

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0294

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 66** - 01/17/2013

Introduced by: The Committee on Commerce and Energy at the request of the South Dakota
Real Estate Commission

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions, to amend
2 certain provisions to streamline and clarify, and to repeal certain obsolete and unnecessary
3 provisions pertaining to the Real Estate Commission.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 36-21A-1 be amended to read as follows:

6 36-21A-1. Terms used in this chapter mean:

- 7 (1) "Agency," any relationship by which one person acts for or on behalf of a client
8 subject to the client's reasonable direction and control;
- 9 (2) "Agency agreement," a written agreement between a broker and a client which
10 creates a fiduciary relationship between the broker and client. The payment or
11 promise of payment of compensation to a responsible broker does not determine
12 whether an agency relationship has been created between any responsible broker or
13 licensees associated with the responsible broker and a client;
- 14 (3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business



1 property as defined in subdivision 36-21A-6 (3) at public offering to the highest
2 bidder;

3 (4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts
4 or agrees to auction real estate or business opportunities;

5 (5) "Broker associate," any broker acting in association with or under the auspices of a
6 responsible broker;

7 (6) "Client," any person, including a seller/landlord or a buyer/tenant, who has entered
8 into an agency relationship with a real estate licensee;

9 (7) "Commission," the South Dakota Real Estate Commission;

10 (8) "Consumer," any person seeking or receiving services from a real estate broker;

11 (9) "Customer," any party to a real estate transaction who does not have an agency
12 relationship with a licensee;

13 (10) "Designated broker," any broker licensee designated by a responsible broker to act
14 for the company in the conduct of real estate brokerage;

15 (11) "In-company transaction," any transaction in which both the seller/landlord and the
16 buyer/tenant receive real estate services from the same broker or from licensees
17 associated with the same broker;

18 (12) "Licensee," any person holding a license issued pursuant to this chapter;

19 (13) "Limited agent," any licensee who has a written agency relationship with both the
20 seller and the buyer in the same in-company transaction;

21 (14) "Person," any individual, corporation, limited liability company, partnership, limited
22 partnership, association, joint venture or any other entity, foreign or domestic;

23 (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an
24 interest in real property;

- 1 (16) "Responsible broker," any person holding a broker's license issued pursuant to this
2 chapter who is responsible for the real estate activities conducted by those licensees
3 acting in association with or under the auspices of the responsible broker;
- 4 (17) "Served actively," if referring to a real estate salesman or broker associate, having the
5 license on an active status with the commission;
- 6 (18) "Single agent," any licensee who represents only one party to a transaction;
- 7 (19) "Subdivider," a person who causes land to be subdivided into a subdivision for that
8 person or others, or who undertakes to develop a subdivision. However, this does not
9 include a public agency or officer authorized by law to create subdivisions;
- 10 (20) "Subdivision," or "subdivided land," any real estate offered for sale and which has
11 been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and
12 following, 15 U.S.C. 1701 and following, as such Act existed on January 1, 1980, or
13 real estate located out of this state which is divided or proposed to be divided into
14 fifty or more lots, parcels, or units;
- 15 (21) "Transaction broker," a broker who assists one or more parties with a real estate
16 transaction without being an agent or advocate for the interests of any party to the
17 transaction. The term includes the licensees associated with the broker;
- 18 ~~(20)~~(22) "Transaction broker agreement," a written agreement in which the broker does
19 not represent either the seller or the buyer in a fiduciary capacity. No
20 brokerage relationship can be created or implied by word or action alone, but
21 only by written agreement clarifying the brokerage relationship.

22 Section 2. That § 36-21A-2 be amended to read as follows:

23 36-21A-2. For the purposes of this chapter, an advertisement or advertising is any attempt,
24 by publication or broadcast, whether oral, written or otherwise, to induce a person to use the

1 services of a licensed real estate broker, real estate salesman or real estate firm.

2 Section 3. That § 36-21A-3 be amended to read as follows:

3 36-21A-3. For the purposes of this chapter, an appraisal is the ~~work product of a real estate~~
4 ~~appraiser which estimates the value of real estate or any interest in real estate~~ act or process of
5 developing an opinion of value of real estate for another and for compensation.

6 Section 4. That § 36-21A-4 be repealed.

7 ~~— 36-21A-4. For the purposes of this chapter, an appraiser is any person engaged in the~~
8 ~~business of estimating real estate values or who advertises or holds himself out to the general~~
9 ~~public to provide such a service for compensation.~~

10 Section 5. That § 36-21A-9 be amended to read as follows:

11 36-21A-9. For the purposes of this chapter, an inactive ~~licensee~~ license is any ~~licensee~~
12 ~~whose license~~ that ~~has been returned to the commission by the licensees' responsible broker, a~~
13 ~~licensee who has returned his license to the commission and requested the commission to place~~
14 ~~the license on inactive status, or a new licensee who has failed to designate a responsible broker~~
15 placed on inactive status for any of the following reasons:

- 16 (1) At the request of the licensee;
17 (2) Failure to designate a responsible broker;
18 (3) Cessation of being associated with a responsible broker or a licensed firm;
19 (4) Failure to notify the commission of a change of registered address;
20 (5) Failure of the licensee's responsible broker to maintain an active license;
21 (6) Failure to provide proof of errors and omissions insurance upon renewal;
22 (7) Failure of a nonresident real estate salesperson, who establishes residency in South
23 Dakota, to successfully complete the education requirement for upgrade to broker
24 associate within the prescribed timeframe; or

1 (8) Failure to provide proof of the necessary hours of continuing education.

2 No licensee whose license is on inactive status may perform any of the actions enumerated
3 within this chapter prior to reactivation of the inactive license.

4 Section 6. That § 36-21A-12 be amended to read as follows:

5 36-21A-12. For the purposes of this chapter, a real estate salesperson is any person who for
6 compensation or consideration is associated with a ~~real estate~~ responsible broker, to sell or offer
7 to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of
8 real property, or of the property's improvements, or any business opportunity or business, or its
9 goodwill, inventory, or fixtures, or any interest therein; ~~or to sell or offer to sell, or to buy or~~
10 ~~offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of a mobile or~~
11 ~~manufactured home which has been registered under the provisions of chapters 32-3 to 32-5B,~~
12 ~~inclusive.~~ A salesperson may ~~give opinions of value~~ perform a broker price opinion or
13 comparative market analysis for purposes of purchase, sale, lease, rental, or exchange of real
14 property.

15 Section 7. That § 36-21A-18 be amended to read as follows:

16 36-21A-18. The commission shall employ an executive director who shall ~~furnish bond as~~
17 ~~required by the commission and who shall keep~~ perform the following duties:

18 (1) Keep a record of all proceedings, transactions, communications and official acts of
19 the commission. ~~The executive director shall be;~~

20 (2) Be custodian of all moneys received ~~and shall deposit;~~

21 (3) Deposit all moneys in depositories designated by the commission. ~~He shall be;~~

22 (4) Be custodian of all records of the commission ~~and perform such; and~~

23 (5) Such other duties as the commission may require.

24 Section 8. That § 36-21A-21 be amended to read as follows:

1 36-21A-21. The commission shall meet annually and at other times upon call by the
2 executive director, ~~chairman~~ chairperson, or upon a written request of three or more members
3 of the commission. The place of meeting of the commission shall be at the office of the
4 executive director or other places within South Dakota as designated by the commission.

5 Section 9. That § 36-21A-26 be amended to read as follows:

6 36-21A-26. The executive director of the commission shall, ~~at least annually, publish~~ make
7 available a list of the names and addresses of all persons licensed by the commission under the
8 provisions of this chapter, together with such other information relative to the enforcement of
9 the provisions of this chapter as the commission determines to be of interest to the public. The
10 commission may charge a reasonable fee to persons who request the list.

11 Section 10. That § 36-21A-28 be amended to read as follows:

12 36-21A-28. No person, ~~unless exempted under this chapter,~~ may act as a licensee under this
13 ~~chapter, assume to act as a licensee or advertise as a licensee~~ offer, attempt or agree to perform,
14 or perform any act enumerated within this chapter without a an active license issued by the
15 commission. No person may collect compensation as a licensee under this chapter without
16 having first complied with the provisions of this chapter. ~~A violation of this section is a Class~~
17 ~~1 misdemeanor.~~

18 Section 11. That § 36-21A-30.2 be amended to read as follows:

19 36-21A-30.2. Any broker associate receiving initial licensure as a broker associate after June
20 30, 2009, shall complete sixty class hours of education in a course of study approved by the
21 commission given by instructors approved by the commission or in an independent study or
22 distance education course approved by the commission. The broker associate shall complete the
23 sixty class hours in prescribed subject matter by the second active renewal deadline with thirty
24 class hours completed during the initial active licensing period and thirty class hours completed

1 during the second active licensing period. The thirty class hours completed during the initial
2 active licensing period and second active licensing period apply towards the continuing
3 education requirements for license renewal. The commission shall ~~adopt~~ promulgate rules,
4 pursuant to chapter 1-26, to specify requirements for the course, qualifications of an instructor,
5 and criteria for an independent study or distance education course.

6 Section 12. That § 36-21A-34.1 be amended to read as follows:

7 36-21A-34.1. ~~Any person~~ An active licensed ~~as a~~ nonresident real estate salesperson
8 ~~pursuant to this chapter, who establishes residency in South Dakota, shall, within two years of~~
9 ~~January 1, 2003, complete~~ upgrade to a broker associate license by completing the following
10 before the current license expires: complete forty hours of prescribed education in a course
11 approved by the commission; submit a broker associate license application; and submit the
12 required license application fee.

13 ~~Any~~ A resident real estate salesperson, whose license is on inactive ~~shall complete the status~~
14 and who wishes to be an active licensee, shall upgrade to a broker associate license by
15 completing the following prior to activation: complete forty hours of prescribed education ~~and~~
16 ~~course examination requirements in a course approved by the commission before activating that~~
17 ~~license~~ submitting a broker associate license application; submit a broker associate license
18 application; and submit the required license application fee.

19 The commission shall promulgate rules, pursuant to chapter 1-26, to specify requirements
20 for the course and examination. ~~This section does not apply to residents of another licensing~~
21 ~~jurisdiction who are licensed in South Dakota under the provisions of a reciprocal agreement~~
22 ~~with that jurisdiction.~~

23 Section 13. That § 36-21A-34.2 be repealed.

24 ~~36-21A-34.2. Any salesperson who has completed the requirements of § 36-21A-34.1 shall~~

1 ~~file an application for a broker associate license before the end of the current license term.~~

2 Section 14. That § 36-21A-36.1 be amended to read as follows:

3 36-21A-36.1. Upon notification in writing that the person has passed the examination, the
4 person shall file the appropriate application for license with all the required documents to the
5 ~~Real Estate Commission~~ commission within sixty days of the notice date. If the person fails to
6 file an application and proof of required education within the sixty-day period, the person's
7 registration and all rights deriving from a passing score are canceled.

8 Section 15. That § 36-21A-43 be amended to read as follows:

9 36-21A-43. An applicant ~~currently licensed~~ who holds an active license in another state and
10 who has successfully passed the real estate licensing examination given in another in that same
11 state need only take may obtain a similar level of licensure in South Dakota if the applicant
12 successfully passes the state portion of the examination in South Dakota.

13 Section 16. That § 36-21A-45 be repealed.

14 ~~— 36-21A-45. A real estate salesperson's or broker associate's license is inactive if the real~~
15 ~~estate salesperson or broker associate ceases to be associated with a real estate broker or a~~
16 ~~licensed firm.~~

17 Section 17. That § 36-21A-46.1 be amended to read as follows:

18 36-21A-46.1. A responsible broker may, or a real estate salesperson or broker associate
19 employed by or otherwise associated with a responsible broker may, form a business corporation
20 or limited liability company under the following conditions:

21 (1) The business corporation or limited liability company does not engage in real estate
22 transactions as a third-party agent or in any other capacity requiring a license under
23 this chapter;

24 (2) The business corporation or limited liability company does not advertise or otherwise

1 hold itself out as a real estate brokerage company;

2 (3) The ~~employing or associating~~ responsible broker is not relieved of any obligation to
3 supervise the employed or associated licensee or any other requirement of this
4 chapter or the rules ~~adopted~~ promulgated pursuant to this chapter;

5 (4) The employed or associated licensee is not relieved of any personal liability for any
6 licensed activities by interposing the corporate or limited liability form;

7 (5) The business corporation or limited liability company is owned solely by a broker,
8 ~~an individual real estate~~ a salesperson, or broker associate, or by that licensee and that
9 licensee's spouse, or by that licensee and other licensees within the same firm as that
10 licensee; and

11 (6) The business corporation or limited liability company is approved by and registered
12 with the commission. The registration fee for an approved business corporation or
13 limited liability company shall be established by rule promulgated pursuant to
14 chapter 1-26. The fee may not exceed one hundred dollars.

15 Section 18. That § 36-21A-47 be amended to read as follows:

16 36-21A-47. The commission may promulgate rules pursuant to chapter 1-26 to provide for
17 the issuance of a restricted broker's license to auctioneers, property managers, mortgage brokers,
18 or ~~such other categories as the commission determines~~ time-share or residential-rental agents.

19 The licensee may perform only those duties specified by the license. If the licensee exceeds the
20 authority granted, ~~his~~ the license may be terminated and criminal proceedings brought against
21 ~~him~~ the licensee.

22 Section 19. That § 36-21A-49 be amended to read as follows:

23 36-21A-49. The commission shall set, by rule promulgated pursuant to chapter 1-26, an
24 application fee not to exceed four hundred dollars. This fee shall accompany an application for

1 ~~a real estate salesperson's, broker associate's, or broker's license including restricted licenses~~
2 individual licensure.

3 Section 20. That § 36-21A-51 be repealed.

4 ~~— 36-21A-51. Every person licensed as a real estate broker shall have and maintain a fixed~~
5 ~~place of business within this state for the transaction of the real estate business. The license of~~
6 ~~broker and the license of each licensee associated with the broker shall be prominently displayed~~
7 ~~in the office. This section does not apply to the holder of a property manager license if~~
8 ~~provisions are made with the commission for auditing the licensee's records.~~

9 Section 21. That § 36-21A-57 be repealed.

10 ~~— 36-21A-57. The change of association by an active real estate salesperson or broker~~
11 ~~associate without notice to the commission may cause cancellation of the license by the~~
12 ~~commission.~~

13 Section 22. That § 36-21A-59 be repealed.

14 ~~— 36-21A-59. No real estate salesperson or broker associate may perform any of the acts~~
15 ~~contemplated by this chapter, either directly or indirectly after the licensee's association has been~~
16 ~~terminated and before becoming associated with another broker and has been notified of the~~
17 ~~registration by the commission. A violation of this section is a Class 1 misdemeanor.~~

18 Section 23. That § 36-21A-61 be amended to read as follows:

19 36-21A-61. A ~~person or firm licensed either actively or inactively under this chapter~~
20 licensee, either active or inactive, shall register every two years with the commission and pay
21 a fee set by rule promulgated by the commission pursuant to chapter 1-26 not to exceed two
22 hundred dollars. The application for renewal of a license shall be made to the commission by
23 November thirtieth of the year the current license expires. Failure of a person or firm to register
24 results in ~~cancellation~~ the expiration of the license on December thirty-first. ~~The license may~~

1 ~~be reinstated by filing a new application and requalifying as provided by this chapter.~~

2 Section 24. That § 36-21A-62 be amended to read as follows:

3 36-21A-62. ~~A person licensed under this chapter~~ An individual licensee shall provide to the
4 ~~Real Estate Commission~~ commission proof of participation in ~~not less than twenty-four~~ the
5 following required number of hours of approved continuing education in the preceding two-year
6 period:

7 (1) Responsible broker, broker associate, salesperson, auctioneer, or property manager:
8 not less than twenty-four hours; or

9 (2) Residential rental agent: not less than twelve hours.

10 ~~This section does not apply to attorneys~~ Attorneys licensed in South Dakota, ~~persons~~
11 ~~licensed to sell time-share estates as defined by chapter 43-15B, or mortgage brokers~~ and time-
12 share agents are exempt from this section.

13 Section 25. That § 36-21A-64 be amended to read as follows:

14 36-21A-64. ~~The commission shall withhold the license~~ An individual licensee who submits
15 a renewal of a person who registration application but does not provide proof of continuing
16 education ~~with the registration application, as required by § 36-21A-62, shall be an inactive~~
17 licensee until proof of such continuing education has been ~~presented~~ provided to the
18 commission.

19 Section 26. That § 36-21A-66 be amended to read as follows:

20 36-21A-66. A licensee who fails to ~~file an application and fee for biennial registration may~~
21 ~~suspend the cancellation of the license by filing~~ meet the renewal requirements of § 36-21A-61
22 may file a late registration application and pay a late registration fee in an amount not to exceed
23 twenty dollars for each month or fraction of a month that has passed since November thirtieth.
24 The fee shall be set by the commission by rule promulgated pursuant to chapter 1-26. ~~However,~~

1 ~~no~~ No late application may be accepted by the commission after June thirtieth. A licensee may
2 not perform any of the actions enumerated within this chapter prior to the commission renewing
3 the license.

4 Section 27. That § 36-21A-69 be repealed.

5 ~~— 36-21A-69. When surrendering his license or when an order of suspension or revocation of~~
6 ~~his license becomes final, a licensee shall forward the license and identification card at once to~~
7 ~~the commission.~~

8 Section 28. That § 36-21A-71 be amended to read as follows:

9 36-21A-71. Unprofessional conduct includes the following:

- 10 (1) Violating any provisions of this chapter or any rule promulgated by the commission;
- 11 (2) Making a material false statement in the licensee's application for a license or in any
12 information furnished to the commission;
- 13 (3) Making any substantial and willful misrepresentation with reference to a transaction
14 which is injurious to any party;
- 15 (4) Making any false promise or advertisement of a character such as to influence,
16 persuade or induce a party to a transaction to the party's injury or damage;
- 17 (5) Failure to account for or to remit, within a reasonable time, any moneys coming into
18 the licensee's possession belonging to others, commingling funds of others with the
19 licensee's own, failing to keep the funds of others in an escrow or trust account with
20 a ~~bank or other recognized depository in this state~~ federally insured financial
21 institution, or failing to keep records relative to the deposit, which shall contain any
22 information as may be prescribed by this chapter or the rules promulgated by the
23 commission pursuant to chapter 1-26 relative thereto;
- 24 (6) Being convicted, or pleading guilty or nolo contendere before a court of competent

1 jurisdiction in this or any other state, or before any federal court, of a misdemeanor
2 involving moral turpitude or a felony arising under the laws of this state or under the
3 laws of the United States or any other state that would be a misdemeanor involving
4 moral turpitude or a felony under the laws of this state;

5 (7) Claiming or taking any secret or undisclosed amount of compensation or the failure
6 of a licensee to reveal to the licensee's principal or employer the full amount of
7 compensation in connection with any acts for which a license is required under this
8 chapter;

9 (8) Failing or refusing upon demand to produce any document, book, or record in the
10 licensee's possession or under the licensee's control, concerning a transaction under
11 investigation by the commission;

12 (9) Offering real property for sale or lease without the knowledge and prior written
13 consent of the owner or the owner's authorized agent or on any terms other than those
14 authorized by the owner or the owner's authorized agent;

15 (10) Any violation of federal or state fair housing requirements;

16 (11) Failing or refusing upon demand to furnish copies including reproductions of any
17 document pertaining to any transaction dealing with real estate to a person whose
18 signature is affixed thereto;

19 (12) Paying compensation or commission in connection with a transaction to any person
20 who is not licensed under this chapter;

21 (13) Failing to disclose to an owner in writing the licensee's intention or true position if
22 the licensee directly or indirectly through a third party purchases for himself or
23 herself or acquires or intends to acquire any interest in or any option to purchase
24 property which has been listed with the licensee's office for sale or lease;

- 1 (14) Failure by a broker to deliver to the seller in every real estate transaction, at the time
2 the transaction is consummated, a complete, detailed closing statement, showing all
3 of the receipts and disbursements for the seller; also failure to deliver to the buyer a
4 complete statement showing all money received in the transaction from the buyer and
5 how and for what the same was disbursed, and to retain true copies of the statements
6 in the broker's files; also failure to date and sign the closing statement;
- 7 (15) Any other conduct which constitutes dishonesty or fraudulent conduct, whether
8 arising within or without the pursuit of the licensee's license privilege;
- 9 (16) Accepting employment or compensation for appraising real estate contingent upon
10 reporting a predetermined value or issuing an appraisal report on real estate in which
11 the licensee has an undisclosed interest;
- 12 (17) The revocation or suspension of any other license held by a person licensed under
13 this chapter. Any other license includes being licensed as an attorney; real estate
14 ~~salesman~~ salesperson, broker or appraiser; insurance licensee; securities licensee; and
15 other similar regulated occupation, trade or profession;
- 16 (18) Using, proposing the use, agreeing to the use or knowingly permitting the use of two
17 or more contracts of sale, earnest money agreements or loan applications, one of
18 which is not made known to the prospective lender or the loan guarantor, to enable
19 the purchaser to obtain a larger loan than the true sales price would allow or to enable
20 the purchaser to qualify for a loan which the purchaser otherwise could not obtain;
- 21 (19) Failing to promptly give a copy of an offer to purchase to the purchaser;
- 22 (20) Failing to promptly give the seller every written offer to purchase obtained;
- 23 (21) Upon obtaining an acceptance of the offer signed by the seller, failing to promptly
24 give a copy of it to both purchaser and seller;

- 1 (22) Failing to make certain that all of the terms and conditions of the transaction are
2 included in the offer to purchase;
- 3 (23) Giving a title opinion upon the merchantability of the title to property in any
4 transaction in which the licensee participated;
- 5 (24) Preparing any legal document, giving any legal advice, or otherwise engaging in the
6 practice of law. Preparation of the following documents is exempt from this
7 provision:
 - 8 (a) ~~Listing Agency~~ agreements or extensions;
 - 9 (b) Offers to purchase;
 - 10 (c) Offers to lease;
 - 11 (d) Acceptances; and
 - 12 (e) Closing statements;
- 13 (25) Permitting the use of a broker's license to enable licensed ~~salesmen~~ salespersons to
14 establish and carry on a real estate brokerage business if the broker has only
15 insignificant control of the affairs of the business conducted;
- 16 (26) Taking a net listing whereby a licensee agrees to take as compensation the proceeds
17 of a sale over and above the selling price agreed in the listing contract;
- 18 (27) Failing to put in writing all guarantees of sale and other guarantees made by a
19 licensee to the person listing the property for sale;
- 20 (28) Failing to put in writing any agreement to furnish or sell a warranty;
- 21 (29) Attempting to solicit or attempting to secure listings without first advising the owner
22 that the licensee is a licensee and is engaged in real estate brokerage;
- 23 (30) Failing to protect and promote the interests of the client whom the licensee has
24 undertaken to represent to the best of the licensee's ability;

- 1 (31) Failing to deal fairly with all parties to a transaction;
- 2 (32) Committing any act constituting or demonstrating bad faith, incompetency or
3 fraudulent dealings;
- 4 (33) Using the licensee's position to gain undue influence over a prospective buyer, seller,
5 landlord, or tenant, using the licensee's position to coerce a buyer, seller, landlord,
6 or tenant, or using duress on a buyer, seller, landlord, or tenant;
- 7 (34) Issuing an insufficient funds check;
- 8 (35) In a business enterprise that requires licensing by the commission, associating in any
9 manner with another person who has had a license suspended or revoked by action
10 of the commission while the suspension or revocation is in effect. This prohibition
11 includes a corporation, a partnership, an association, a single proprietorship, and an
12 employer-employee relationship. A licensee may act as an agent in a real estate
13 transaction for a person who has had a license suspended or revoked by the
14 commission if the transaction is one that would occur in the ordinary course of the
15 licensee's business;
- 16 (36) Buying, selling, leasing, or exchanging real property under the auspices of a
17 partnership or corporation of which the licensee owns an interest if it is indicated that
18 the purchase or sale is being made by a private party not licensed by the real estate
19 commission;
- 20 (37) Making a listing contract or any other contract with the licensee's principal which
21 allows the licensee to purchase or lease the listed property and charge a commission
22 thereon without obtaining the written consent of the principal to such provision. This
23 written consent shall be in addition to the signing of any listing contract;
- 24 (38) Accepting a note or other nonnegotiable instrument or anything of value not readily

1 negotiable as earnest money on a contract or offer to purchase without the written
2 permission of the licensee's principal;

3 (39) Selling, buying, exchanging or leasing real property in a manner indicating that the
4 licensee is not licensed under this chapter; or

5 (40) Improperly influencing or attempting to influence the development, reporting, result,
6 or review of a real estate appraisal by coercion, extortion, or bribery; withholding or
7 threatened withholding of payment of an appraisal fee; conditioning the payment of
8 an appraisal fee upon the opinion, conclusion, or valuation to be reached; requesting
9 the appraiser report a predetermined opinion, conclusion, or valuation or the desired
10 valuation of any person; or any other act or practice that impairs or attempts to impair
11 an appraiser's independence, objectivity, and impartiality. This subdivision does not
12 apply to the following acts:

13 (a) Requesting an appraiser to consider additional, appropriate property
14 information;

15 (b) Providing further detail, substantiation, or explanation of the appraiser's value
16 conclusion;

17 (c) Correcting errors in the appraisal report;

18 (d) Withholding payment of an appraisal fee based upon a bona fide dispute
19 regarding the appraiser's compliance with the appraisal standards adopted by
20 the Department of Labor and Regulation;

21 (e) Retaining a real estate appraiser from panels or lists on a rotating basis; or

22 (f) Supplying the appraiser with information the appraiser is required to analyze
23 under the appraisal standards adopted by the Department of Labor and
24 Regulation such as agreements of sale, options, or listings of the property to

1 be valued.

2 Section 29. That § 36-21A-79 be amended to read as follows:

3 36-21A-79. A ~~real-estate~~ responsible broker is responsible for the real estate activities
4 conducted by ~~his salesmen and broker associates~~ affiliated licensees, whether as employees or
5 independent contractors.

6 Section 30. That § 36-21A-80 be amended to read as follows:

7 36-21A-80. A ~~real-estate~~ responsible broker shall remit immediately to the responsible
8 broker's principal all money received by the responsible broker belonging to the principal unless,
9 by the terms of a written employment contract, the responsible broker is authorized to retain
10 possession of the money until the final settlement and consummation of the transaction. In that
11 event the responsible broker shall deposit the money in a federally insured financial institution
12 in a special trust account on the first legal banking day after the acceptance of the contract. The
13 account shall be reconciled to the bank statements, trust ledger, and check register at least
14 monthly. The money may not be used by the ~~real-estate~~ responsible broker except in connection
15 with the transaction as authorized by the principal.

16 Section 31. That § 36-21A-83 be amended to read as follows:

17 36-21A-83. A ~~real-estate~~ responsible broker who remits immediately to ~~his~~ the principal all
18 money received by ~~him~~ the responsible broker belonging to the principal without using a trust
19 account shall maintain for at least four years the records that completely disclose all financial
20 dealings between the principal and the responsible broker.

21 Section 32. That § 36-21A-84 be amended to read as follows:

22 36-21A-84. No ~~licensee~~ responsible broker is entitled to any part of the money paid to ~~him~~
23 the responsible broker in any transaction as part of ~~his~~ the responsible broker's compensation
24 until the transaction has been consummated or terminated. The commission may promulgate

1 rules, pursuant to chapter 1-26, to make reasonable exceptions to this section.

2 Section 33. That § 36-21A-92 be repealed.

3 ~~36-21A-92. Terms used in §§ 36-21A-92 to 36-21A-100, inclusive, mean:~~

4 ~~(1) "Commission," the South Dakota Real Estate Commission;~~

5 ~~(2) "Person," an individual, corporation, limited liability company, partnership, limited~~
6 ~~partnership, association, joint venture or any other entity, foreign or domestic;~~

7 ~~(3) "Subdivider," a person who causes land to be subdivided into a subdivision for that~~
8 ~~person or others, or who undertakes to develop a subdivision. However, this does not~~
9 ~~include a public agency or officer authorized by law to create subdivisions;~~

10 ~~(4) "Subdivision," or "subdivided land," any real estate offered for sale and which has~~
11 ~~been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and~~
12 ~~following, 15 U.S.C. 1701 and following, as such Act existed on January 1, 1980, or~~
13 ~~real estate located out of this state which is divided or proposed to be divided into~~
14 ~~fifty or more lots, parcels or units.~~

15 Section 34. That § 36-21A-133 be amended to read as follows:

16 36-21A-133. Without the express written authority of the seller or landlord, no licensee
17 acting as a seller's or landlord's agent may disclose any confidential information about the client
18 unless disclosure is required by statute or rule or failure to disclose the information would
19 constitute misrepresentation. No cause of action for any person may arise against a seller's agent
20 for making any required or permitted disclosure.

21 A seller's agent does not terminate the seller's agency relationship by making any required
22 or permitted disclosures.