

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

400U0294

## SENATE ENGROSSED NO. **SB 66** - 01/23/2013

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  
15 property as defined in subdivision 36-21A-6 (3) at public offering to the highest



- 1 bidder;
- 2 (4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts  
3 or agrees to auction real estate or business opportunities;
- 4 (5) "Broker associate," any broker acting in association with or under the auspices of a  
5 responsible broker;
- 6 (6) "Client," any person, including a seller/landlord or a buyer/tenant, who has entered  
7 into an agency relationship with a real estate licensee;
- 8 (7) "Commission," the South Dakota Real Estate Commission;
- 9 (8) "Consumer," any person seeking or receiving services from a real estate broker;
- 10 (9) "Customer," any party to a real estate transaction who does not have an agency  
11 relationship with a licensee;
- 12 (10) "Designated broker," any broker licensee designated by a responsible broker to act  
13 for the company in the conduct of real estate brokerage;
- 14 (11) "In-company transaction," any transaction in which both the seller/landlord and the  
15 buyer/tenant receive real estate services from the same broker or from licensees  
16 associated with the same broker;
- 17 (12) "Licensee," any person holding a license issued pursuant to this chapter;
- 18 (13) "Limited agent," any licensee who has a written agency relationship with both the  
19 seller and the buyer in the same in-company transaction;
- 20 (14) "Person," any individual, corporation, limited liability company, partnership, limited  
21 partnership, association, joint venture or any other entity, foreign or domestic;
- 22 (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an  
23 interest in real property;
- 24 (16) "Responsible broker," any person holding a broker's license issued pursuant to this

1 chapter who is responsible for the real estate activities conducted by those licensees  
2 acting in association with or under the auspices of the responsible broker;

3 (17) "Served actively," if referring to a real estate salesman or broker associate, having the  
4 license on an active status with the commission;

5 (18) "Single agent," any licensee who represents only one party to a transaction;

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

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

14 (21) "Transaction broker," a broker who assists one or more parties with a real estate  
15 transaction without being an agent or advocate for the interests of any party to the  
16 transaction. The term includes the licensees associated with the broker;

17 ~~(20)~~(22) "Transaction broker agreement," a written agreement in which the broker does  
18 not represent either the seller or the buyer in a fiduciary capacity. No  
19 brokerage relationship can be created or implied by word or action alone, but  
20 only by written agreement clarifying the brokerage relationship.

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

22 36-21A-2. For the purposes of this chapter, an advertisement or advertising is any attempt,  
23 by publication or broadcast, whether oral, written or otherwise, to induce a person to use the  
24 services of a licensed real estate broker, real estate salesman or real estate firm.

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

2 36-21A-3. For the purposes of this chapter, an appraisal is the ~~work product of a real estate~~  
3 ~~appraiser which estimates the value of real estate or any interest in real estate~~ act or process of  
4 developing an opinion of value of real estate for another and for compensation.

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

6 ~~36-21A-4. For the purposes of this chapter, an appraiser is any person engaged in the~~  
7 ~~business of estimating real estate values or who advertises or holds himself out to the general~~  
8 ~~public to provide such a service for compensation.~~

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

10 36-21A-9. For the purposes of this chapter, an inactive ~~licensee~~ license is any ~~licensee~~  
11 ~~whose license that has been returned to the commission by the licensees' responsible broker, a~~  
12 ~~licensee who has returned his license to the commission and requested the commission to place~~  
13 ~~the license on inactive status, or a new licensee who has failed to designate a responsible broker~~  
14 placed on inactive status for any of the following reasons:

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

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

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

4        36-21A-12. For the purposes of this chapter, a real estate salesperson is any person who for  
5 compensation or consideration is associated with a ~~real estate~~ responsible broker, to sell or offer  
6 to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of  
7 real property, or of the property's improvements, or any business opportunity or business, or its  
8 goodwill, inventory, or fixtures, or any interest therein, or to sell or offer to sell, or to buy or  
9 offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of a mobile or  
10 manufactured home which has been registered under the provisions of chapters 32-3 to 32-5B,  
11 inclusive. A salesperson may ~~give opinions of value~~ perform a broker price opinion or  
12 comparative market analysis for purposes of purchase, sale, lease, rental, or exchange of real  
13 property.

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

15        36-21A-18. The commission shall employ an executive director who shall ~~furnish bond as~~  
16 ~~required by the commission and who shall keep~~ perform the following duties:

- 17        (1)    Keep a record of all proceedings, transactions, communications and official acts of  
18            the commission. ~~The executive director shall be;~~
- 19        (2)    Be custodian of all moneys received ~~and shall deposit;~~
- 20        (3)    Deposit all moneys in depositories designated by the commission. ~~He shall be;~~
- 21        (4)    Be custodian of all records of the commission ~~and perform such; and~~
- 22        (5)    Such other duties as the commission may require.

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

24        36-21A-21. The commission shall meet annually and at other times upon call by the

1 executive director, ~~chairman~~ chairperson, or upon a written request of three or more members  
2 of the commission. The place of meeting of the commission shall be at the office of the  
3 executive director or other places within South Dakota as designated by the commission.

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

5 36-21A-26. The executive director of the commission shall, ~~at least annually, publish~~ make  
6 available a list of the names and addresses of all persons licensed by the commission under the  
7 provisions of this chapter, together with such other information relative to the enforcement of  
8 the provisions of this chapter as the commission determines to be of interest to the public. The  
9 commission may charge a reasonable fee to persons who request the list.

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

11 36-21A-28. No person, unless exempted under this chapter, may ~~act as a licensee under this~~  
12 ~~chapter, assume to act as a licensee or advertise as a licensee~~ offer, attempt or agree to perform,  
13 or perform any act enumerated within this chapter without a an active license issued by the  
14 commission. No person may collect compensation as a licensee under this chapter without  
15 having first complied with the provisions of this chapter. ~~A violation of this section is a Class~~  
16 ~~† misdemeanor.~~

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

18 36-21A-30.2. Any broker associate receiving initial licensure as a broker associate after June  
19 30, 2009, shall complete sixty class hours of education in a course of study approved by the  
20 commission given by instructors approved by the commission or in an independent study or  
21 distance education course approved by the commission. The broker associate shall complete the  
22 sixty class hours in prescribed subject matter by the second active renewal deadline with thirty  
23 class hours completed during the initial active licensing period and thirty class hours completed  
24 during the second active licensing period. The thirty class hours completed during the initial

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

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

6 36-21A-34.1. ~~Any person~~ An active licensed as a nonresident real estate salesperson  
7 ~~pursuant to this chapter, who establishes residency in South Dakota,~~ shall, ~~within two years of~~  
8 ~~January 1, 2003,~~ complete upgrade to a broker associate license by completing the following  
9 before the current license expires: complete forty hours of prescribed education in a course  
10 approved by the commission; submit a broker associate license application; and submit the  
11 required license application fee.

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

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

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

23 ~~— 36-21A-34.2. Any salesperson who has completed the requirements of § 36-21A-34.1 shall~~  
24 ~~file an application for a broker associate license before the end of the current license term.~~

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

2 36-21A-36.1. Upon notification in writing that the person has passed the examination, the  
3 person shall file the appropriate application for license with all the required documents to the  
4 ~~Real Estate Commission~~ commission within sixty days of the notice date. If the person fails to  
5 file an application and proof of required education within the sixty-day period, the person's  
6 registration and all rights deriving from a passing score are canceled.

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

8 36-21A-43. An applicant ~~currently licensed~~ who holds an active license in another state and  
9 who has successfully passed the real estate licensing examination ~~given in another~~ in that same  
10 state ~~need only take~~ may obtain a similar level of licensure in South Dakota if the applicant  
11 successfully passes the state portion of the examination in South Dakota.

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

13 ~~36-21A-45. A real estate salesperson's or broker associate's license is inactive if the real~~  
14 ~~estate salesperson or broker associate ceases to be associated with a real estate broker or a~~  
15 ~~licensed firm.~~

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

17 36-21A-46.1. A responsible broker may, or a real estate salesperson or broker associate  
18 employed by or otherwise associated with a responsible broker may, form a business corporation  
19 or limited liability company under the following conditions:

- 20 (1) The business corporation or limited liability company does not engage in real estate  
21 transactions as a third-party agent or in any other capacity requiring a license under  
22 this chapter;
- 23 (2) The business corporation or limited liability company does not advertise or otherwise  
24 hold itself out as a real estate brokerage company;



- 1       (3) The ~~employing or associating~~ responsible broker is not relieved of any obligation to  
2       supervise the employed or associated licensee or any other requirement of this  
3       chapter or the rules ~~adopted~~ promulgated pursuant to this chapter;
- 4       (4) The employed or associated licensee is not relieved of any personal liability for any  
5       licensed activities by interposing the corporate or limited liability form;
- 6       (5) The business corporation or limited liability company is owned solely by a broker,  
7       ~~an individual real estate a salesperson, or broker associate,~~ or by that licensee and that  
8       licensee's spouse, or by that licensee and other licensees within the same firm as that  
9       licensee; and
- 10      (6) The business corporation or limited liability company is approved by and registered  
11      with the commission. The registration fee for an approved business corporation or  
12      limited liability company shall be established by rule promulgated pursuant to  
13      chapter 1-26. The fee may not exceed one hundred dollars.

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

15      36-21A-47. The commission may promulgate rules pursuant to chapter 1-26 to provide for  
16      the issuance of a restricted broker's license to auctioneers, property managers, mortgage brokers,  
17      ~~or such other categories as the commission determines~~ time-share or residential-rental agents.  
18      The licensee may perform only those duties specified by the license. If the licensee exceeds the  
19      authority granted, ~~his~~ the license may be terminated and criminal proceedings brought against  
20      ~~him~~ the licensee.

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

22      36-21A-49. The commission shall set, by rule promulgated pursuant to chapter 1-26, an  
23      application fee not to exceed four hundred dollars. This fee shall accompany an application for  
24      ~~a real estate salesperson's, broker associate's, or broker's license including restricted licenses~~

1 individual licensure.

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

3 ~~—36-21A-51. Every person licensed as a real estate broker shall have and maintain a fixed~~  
4 ~~place of business within this state for the transaction of the real estate business. The license of~~  
5 ~~broker and the license of each licensee associated with the broker shall be prominently displayed~~  
6 ~~in the office. This section does not apply to the holder of a property manager license if~~  
7 ~~provisions are made with the commission for auditing the licensee's records.~~

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

9 ~~—36-21A-57. The change of association by an active real estate salesperson or broker~~  
10 ~~associate without notice to the commission may cause cancellation of the license by the~~  
11 ~~commission.~~

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

13 ~~—36-21A-59. No real estate salesperson or broker associate may perform any of the acts~~  
14 ~~contemplated by this chapter, either directly or indirectly after the licensee's association has been~~  
15 ~~terminated and before becoming associated with another broker and has been notified of the~~  
16 ~~registration by the commission. A violation of this section is a Class 1 misdemeanor.~~

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

18 36-21A-61. A person or firm licensed either actively or ~~inactively~~ under this chapter  
19 licensee, either active or inactive, shall register every two years with the commission and pay  
20 a fee set by rule promulgated by the commission pursuant to chapter 1-26 not to exceed two  
21 hundred dollars. The application for renewal of a license shall be made to the commission by  
22 November thirtieth of the year the current license expires. Failure of a person or firm to register  
23 results in ~~cancellation~~ the expiration of the license on December thirty-first. ~~The license may~~  
24 ~~be reinstated by filing a new application and requalifying as provided by this chapter.~~

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

2 36-21A-62. ~~A person licensed under this chapter~~ An individual licensee shall provide to the  
3 ~~Real Estate Commission~~ commission proof of participation in ~~not less than twenty-four~~ the  
4 following required number of hours of approved continuing education in the preceding two-year  
5 period:

- 6 (1) Responsible broker, broker associate, salesperson, auctioneer, or property manager:  
7 not less than twenty-four hours; or  
8 (2) Residential rental agent: not less than twelve hours.

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

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

13 36-21A-64. ~~The commission shall withhold the license~~ An individual licensee who submits  
14 a renewal of a person who registration application but does not provide proof of continuing  
15 education ~~with the registration application,~~ as required by § 36-21A-62, shall be an inactive  
16 licensee until proof of such continuing education has been ~~presented~~ provided to the  
17 commission.

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

19 36-21A-66. A licensee who fails to ~~file an application and fee for biennial registration may~~  
20 ~~suspend the cancellation of the license by filing~~ meet the renewal requirements of § 36-21A-61  
21 may file a late registration application and pay a late registration fee in an amount not to exceed  
22 twenty dollars for each month or fraction of a month that has passed since November thirtieth.  
23 The fee shall be set by the commission by rule promulgated pursuant to chapter 1-26. ~~However,~~  
24 ~~no~~ No late application may be accepted by the commission after June thirtieth. A licensee may

1 not perform any of the actions enumerated within this chapter prior to the commission renewing  
2 the license.

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

4 ~~— 36-21A-69. When surrendering his license or when an order of suspension or revocation of~~  
5 ~~his license becomes final, a licensee shall forward the license and identification card at once to~~  
6 ~~the commission.~~

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

8 36-21A-71. Unprofessional conduct includes the following:

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

- 1 involving moral turpitude or a felony arising under the laws of this state or under the  
2 laws of the United States or any other state that would be a misdemeanor involving  
3 moral turpitude or a felony under the laws of this state;
- 4 (7) Claiming or taking any secret or undisclosed amount of compensation or the failure  
5 of a licensee to reveal to the licensee's principal or employer the full amount of  
6 compensation in connection with any acts for which a license is required under this  
7 chapter;
- 8 (8) Failing or refusing upon demand to produce any document, book, or record in the  
9 licensee's possession or under the licensee's control, concerning a transaction under  
10 investigation by the commission;
- 11 (9) Offering real property for sale or lease without the knowledge and prior written  
12 consent of the owner or the owner's authorized agent or on any terms other than those  
13 authorized by the owner or the owner's authorized agent;
- 14 (10) Any violation of federal or state fair housing requirements;
- 15 (11) Failing or refusing upon demand to furnish copies including reproductions of any  
16 document pertaining to any transaction dealing with real estate to a person whose  
17 signature is affixed thereto;
- 18 (12) Paying compensation or commission in connection with a transaction to any person  
19 who is not licensed under this chapter;
- 20 (13) Failing to disclose to an owner in writing the licensee's intention or true position if  
21 the licensee directly or indirectly through a third party purchases for himself or  
22 herself or acquires or intends to acquire any interest in or any option to purchase  
23 property which has been listed with the licensee's office for sale or lease;
- 24 (14) Failure by a broker to deliver to the seller in every real estate transaction, at the time

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

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

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



- 1 permission of the licensee's principal;
- 2 (39) Selling, buying, exchanging or leasing real property in a manner indicating that the  
3 licensee is not licensed under this chapter; or
- 4 (40) Improperly influencing or attempting to influence the development, reporting, result,  
5 or review of a real estate appraisal by coercion, extortion, or bribery; withholding or  
6 threatened withholding of payment of an appraisal fee; conditioning the payment of  
7 an appraisal fee upon the opinion, conclusion, or valuation to be reached; requesting  
8 the appraiser report a predetermined opinion, conclusion, or valuation or the desired  
9 valuation of any person; or any other act or practice that impairs or attempts to impair  
10 an appraiser's independence, objectivity, and impartiality. This subdivision does not  
11 apply to the following acts:
- 12 (a) Requesting an appraiser to consider additional, appropriate property  
13 information;
- 14 (b) Providing further detail, substantiation, or explanation of the appraiser's value  
15 conclusion;
- 16 (c) Correcting errors in the appraisal report;
- 17 (d) Withholding payment of an appraisal fee based upon a bona fide dispute  
18 regarding the appraiser's compliance with the appraisal standards adopted by  
19 the Department of Labor and Regulation;
- 20 (e) Retaining a real estate appraiser from panels or lists on a rotating basis; or
- 21 (f) Supplying the appraiser with information the appraiser is required to analyze  
22 under the appraisal standards adopted by the Department of Labor and  
23 Regulation such as agreements of sale, options, or listings of the property to  
24 be valued.

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

2 36-21A-79. A ~~real estate~~ responsible broker is responsible for the real estate activities  
3 conducted by ~~his salesmen and broker associates~~ affiliated licensees, whether as employees or  
4 independent contractors.

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

6 36-21A-80. A ~~real estate~~ responsible broker shall remit immediately to the responsible  
7 broker's principal all money received by the responsible broker belonging to the principal unless,  
8 by the terms of a written employment contract, the responsible broker is authorized to retain  
9 possession of the money until the final settlement and consummation of the transaction. In that  
10 event the responsible broker shall deposit the money in a federally insured financial institution  
11 in a special trust account on the first legal banking day after the acceptance of the contract. The  
12 account shall be reconciled to the bank statements, trust ledger, and check register at least  
13 monthly. The money may not be used by the ~~real estate~~ responsible broker except in connection  
14 with the transaction as authorized by the principal.

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

16 36-21A-83. A ~~real estate~~ responsible broker who remits immediately to ~~his~~ the principal all  
17 money received by ~~him~~ the responsible broker belonging to the principal without using a trust  
18 account shall maintain for at least four years the records that completely disclose all financial  
19 dealings between the principal and the responsible broker.

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

21 36-21A-84. No ~~licensee~~ responsible broker is entitled to any part of the money paid to ~~him~~  
22 the responsible broker in any transaction as part of ~~his~~ the responsible broker's compensation  
23 until the transaction has been consummated or terminated. The commission may promulgate  
24 rules, pursuant to chapter 1-26, to make reasonable exceptions to this section.

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

2 ~~36-21A-92. Terms used in §§ 36-21A-92 to 36-21A-100, inclusive, mean:~~

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

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

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

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

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

15 36-21A-133. Without the express written authority of the seller or landlord, no licensee  
16 acting as a seller's or landlord's agent may disclose any confidential information about the client  
17 unless disclosure is required by statute or rule or failure to disclose the information would  
18 constitute misrepresentation. No cause of action for any person may arise against a seller's agent  
19 for making any required or permitted disclosure.

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