A copy of an agreement with the providers for the provision of nursing care, health care, or other health-related services;

(m) A list of all necessary permits, licenses and certificates received or applied for, and their status at the time the application is submitted to the department;

(n) A copy of the procedure for handling and reviewing residents' complaints;

(o) A representative sample of advertisements and promotional materials for the facility;

(p) Any other information required to be submitted under Section 37-11-30(B) as may be outlined in the application form for a final license;

(q) Such other reasonable data as the department may require with respect to the operator or the facility.

(3) The department shall issue a final license, with appropriate conditions, if it determines that each of the following have been satisfied:

(a) The applicant has a preliminary license issued by the department;

(b) The documents required have been filed with the department;

(c) The advertising materials filed are not deceptive, misleading, or likely to mislead;

(d) The continuing care retirement community is financially responsible and can meet its obligations to residents:

(i) In determination of financial responsibility of an applicant for a final license, the department shall consider the requirements set forth in Section 37-11-40(1) through (4) and the facility's statement of financial responsibility as required in R. 28-600Q;

(ii) Financial adequacy required to guarantee performance of contractual obligations will be determined from a review of audited financial statements to insure that the assets are adequate to meet contractual obligations to residents and from actuarial reports, if required under Section 37-11-30(B)(10);

(e) The operator has complied with all requirements of the Department of Health and Environmental Control in obtaining a Certificate of Need and has applied for licenses to operate nursing, medical, or other health-related services;

(f) The operator has all necessary permits and licenses or applications for the same. If applications are provided, the effectiveness of any final license is conditioned upon the receipt of all necessary permits and licenses;

(g) The proposed complaint system satisfies the requirements of Section 37-11-60 and of this regulation;

(h) The operator is in compliance with the entrance fee escrow requirements of Section 37-11-90.

(4) An operator who elects not to collect binding reservation deposits from prospective residents but who instead, prior to securing binding financial commitments, intends to offer for signature by prospective residents continuing care contracts with certain percentage of the entrance fee to be paid upon signature, is not required to apply for a preliminary license under R. 28-600C. Such operator may instead apply only for a final license pursuant to this Section. To the extent applicable, such application shall contain information required by R. 28-600C and D and shall be accompanied by a licensing fee of Two Thousand Dollars, subject to change. Under no circumstances may continuing care contracts be entered into or advertising as a continuing care retirement community occur prior to obtaining a final license from the department.

(5) The department shall decide whether to grant a final license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a final license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

E. Renewal licenses.

(1) Holders of final licenses shall apply at least sixty days prior to the expiration of their current licenses for a renewal license. Any subsequent annual applications for a renewal license shall likewise be submitted at least sixty days prior to the expiration of a current license.

(2) The application for a renewal license shall be on a form prescribed by the department and accompanied by a license fee of Two Thousand Dollars, subject to change.

(3) Unless the same information was previously submitted to the department, the application for a renewal license shall contain:

(a) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) An accountant's opinion; and

(ii) Notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation;

(b) If the fiscal year ended more than one hundred twenty days before the date of filing, a financial statement which need not be certified concerning the period between the date the fiscal year ended and a date not more than ninety days before the date the application is filed;

(c) A statement of financial responsibility as required in R. 28-600Q;

(d) A projected annual budget for the facility;

(e) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(f) A copy of all written complaints handled through the complaint system and a statement of the average time to resolve the complaint;

(g) A description of any material change with respect to any information provided with the previous application;

(h) A representative sample of advertisements and promotional materials for the facility;

(i) Such other reasonable data as the department may require with respect to the operator or the facility.

(4) The department shall decide whether to grant a renewal license within sixty days of the submission of the application provided that for good cause shown and subject to Section J, a reasonable extension of time may be granted concerning the application. If a renewal license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

F. Continuous updates.

Regardless of the information filed with the annual license renewal application, each operator shall immediately notify the department of and file pertinent documents regarding:

(1) Any investigation, litigation, orders, judgments, or decrees which affect the facility, operator and/or owner, including, but not limited to, a bankruptcy, foreclosure, or receivership proceeding;

(2) Any proceeding for denial, suspension or revocation of any license or permit needed to operate the facility;

(3) Any proposed changes in the continuing care contract;

(4) Any updates to the disclosure statement in which information required by R. 28-600M is changed;

(5) Any proposed expansion or closure of the facility, including, but not limited to, the closing of a wing or building of the facility where the residents are being relocated;

(6) Any proposed transfer of ownership of the facility;

(7) Any proposed change in the control of the operator;

(8) Any change of the administrator of the facility;

(9) Any change with respect to the information required by the sections as in D and E above;

(10) Any change in the facility's contract(s) with the provider of medical or other health-related services.

G. All license applications; form.

Applications for all licenses shall be submitted in the following form:

(1) One complete set of the information and documents required to be filed shall be submitted in a separate binder, fastened in such a manner as to permit the reading of each page without requiring removal. The disclosure statement and financial statement shall be submitted in separate binders.

(2) All information and documents shall be arranged in the order set forth by the department in the application forms. The department will make such applications form available upon request to any potential applicant.

(3) Each binder shall note the name and address of the operator and the name, address and phone number of the person responsible for the preparation of the application on the front cover.

(4) The first page shall be a table of contents.

(5) The right of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab.

(6) If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission.

(7) With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8 ½ inches by 11 inches nor larger than 8 ½ inches by 14 inches.

(8) Plats, maps, or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

H. All licenses; validity and form.

(1) All licenses issued under the Act and this regulation expire one year after the date of issuance or such additional time as the department may allow during the review of the subsequent application. Licenses may be issued only for the premises and persons named in the application and are not transferrable or assignable.

(2) All licenses issued by the department shall be on a form issued by the department and shall be posted in a conspicuous place at the business location. If the facility has not begun operations, the license shall be posted where contracts are entered into or monies are received by the business.

(3) All licenses issued by the department pursuant to this regulation shall contain, in a prominent location, a statement that the issuance of a license does not constitute approval, recommendation, or endorsement of the facility by the department nor does such a license evidence the accuracy or completeness of the information set forth in the applications for such license.

I. Several facilities.

(1) If the operator provides or intends to provide continuing care at more than one facility, the operator must obtain an appropriate separate license for each such facility. Funds collected by one facility should not be expended for the benefit of any other facility. Where there are multi-facility operations, entrance fees collected for service at a particular facility shall be managed appropriately to safeguard the financial interest of the resident who paid the fee for facilities and services at a particular community, provided no cross-collateralization is permissible and evidence of any shall be grounds for license revocation, penalty or other action deemed appropriate by the department.

(2) An entity which as of July 1, 1991, has operated in this State several facilities on different locations under one corporate structure where all monies from and disbursements to such locations have been channeled through the corporate headquarters and where only one central system of accounting has been maintained for all the locations is exempt from the provision of subsection (1) above. Such entity may in its license application submit only one financial statement on behalf of all locations it operates, pay a license fee of Two Thousand Dollars on behalf of the corporate entity and a processing fee of Five Hundred Dollars on behalf of each location it operates, subject to change. Disbursements to individual locations will not be deemed cross-collateralization, provided, however, that continuance of such practice will not adversely affect financial soundness of any location operated by the corporation. To that effect, the department reserves the right to invoke, upon investigation and hearing, the cross-collateralization penalties of subsection (1) above.

J. Incomplete applications and notice of corrections.

(1) When the department determines, upon inquiry and examination, that any application for license is not complete or in any other way does not meet the requirements of Section 37-11-10 et. seq. and of this regulation, the department shall issue to the applicant in writing a notice of corrections that will clearly notify the applicant that the application for license must be corrected in such particulars within thirty days of receipt of the notice.

(2) The issuance of a notice of corrections shall toll the sixty day review period of the application by the department until the deficiencies listed in the notice of corrections are cured by the applicant.

(3) In the event the requirements of the notice of corrections are not met within the thirty day period or in such additional time as the department may grant for good cause shown, the department may reject the application for a license and include findings of facts.

(4) Upon rejection, an applicant may request a hearing, or alternatively, may reapply after making appropriate corrections.

K. Advertising; general standards.

All advertising which is used by or on behalf of the operator to promote a continuing care retirement community shall be accurate, truthful and not misleading so as to fully inform the public and foster their understanding and trust. In preparing any advertising material, the operator is subject to state unfair and deceptive trade practices laws.

L. Continuing care contracts.

(1) Continuing care contracts must be printed in one hundred percent black ink with the exception of the operator's name and business logo. The contracts must be printed on stock that is at least 11 inches high and 7¼ inches wide. All print in continuing care contracts shall be in print no smaller than ten point type.

(2) Continuing care contracts shall be written in language customarily used and understood by people in the conduct of their personal affairs.

(3) A continuing care contract shall contain a full description of services offered by the continuing care community. Such description shall include, to the extent known, a description of the conditions under which such services may be rendered, including the services that may in the future be rendered pursuant to a different contract with the operator.

(4) The continuing care contract must contain a right to cancel provision in the following language which must be bold face type:

RESIDENT'S RIGHT TO CANCEL

You may cancel this contract by sending notice of your wish to cancel to the continuing care community (community) before midnight of the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following: (Insert business name and address). If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

(5) The continuing care contract must contain a statement in bold face type of what portion, if any, of the entrance fee is refundable or non-refundable.

(6) The continuing care contract must contain in capital letters in bold face type no smaller than the largest type used in the contract the following statement:

A license issued by the South Carolina Department of Consumer Affairs is not an endorsement or guarantee of this facility by the State of South Carolina. The South Carolina Department of Consumer Affairs urges you to consult with an attorney and a suitable financial advisor before signing any documents.

(7) No act, agreement or statement of a resident or an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act and this regulation intended for the benefit or protection of the resident or the individual purchasing care for the resident.

M. Disclosure statement.

(1) At the time of, or before, the execution of a contract to provide continuing care, or the transfer of money or other property to an operator by or on behalf of a prospective resident, whichever occurs first, the operator must deliver a current disclosure statement to the person with whom the contract is to be entered into containing at least the following information:

(a) The name and the business address of the operator and a statement of whether the operator is a partnership, corporation, or other type of legal entity;

(b) The name and position title of the individual to whom inquiries should be directed regarding facilities, services, or other information;

(c) A statement that the facility will make available upon request the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, and any person who will be managing the community on a day-to-day basis, together with a description of a business experience, if any, of these persons in the operation or management of similar facilities and, if applicable, a description of any matter in which these persons:

(i) have been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) are subject to a currently effective injunctive or restrictive court order or within the past five years, had a state or federal license suspended or revoked as a result of an action brought by a governmental agency or department;

(d) A statement as to the operator's affiliation with a religious, charitable or other non-profit organization, the extent of the affiliation, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the operator, and the provisions of the Federal Internal Revenue Code, if any, under which the operator or affiliate is exempt from the payment of income tax;

(e) The location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, the date construction began or shall begin, and the contingencies subject to which construction may be deferred;

(f) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished; a clear statement of which services are included for monthly basic fees for continuing care and which services are made available at or by the facility at extra charge;

(g) If the facility is already in operation, a statement as to which services may be available subject to a waiting list or priority rights of other residents, as well as the best estimate of the average waiting period for such services. This statement shall cover both the services described in the continuing care contract and in any other materials used to advertise and promote the facility regardless of whether such services are provided under the continuing care contract or under another agreement to be executed in the future;

(h) A description of all fees required of residents, including the entrance fee, monthly basic fee and other periodic charges, if any. The description must include:

(i) a statement of the fees charged if the resident remarries while at the facility and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirement for entry;

(ii) the circumstances under which the resident is permitted to stay in the facility if the resident has financial difficulties;

(iii) the terms and the conditions under which a contract for continuing care at the facility may be canceled by the operator or by the resident, and the conditions, if any, under which all or a portion of the entrance fee is refunded if the contract is canceled by the operator or by the resident or if the resident dies before or following occupancy of a living unit;

(iv) the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident;

(v) the manner by which the operator may adjust monthly basic fees or other periodic charges, and the limitations on these adjustments, if any. If the facility is already in operation, tables must be included showing the frequency and average dollar amount of each increase in monthly basic fees or other periodic charges at the facility or location for the previous two years, or for all the years in operation if less than two years;

(i) The health and financial condition required for a person to be accepted as a resident, and to continue as a resident once accepted, including the effect of a change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person;

(j) The current and estimated number of the residents of the facility to be provided services by the operator pursuant to the contract for continuing care;

(k) A description of the procedures for receiving and resolving written complaints by the residents;

(l) The following statement: The operator is required to furnish an item-by-item billing for all charges to the resident or the person paying the bill upon his or her request unless the items and charges are included in the continuing care contract. Items which remain unpaid are not required to be itemized again. A request for itemized billing remains in effect until further notification by resident or person paying the bill;

(m) A statement as to whether or not the facility, or any component thereof, accepts Medicare and/or Medicaid. In case the facility does not accept Medicare and/or Medicaid, the following statement will be inserted in bold face type in the disclosure statement:

This facility does not accept Medicare and/or Medicaid. In case a resident exhausts his available financial resources prior to or following admission into our nursing home or assisted living accommodations, the resident might have no choice but to apply for admission to a facility that accepts these payments.

In case the facility has a discretionary fund to assist residents who deplete their financial resources, the following language will also be inserted in bold face type in the disclosure statement:

The discretionary funds available to the management may be used to supplement the entire cost of care or a part of it. However, the application of these funds is entirely within the discretion of the management and the presence of these funds is no guarantee for a continuing stay in this facility following the depletion of your own financial resources.

(2) The disclosure statement shall conspicuously state that in addition to the information contained in the disclosure statement, a prospective or current resident or prospective or current resident's legal representative with a general power of attorney has a right to ask for and receive the information regarding reserve funding of the facility, if any, experience of persons who will make investment decisions, certified financial statements of the operator including balance sheets and income statements, a current actuarial study, if available, a feasibility study for a facility that has not begun operations, and information regarding persons having a five percent or greater interest in the facility within the scope of Section 37-11-30(B)(2).

(3) To the extent applicable, the information required to be provided under this section will be provided in the same form as the identical information required to be submitted with the operator's application for a license under Section 37-11-30(B).

(4) Material changes in the information contained in the disclosure statement shall be updated in the form of addenda on a periodic basis. Each addendum shall be clearly and conspicuously marked as such and shall be immediately filed with the department upon license renewal. Each operator shall from time to time revise the disclosure statement so as to incorporate all existing addenda.

N. Expansions of existing facilities.

(1) An existing operator which intends to expand a continuing care retirement community by more than twelve units or twenty-five percent of individual living units, whichever is more, shall file with the department a letter of intent disclosing the plan of the expansion. The letter shall disclose the following:

- (a) The purpose and the scope of the expansion;
- (b) Estimated capital cost;
- (c) Ability to finance;
- (d) Financial impact on current residents;
- (e) Impact on current community structure to provide resident services;
- (f) Present occupancy rate and marketability of the expansion;

(g) If the facility has had a feasibility study made, then its operator shall submit, in addition to the letter of intent, a supplement to that feasibility study. If the facility did not have a feasibility study made in the past, then the operator shall submit, in addition to the letter of intent, a substitute study.

(2) In order to prevent avoidance of subsection (1) above, the exemption may not exceed a twenty-five percent increase in individual living units cumulative over a two year period.

O. Transfer of ownership of a facility.

(1) An operator intending to undertake a transfer of ownership of a facility shall notify the department at least thirty days in advance of the proposed settlement date.

(2) A notice of intention of transfer of ownership of a facility may be in the form of a letter, addressed to the department, and shall contain the following information:

- (a) Name and address of the licensed operator from whom ownership will be transferred;
- (b) Name and address of the person intending to acquire the ownership interest;
- (c) Name and address of the facility whose ownership is being transferred;
- (d) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a license from the department.

(4) When a person to whom ownership is being transferred files an application for a license, in addition to the selected information as will be specified on a form available from the department, the person shall file a statement containing the following information:

- (a) The terms and conditions of the transfer of ownership;
- (b) The source of funds to be used to finance transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions;
- (c) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A license will not be issued under this Section unless the transferee has agreed in writing to assume the contractual obligations imposed on the current operator by its existing continuing care agreements. Any person aggrieved by the determination of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

P. Entrance fees and binding reservation deposits; escrow provisions.

(1) If an entrance fee is received by the operator before the date the resident is permitted to occupy a living unit in the facility, the total amount must be placed in an escrow account with a trust institution. These funds may be released only as follows:

(a) If the entrance fee applies to a living unit that previously has been occupied in the facility, the entrance fee must be released to the operator when the living unit becomes available for occupancy by the new resident.

(b) If the entrance fee applies to a living unit which previously has not been occupied by a resident, the non-refundable portion, if any, of the entrance fee must be released to the operator when the living unit becomes available for occupancy. The refundable portion, if any, of the entrance fee must be released to the operator when the escrow agent is satisfied that:

(i) construction or purchase of the living unit has been completed, and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue the permit;

(ii) a commitment has been received by the operator for a permanent mortgage loan or other long-term financing, and conditions of the commitment before disbursement of funds have been satisfied substantially;

(iii) aggregate entrance fees received or receivable by the operator pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the financial feasibility study required by Section 37-11-30 to be necessary to fund cash shortages during start-up and assure full performance of the obligations of the operator pursuant to continuing care retirement community contracts.

(2) If the operator enters into binding reservation agreements pursuant to which deposits are collected from prospective residents, such deposits shall be deposited in an escrow account with a trust institution as defined in Section 37-11-20(10). Such deposits will be released to the operator under the conditions stated in Section 37-11-90(B) and R. 28-600P of this regulation.

(3) An escrow agreement entered into between a trust institution and an operator shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence

of compliance with applicable portions of the Act and this regulation, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator or resident as directed. At the time of entering into an escrow agreement, an operator shall inform an escrow agent of the Act and this regulation and the respective requirements of each.

(4) All funds deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the operator or facility.

(5) When funds are received from a resident or prospective resident, the operator shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the continuing care contract, and the amount of money paid.

(6) In applying the provision of Section 37-11-90(C) relating to the reasonable time in which the operator must meet the requirements for release of funds held in the escrow account, escrow agents shall not consider such reasonable time to exceed thirty months from the date the entrance fee or any portion thereof was first deposited in the escrow account, unless the extension is requested from and granted by the department for good cause shown.

(7) A continuing care retirement community is exempt from the provisions of this Section if:

(a) it has been operating for at least five years; and

(b) for the previous six months it has maintained at least the minimum occupancy rate estimated in its financial feasibility study to achieve a break-even cash flow operating level or seventy-five percent occupancy, whichever is less.

Q. Financial responsibility requirements.

The applicant shall provide a detailed written statement regarding the specific provisions taken, or to be taken, to enable the applicant to perform its obligations fully under contracts to provide continuing care. Such provisions may include surety bonds; financial reserves; letters of credit; adequacy of working capital and actual and projected occupancy rates; and other financial arrangements or assurances, as permitted in Section 37-11-40.

R. Dismissal or discharge of resident; refund.

(1) No continuing care contract which requires payment of an entrance fee or other fee in return for a promise of future care or which provides for services for the life of the person or for more than one year (including mutually terminable contracts) shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement without just cause for such removal. The term "just cause" includes, but is not limited to, a good faith determination in writing, signed by the medical director and/or the administrator of the facility, that a resident is danger to himself or others while remaining in the facility. The written determination shall state:

(a) That the determination is made in good faith;

(b) The reasons supporting the determination that the resident is a danger to himself/herself or others;

(c) The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident.

(2) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, to the extent the continuing care contract between the parties so provides.

S. Examination of affairs of continuing care retirement communities and health care providers.

(1) The department may at any time examine the business of any applicant for a license and any operator engaged in the execution of continuing care contracts or in the performance of obligations under such agreements. Routine examinations may be made by having the necessary documents submitted to the department; and, for that purpose, financial documents and records conforming to commonly accepted accounting principles and practices will be deemed adequate. The final written report of each such examination shall be filed with the Administrator. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative of the department may at any time examine the records and affairs and inspect the physical property of any operator and the health care and health-related services provider with

whom the operator has contracts, agreements, or other arrangements, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect and copy any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of the Act and this regulation.

(3) Reports of the results of such examinations shall be kept on file by the Administrator. Any records, reports, or documents obtained by the department which by state or federal law or regulation are deemed confidential may not be distributed to the public by the department unless required under appropriate court order or until such confidential status has expired.

(4) The department shall notify the operator in writing of all deficiencies in its compliance with the provisions of the Act and this regulation and shall set a reasonable length of time for compliance by the facility. In addition, the department shall require corrective action or request a corrective action plan. If the operator fails to comply in a time established by the department, a fine not to exceed Fifty Dollars per day shall be paid. The department may also initiate action against the operator in accordance with the provisions of Section 37-11-110 and R. 28-600Z.

T. Grounds for discretionary denial, suspension, or revocation of a license.

The department, in its discretion, may deny, suspend, revoke, or refuse to renew or continue the license of any applicant or operator if it finds that any one or more of the following grounds applicable to the operator exist:

(1) Failure by the operator to continue to meet the requirements for the license originally granted, on account of deficiency of assets;

(2) Lack of one or more of the qualifications for the license as specified by this chapter;

(3) Material misstatement, misrepresentation, or fraud in attempting to obtain or obtaining the license;

(4) Demonstrated lack of fitness or trustworthiness;

(5) Fraudulent or dishonest practices of management in the conduct of business under the license;

(6) Misappropriation, conversion, or withholding of money;

(7) Substantial failure to comply with, or violation of, any provision of the Act and this regulation or any properly issued order of the Administrator;

(8) Refusal by the operator to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the department;

(9) Failure by the operator to comply with the requirements of Section 37-11-90 and R. 28-600S;

(10) Failure by the operator to maintain escrow accounts or funds that may be required by the Act and this regulation;

(11) Failure by the operator to honor its continuing care contracts with residents.

U. Duration of suspension; obligations during suspension period; reinstatement.

(1) Suspension of a license shall be for such period, not to exceed one year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order of suspension is modified, rescinded, or reversed.

(2) During the period of suspension, the operator shall file its renewal application if and when due. The department in its order of suspension may order that the operator issue no new contracts. If and when the renewal license is granted, the operator shall then pay its annual license fee required for that year.

(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the operator's license shall automatically be reinstated unless the department finds that the causes for the suspension have not been removed or that the operator is otherwise not in compliance with the requirements of the Act and this regulation. If not automatically reinstated, the license shall be deemed to have expired as of the end of the suspension period or upon failure of the operator to continue the license during the suspension period, whichever event first occurs.

V. Administrative fines.

(1) If the department finds that one or more grounds exist for revocation or suspension of a license, the department, in lieu of such revocation or suspension, may impose a fine upon the operator in an amount not to exceed Ten Thousand Dollars per violation.

(2) If it is found that the operator has knowingly and willfully violated a lawful order of the department or a provision of the Act and this regulation, the department may impose a fine not to exceed Ten Thousand Dollars for each such violation.

(3) Failure of holders of final licenses to apply at least sixty days prior to the expiration of their current licenses for a renewal license shall result in a fine being imposed by the department.

W. Complaint system to be established.

(1) Each facility's complaint system shall, at a minimum, provide residents with the following:

(a) The name of the staff person or persons authorized to receive written complaints from residents;

(b) An opportunity to discuss the substance of the complaint with the designated staff person;

(c) The time period in which the operator shall make a written response to the complaint;

(d) A statement that the operator shall not engage in any retaliatory action against the complainant.

(2) Copies of the complaint system shall be distributed to residents and conspicuously posted at a common area of the facility.

X. Department's response to written complaints.

(1) Upon receipt of a written complaint, the department shall make a preliminary review; and unless the department determines that the complaint is without any reasonable basis, the department shall take appropriate action.

(2) No licensed operator may discriminate or retaliate in any manner against a resident of a facility providing care because such resident has initiated a written complaint pursuant to this Section.

Y. Financial review committee.

At such time as the Administrator determines that a facility cannot fully perform its obligations under continuing care contracts, the Administrator may appoint a financial review committee. Such committee may include persons knowledgeable in the field of continuing care, certified public accountants, members of the financial community, and others as may be deemed appropriate by the Administrator. The members of the committee shall advise the Administrator regarding the merits of the facility's corrective plan proposal.

Z. Administrative Procedures Act; applicability.

The South Carolina Administrative Procedures Act and the department's regulations promulgated thereunder shall apply in all the proceedings involving the determination of any issue pursuant to Section 37-11-10 et seq. and thereunder. Any person who is aggrieved by a decision of the department shall be entitled to a contested case hearing before the Administrative Law Court provided the hearing is requested in writing no later than thirty days from the issuance of such decision pursuant to S.C. Code Ann. Section 1-23-310 and Rule 11 of the Rules of Procedure for the Administrative Law Court.

AA. Severability.

If any provision of this regulation or the application thereof to any person, facility or circumstances is held to be invalid, the invalidity shall not affect other provisions or application of this regulation, and to this end the provisions of this regulation are severable.

HISTORY: Added by State Register Volume 16, Issue No. 7, eff July 24, 1992. Amended by State Register Volume 33, Issue No. 3, eff March 27, 2009.

28-700. Consumer Credit Counseling Requirements.

(Statutory Authority 1976 Code Section 37-7-101, as amended)

A. Definitions

(1) Definitions shall be those contained in the Consumer Credit Counseling Act, S.C. Code Ann. Section 37-7-101 *et seq.* and the following:

(a) "Fees and charges of licensees" means the amount of money the credit counseling organization licensee may charge to the consumer.

(b) "Good Faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(c) "Instructor" means a person that presents or teaches a continuing education course to licensees or otherwise guides licensees through the course materials.

(d) "Professional certification organization" means an independent organization, approved by the department, which authenticates the competence of individuals providing education and assistance to other individuals in connection with credit counseling services.

(e) "Sponsor" means a person that offers or otherwise coordinates a continuing professional education course.

B. Fees and Charges of Licensees

(1) A licensee may not charge or receive from a consumer, directly or indirectly, a fee except as delineated in this section. A credit counseling organization may not impose or receive fees under more than one subitem listed under subsection (2) below.

(2) The following fees may be charged based on the primary purpose of the services contracted for:

(a) If the organization receives or offers to receive funds from the consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a DMP set-up fee, not to exceed fifty dollars;

(iii) a monthly maintenance fee, not to exceed ten dollars times the number of creditors in the DMP at the time the fee is assessed, but not more than seventy dollars for each month;

(iv) a reinstatement fee, not to exceed twenty-five dollars;

(v) an additional fee for services related to the debt management plan not to exceed ten dollars per month. No fee may be charged pursuant to this subsection without prior approval from the Department.

(b) If the organization improves or offers to improve a consumer's credit record, history or rating:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a monthly maintenance fee, not to exceed fifty dollars for each month;

(iii) a reinstatement fee, not to exceed twenty-five dollars.

(c) If the organization negotiates or offers to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a monthly maintenance fee, not to exceed ten dollars times the number of creditors remaining at the time the fee is assessed, but not more than seventy dollars for each month;

(iii) a reinstatement fee, not to exceed twenty-five dollars.

(3) Upon the third dishonored payment made by a consumer to a licensee within a twelve-month period, the licensee may impose on the consumer a charge not to exceed twenty-five dollars. A licensee may not charge the same consumer more than three of these charges within the same twelve-month period.

(4) Any monies received by a person in violation of the Consumer Credit Counseling Act or Regulation 28-700 shall be returned to the payor.

(5) No person shall receive a fee from a consumer unless the fee permitted by S.C. Code Ann. Section 37-7-101 *et seq.* and/or R.28-700 is delineated in the contract and it has been established, as based on a good faith determination that the consumer will benefit from the services to be received pursuant to the contract.

C. Continuing Professional Education

(1) Pursuant to S.C. Code Ann. Section 37-7-105, persons other than the department may seek approval to offer continuing professional education courses to licensees. Persons other than the department seeking to provide a continuing professional education course to licensees for the purpose of fulfilling the requirements of section 37-7-105 must submit a sponsor application to the department on forms prescribed by the department or, in the alternative, seek approval from the department to be deemed a professional certification organization. The application shall at a minimum include:

(a) Applicant's name, telephone number, address, and contact person;

(b) Description of the applicant's attendance policy, including a copy of the attendance form or document that will be kept by the sponsor to evidence attendance;

(c) A copy of the certificate of completion to be delivered to licensees completing an approved course.

(2) Upon review of the sponsor application or request for approval as a professional certification organization, the department will either issue the applicant a certificate of approval or a letter of denial. Sponsors and professional certification organizations shall inform the department of any changes in subitems (1)(a)-(c) above within thirty days of the change.

(3) No continuing professional education course credit will be given for a course unless the sponsor has been approved by the department.

(4) Approved sponsors may submit courses for approval by the continuing professional education panel. Professional certification organizations are not required to submit individual courses for approval. To be considered for approval, the sponsor must submit a course approval application to the department on forms prescribed by the department. The application shall at a minimum include:

(a) Course information, including course title, type, location, and continuing professional education hours requested;

(b) Course content outline and coordinating objectives;

(c) Instructor name, address, telephone number, and employer;

(d) Description of the instructor's qualifications;

(e) If a person other than the sponsor furnished, prepared and/or authored the continuing professional education course materials, written authorization permitting the sponsor to utilize the materials.

(5) Licensees who attend a course not submitted for prior approval by an approved sponsor may submit to the department the items described in subitems (4)(a)-(d) above, the certificate of completion received, and an approval application on a form prescribed by the department.

(6) Licensees that are certified by a professional certification organization may submit evidence of current certification, along with the completed form as required by S.C. Code Ann. Section 37-7-105(A), to the department to satisfy their continuing professional education requirements.

(7) The department may require that all information required by this section be submitted in electronic form.

(8) The department may permit a licensee to receive continuing professional education credit for a course that was not approved at the time of attendance, but was subsequently approved by the continuing professional education panel.

D. Record Keeping

(1) A credit counseling organization must maintain and preserve the following records:

(a) Any documents signed by and/or given to the consumer, including the budget analysis and contract required by sections 37-7-108 and 37-7-110;

(b) Creditor consent forms required by section 37-7-109;

(c) Trust account statements required by section 37-7-111;

(d) Name and address of the FDIC-insured institution where South Carolina consumer funds are held and the number of the account utilized;

(e) Telephone scripts and marketing materials;

(f) Contracts entered into with service providers;

(g) Consumer complaint files;

(h) Copy of the organization's records disposal and security breach notification policies utilized to maintain compliance with the South Carolina Financial Identity Fraud and Identity Theft Protection Act, S.C. Code Ann. Sections 37-20-110 *et seq.*

(2) Consumer records must be maintained and preserved for at least three years after the termination of the contract. All business records must be maintained for at least three years after the discontinuation of the account, script, marketing materials, contract, or other record for at least three years after the date of the complaint, as applicable.

(3) All books and records shall be kept current and available for examination by the department. Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by S.C. Code Ann. Sections 37-7-111 and 37-7-114 if they contain equivalent information and such information is accessible to the department. Electronic duplicates of original documents may satisfy the requirements of this section.

E. Reporting Requirements

(1) Within ten business days after the occurrence of any of the following events, a licensee shall file a written report with the department describing the event and its expected impact upon the licensee's business;

(a) The institution of a revocation, suspension, or other proceeding or action against the licensee by a governmental authority. The licensee shall advise the department within thirty days of the proceeding or action being dismissed, settled, or otherwise resolved.

(b) The institution of a civil action against the licensee. The licensee shall advise the department within thirty days of the action being dismissed, settled, or otherwise resolved.

(c) The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee.

(d) The institution of a revocation, suspension, or other proceeding by a governmental authority which is related to the licensee's credit counseling organization in any state.

(e) Felony indictments or convictions of the licensee or any of its member, partners, directors, officers, trustees, beneficiaries, or principles, if known.

(f) Any action taken by the Internal Revenue Service against a nonprofit licensee, its officers, directors, employees, agents, or other disqualified persons with respect to the organization within the meaning of Section 4958 of the Internal Revenue Code of 1986 as amended, including the imposition of penalties or excise taxes or the change, suspension, or revocation of the organization's tax exempt status.

(g) Opening a new business location within this State.

(2) If a licensee fails to make a report required by this section, the department may require the licensee to pay a late penalty of fifty dollars for each day the report is overdue.

HISTORY: Added by State Register Volume 30, Issue No. 5, eff May 26, 2006. Amended by State Register Volume 33, Issue No. 6, eff June 26, 2009; State Register Volume 40, Issue No. 2, Doc. No. 4527, eff February 26, 2016.

28-900. Motor Vehicle Subleasing and Loan Assumption Brokers.

(Statutory Authority: 1976 Code § 37-13-10 *et seq.*)

A. Definitions

Definitions shall be those contained in the Regulation of the Subleasing and Loan Assumption of Motor Vehicles Act. S.C. Code Ann. Section 37-13-10 *et seq.* (1976 as amended).

B. Application Process

All motor vehicle sublease arrangers must submit the following in order to be considered for a license to engage in the business of auto brokering in this State

(1) A formal application for the license in the form and detail the Administrator requires, executed under oath by the owner(s) of the business or other persons as required by the Administrator.

(2) A certified copy of its charter or articles of incorporation and its bylaws, if any. If a partnership, any partnership filings and agreements.

(3) If a corporation, a certified copy of the good standing certificate from the Secretary of State.

(4) A certified copy of its most recent financial statement certified by the owner(s) as true and correct as of the date of the signature(s) or an audited written financial statement by an accountant licensed in this State.

(5) A copy of the sublease agreement incorporating all requirements of applicable law and regulation.

(6) A surety bond or irrevocable letter of credit in the amount of \$25,000.00 per location with the Administrator of the Department of Consumer Affairs of the State of South Carolina listed in favor of the bond or letter of credit.

(7) An application fee of \$250.00 per location due by October 31 each year. The renewal period will be between September 1 and October 31 of each year. The renewal fee is the same as the initial fee.

C. Contract Requirements Between the Sublease Arranger and Sublessee:

(1) The agreement must be in writing.

(2) It must include the name and current physical address and telephone number of the sublease arranger.

(3) The name and address of the sublessee.

(4) The signature of the authorized agent for the sublease arranger.

(5) The signature of the sublessee(s).

(6) The VIN number of the motor vehicle subject to the contract. This VIN number must be listed in the upper right corner of the agreement.

(7) The year, make and model of the motor vehicle subject to the agreement.

(8) The odometer reading of the motor vehicle at the beginning of the agreement. In the event the vehicle is returned prior to the end of the sublease agreement, the sublease arranger must indicate the ending odometer reading in the sublessee's file.

(9) A copy of the written authorization that has been received from the secured party or lessor on the vehicle.

(10) Accurate Truth in Leasing disclosures for the sublessee or in the case of assumptions, accurate Truth in Lending disclosures pursuant to 15 U.S.C. Section 1601 et seq.

(11) A statement that indicates all rights under any applicable warranties or service contracts regarding the motor vehicle transfer to sublessee unless a pro rata rebate for unexpired coverage is applied itemized, to reduce the sublessee's contract under the sublease.

(12) A statement of fees for sublease arranger services.

(13) A statement of services the sublease arranger will provide for the sublessee.

(14) A statement of who is responsible for automotive insurance.

D. Contract Requirements Between Sublease Arranger and Buyer or Lessee

(1) The agreement must be in writing.

(2) It must include the name and physical and mailing address and telephone number of the sublease arranger as of the date the sublease agreement was consummated, and the sublease arranger's current physical and mailing address and telephone number.

(3) It must include the name and address of buyer or lessee.

(4) The signature of authorized agent of the sublease arranger.

(5) The signature of the buyer or lessee.

(6) The VIN number of the motor vehicle subject to the agreement. This VIN number must be included in the upper right corner of the agreement.

(7) The odometer reading at the beginning of the agreement. In the event the vehicle is returned prior to the end of the sublease agreement, the ending odometer reading must be kept with the sublease file.

(8) A copy of the written authorization that has been received from the secured party or lessor on the vehicle.

(9) A statement indicating that all rights under any applicable warranties and service contracts regarding the motor vehicle transfer to sublessee unless a pro rata rebate for unexpired coverage is applied to reduce the sublessee's contract.

(10) A statement of fees for the sublease arranger's services to the buyer or lessee.

(11) A statement of services the sublease arranger will provide to the buyer or lessee.

(12) A statement that an identification of the location of the vehicle is available upon the request of the buyer, lessee, secured party or lessor.

(13) A written notice in the following language must be more conspicuous than all other disclosures except truth in leasing and lending requirements and the company name. "Notice: This sublease arrangement does not release you from liability for your original security agreement or lease."

(14) A statement of who is responsible for automobile insurance.

E. Fees and Charges:

(1) Only charges that are permitted by this regulation may be assessed in sublease arrangements.

(2) The sublease arranger may assess a brokerage fee from the buyer or lessee who places his vehicle with the sublease arranger for a sublease arrangement in the amount of no more than \$2,000.00 or 10% of the unpaid balance of the vehicle at the time of the sublease, whichever is less. The sublease arranger may contract for a minimum fee of no more than \$250.00.

(3) The sublease arranger may assess a brokerage fee from the sublessee in an amount of no more than \$2,000.00 or 10% of the unpaid balance of the vehicle at the time of the sublease, whichever is less. The sublease arranger may contract for a minimum fee of no more than \$250.00.

(4) The sublease arranger may assess a late charge for any payment remaining unpaid more than ten days from its due date in an amount of \$10.00 or 5% of the installment payment, whichever is less.

(5) The sublease arranger may assess only such repossession charges as are reasonable and necessary to obtain possession of the vehicle after default by the sublessee, including reasonable attorney's fees actually paid to an attorney other than a salaried employee of the sublease arranger, not to exceed 15% of the unpaid balance at the time of default.

(6) The sublease arranger may make a reasonable charge for skip insurance that will protect only the secured party and the buyer or lessee. The sublease arranger nevertheless, must arrange for such skip insurance within thirty (30) days of notice of cancellation to the buyer or lessee, the lienholder and the Department.

F. Recordkeeping

Records are to be made available at all times for inspection by the Department of Consumer Affairs on demand. These records include:

(1) A copy of the completed sublease agreement between the sublease arranger and the sublessee.

(2) A copy of the completed agreement between the sublease arranger and the original buyer or lessee.

(3) A copy of the written authorization for the sublease of the vehicle from the vehicle's secured party or lessor.

(4) A copy of all advertising used including a record of the source and date(s) used by the sublease arranger. All advertising must include the statement that "vehicles are available for sublease" and that "(insert business name) is a sublease arranger." Advertising records must be kept for a period of one year from the last date of use.

(5) Copies of Skip Insurance policies.

(6) Records must be kept in alphabetical order by the last name of the sublessee.

(7) Sublessee files must contain copies of any previous sublease agreements of the same vehicle by the sublease arranger.

(8) A copy of the original agreement between the secured party or lessor and the buyer or lessee of the vehicle.

(9) All records except advertising must be kept for a minimum of three years.

G. Licenses

(1) Licenses must be posted in a conspicuous place at the business location.

(2) All licensed brokers must give 30 days notice of intent prior to opening, closing, consolidating or moving a business location in this State. No licenses shall be effective for consolidated brokers or brokers that have moved their business locations without complying with this section.

(3) Issuance of a license does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No licensee will in any way represent that its services or contracts are approved by the State or any state agency. This does not prevent a licensee from indicating the business is licensed by the Department.

HISTORY: Added by State Register Volume 17, Issue No. 4, eff April 23, 1993.

28–1000. Professional Employer Organizations.

(Statutory Authority: 1976 Code § 40–68–20)

A. Definitions.

(1) “Biennium” means the two-year licensing cycle which ends on September 30 of every odd-numbered year.

(2) “Co-employer” means either a professional employer organization or a client company, as defined in Section 40–68–10 (2) and (10).

(3) “Co-employment relationship” means a relationship which is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between co-employers pursuant to a professional employer agreement and the Professional Employer Organization Act, S.C. Code Ann. Section 40–68–10 et seq.

(4) “Temporary help services” means services consisting of a person:

(a) recruiting and hiring its own employees;

(b) finding other organizations that need the services of those employees;

(c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations’ workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects; and

(d) customarily attempting to reassign the employees to other organizations when they finish each assignment.

B. Application Procedure; Application Form; Fees; Denial of Application; Request for Hearing.

(1) Applicants for licensure as a professional employer organization or as a controlling person shall file a completed application on forms provided by the Department. An application is complete when all items on the application have been fully answered, all required documentation has been submitted and the applicable fees as specified in Section 40–68–30 have been paid.

(2) An applicant must cure all deficiencies in its application as noted by the Department within 90 days from the date of the letter notifying the applicant of the deficiency or the application will be denied as incomplete. Applicants who have not cured all deficiencies within 90 days of the notification will be required to re-file with the Department a new application accompanied by a non-refundable application fee.

(3) Any entity applying for licensure as a professional employer organization or professional employer organization group, must be validly organized in the State of South Carolina, or otherwise appropriately registered as a foreign entity with the South Carolina Secretary of State.

(4) The burden of showing qualification for licensure shall be on the applicant.

(5) If the department determines that an applicant is not qualified for licensure, it shall notify the applicant in writing, citing the specific reason for that determination. Any person aggrieved by the decision shall be entitled to a contested case hearing before the Administrative Law Court provided the hearing is requested in writing no later than 30 days from the issuance of such determination pursuant S.C. Code Ann. Sections 1-23-310, 40-68-160 and Rule 11 of the Rules of Procedure for the Administrative Law Court.

C. License Renewal Procedures; Inactive License Renewal.

In the event any licensee fails to renew the license, the license shall automatically become delinquent. A license delinquent 30 days or less may be returned to active status by the payment of the biennial license renewal fee and a delinquent fee of five hundred dollars.

D. Assessment on Gross South Carolina Payroll.

(1) The department may assess each professional employer organization and each professional employer organization group a biennial assessment based upon the preceding calendar year's gross South Carolina payroll of the company or group. This assessment shall be made if the department determines that licensing fees are not sufficient to cover all costs for its program for licensing and regulation of professional employer organization services. The assessment shall be due on August 1 of every even-numbered year and shall become delinquent after August 31.

(2) In order to ensure compliance with the requirements of subsection (1), each licensee shall annually by April 1 submit copies of all South Carolina Department of Revenue "Fourth Quarter/Annual Reconciliation of Income Tax Withheld" forms WH-1606 for the preceding calendar year.

(3) Licensees who do not submit assessment fees to the department by the August 31 deadline must pay the assessment fee and a late penalty fee of one hundred fifty dollars for every thirty days or portion thereof it is late. If it is late more than sixty days, the licensee may be subject to disciplinary action as set forth in Section 40-68-160 (C).

E. The Documentation Submitted to Demonstrate Net Worth.

(1) The documentation submitted to establish net worth must be prepared by an independent Certified Public Accountant licensed to practice public accounting as of the date of the accountant's report and must be in the format of independently audited accrual basis financial statements, as determined by generally accepted accounting principles, for the two (2) most recent annual accounting periods preceding the date of application, except that if the most recent accounting period ends within 180 days of the date of application, the current year's financial statement shall be submitted within 180 days of the end of the accounting period.

(2) The following additional documents must be submitted for a determination and verification of the amount of net worth of a professional employer organization or a professional employer organization group:

(a) Verification that federal, state, and local payroll taxes (including unemployment compensation taxes/insurance) have been paid on a timely basis as required by regulations of each taxing authority;

(b) Verification that all health insurance, life insurance, worker's compensation insurance premiums and any other employee benefits accruing either to employees or their dependents have been and are being paid on a timely basis to the proper payees as required by contract, law, or other obligatory documents.

(3) Any documentation submitted to the department to verify the amount of net worth or the payment of payroll taxes and other obligations shall be prepared as of a date not earlier than six months or 180 days before the date of application. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.

(4) The following items may be used to cover any deficit in net worth revealed by the most current financial statements in the amount sufficient to cover the deficiency: infusion of capital, an acceptable bank letter of credit, mortgages, bonds, a promissory note supported by collateral, or a guarantee where the guarantor can satisfy the department that the guarantor has sufficient assets to satisfy the obligation of the guarantee.

(5) At the time of an application for an initial license by a professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve

months of operating history, the applicant must meet the net worth requirements of S.C. Code Ann. Section 40-68-40(E) and present a business plan and pro forma financial statements reviewed by a certified public accountant. Thereafter, such applicant shall present, within 180 days after the end of its fiscal year, audited financial statements.

F. Annual Audited Financial Statements.

(1) All professional employer organizations or professional employer organization groups must submit annual audited financial statements to the department within 120 days of the licensee's fiscal year end. For purposes of this regulation, "submitted" means that the audited financial statement must be postmarked within 120 days of the end of the licensee's fiscal year.

(2) All audited financial statements must be prepared in accordance with generally accepted accounting principles (GAAP), and generally accepted auditing standards (GAAS) must be used.

G. Quarterly Financial Reporting and the Maintenance of Sufficient Working Capital.

In order to be in compliance with the net worth requirements of Section 40-68-40(E), licensed professional employer organizations and professional employer organization groups are required to file a quarterly financial attestation with the department. This quarterly attestation report shall be executed by the chief financial officer, the chief executive officer, and a controlling person of the professional employer organization. Copies of the current quarter's balance sheet and income statement shall be submitted with the quarterly financial attestation report. Quarterly financial statements are due to be submitted to the department within 75 days after the end of each quarter. Quarterly financial reports that are submitted late without prior approval from the department will be assessed a late reporting fee of one hundred fifty dollars for every thirty days or portion thereof they are late. If they are late more than sixty days, the licensee may be subject to a disciplinary action as set forth in Section 40-68-160 (C). The following attestations will be made in the quarterly report:

(1) Health insurance, life insurance, worker's compensation insurance and their respective premiums and any other employee benefits have been paid to the proper payees;

(2) Working capital is sufficient to meet the licensee's ongoing obligations;

(3) Federal, state, and local payroll taxes have been paid as required by regulations of each taxing authority.

H. Restricted License.

(1) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the conditions set forth in Section 40-68-90.

(2) The biennial licensing fee for a restricted license shall be five hundred dollars for a professional employer organization and one thousand dollars for a professional employer organization group.

(3) The holder of a restricted license shall provide to the department quarterly reports on a form developed by the department with information and documentation necessary to show that the holder continues to qualify for a restricted license.

(4) When any condition for an issuance of a restricted license ceases to exist, the licensee shall apply within thirty days for a license pursuant to Sections 40-68-30, 40-68-40, 40-68-50 and any other applicable provision of the Professional Employer Organization Act and accompanying regulations or cease operations in the State.

I. Certification of Workers' Compensation Coverage.

Professional employer organization applicants or licensees must provide to the department a Certificate of Insurance for their workers' compensation coverage. This certificate must be issued by an insurance carrier licensed in South Carolina and must name the Department of Consumer Affairs as Certificate Holder and provide for thirty (30) days notice of cancellation.

J. Notices Required to be Posted.

(1) The license issued by the department must be posted in a conspicuous place in the licensee's principal place of business in this State.

(2) The licensee shall cause each client company to display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is in a co-employment relationship with the professional employer organization licensed and regulated by the

department and that any questions or complaints regarding the professional employer organization should be directed to the department. The notice shall contain the Department's mailing address, web address and phone number. A copy of such notice shall be provided to the Department. A substantially similar notice shall be included in the contract between a licensee and a client company.

(3) The licensee shall cause each client company to post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the assigned employees a notice stating, substantially, the following:

"We are operating under and subject to the Workers' Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert the name of professional employer organization, including a contact address and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits."

K. Inspections; Investigations; Complaints.

(1) The department may conduct inspections or investigations as necessary to enforce the Professional Employer Organization Act, the accompanying regulations or an order of the administrator or the Administrative Law Court related to these provisions. In conducting such an inspection or investigation of a person, the department may enter the business premises of the person during reasonable business hours and may examine and copy records pertinent to the inspection or investigation.

(2) The department shall keep a file about each written complaint filed with the department against a professional employer organization that the department has authority to resolve.

L. Reporting of Change of Status Required; Effect on Licensees.

The Department shall develop forms for the reporting of changes in status of licensed companies and controlling persons. These forms shall specify the information required to be filed for all changes in the status, and the deadlines for filing such changes with the department. The department may charge a filing fee for each change not to exceed fifty dollars.

HISTORY: Added by State Register Volume 30, Issue No. 7, eff July 28, 2006.

28-1100. Prepaid Legal Services Certificate of Registration.

A. Definitions

Definitions shall be those contained in S.C. Code Ann. S. 37-16-10 et seq. (1976 as amended).

B. Registration of Prepaid Legal Company

(1) All persons or entities wishing to offer prepaid legal services to the general public or a segment of the general public in this State must first obtain a Certificate of Registration from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate will be made on the forms prescribed by the Administrator and must be accompanied by a fee of \$800.00.

(2) Certificates of Registration will be renewed upon payment of an annual renewal fee of \$800.00 on or before March 1. The renewal period will be between February 1 and March 1 of each year. Renewal requests may be made by letter and must be accompanied by a copy of the company's most recent financial statement certified by two principal officers of the company, or in the case of partnerships or sole proprietorships, by a partner or the proprietor.

C. Prepaid Legal Representatives

(1) Prepaid legal representatives must be registered with the Administrator before commencing any sales or solicitation activity in this State. Each representative must submit an application for registration on forms prescribed by the Administrator.

(2) Companies will consolidate all representative registration applications, prepare a prepaid legal representative appointment summary form prescribed by the Administrator, and submit the summary, all application forms and a non-refundable fee of \$40.00 for each representative listed on the summary form for approval by the Administrator.

(3) Prepaid legal representatives registration will be renewed upon payment of an annual, non-refundable fee of \$40.00 per representative on or before October 1. The renewal period will be between August 1 and October 1 of each year. Renewal requests will be made on the prepaid legal

representative appointment summary form prescribed by the Administrator. Individual application forms are not required for the renewal of prepaid legal representatives. The renewal summary form must be accompanied by a check for the total amount of fees due.

(4) When a prepaid legal representative is terminated, the company must notify the Administrator by filing a representative registration cancellation form prescribed by the Administrator within thirty days of termination.

HISTORY: Added by State Register Volume 39, Issue No. 6, Doc. No. 4528, eff June 26, 2015.