

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

784Y0368

## HOUSE ENGROSSED NO. **HB 1078** - 2/7/2017

Introduced by: Representatives Conzet, Chase, Gosch, Hawley, Kettwig, Lake, Lust, McPherson, Mickelson, Reed, Rhoden, Rozum, Schoenfish, Wismer, Wollmann, York, and Zikmund and Senators Langer, Cronin, Haverly, Maher, Novstrup, Peters, Sutton, Tidemann, and White

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of teams and team leaders  
2 regarding real estate transactions.

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

4 Section 1. That § 36-21A-1 be amended to read:

5 36-21A-1. Terms used in this chapter mean:

6 (1) "Agency," any relationship by which one person acts for or on behalf of a client  
7 subject to the client's reasonable direction and control;

8 (2) "Agency agreement," a written agreement between a broker and a client ~~which~~ that  
9 creates a fiduciary relationship between the broker and client. The payment or  
10 promise of payment of compensation to a responsible broker does not determine  
11 whether an agency relationship has been created between any responsible broker or  
12 licensees associated with the responsible broker and a client;

13 (3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business  
14 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~~ that  
10 has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590  
11 and following, 15 U.S.C. 1701 and following, as ~~such~~ the Act existed on January 1,  
12 1980, or real estate located out of this state ~~which~~ that is divided or proposed to be  
13 divided into fifty or more lots, parcels, or units;

14 (21) "Team," any two or more persons licensed by the commission who work under the  
15 supervision of the same responsible broker, work together on real estate transactions  
16 to provide real estate brokerage services, represent themselves to the public as being  
17 part of a team or group, and are designated by a team or group name;

18 (22) "Team leader," any person licensed by the commission and appointed or recognized  
19 by the person's responsible or designated broker as the leader for the person's team  
20 or group of licensees associated with the same responsible broker. A team leader  
21 shall have served actively for two years as a licensed broker associate;

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

1       ~~(22)~~(24)       "Transaction broker agreement," a written agreement in which the broker does  
2                       not represent either the seller or the buyer in a fiduciary capacity. No  
3                       brokerage relationship can be created or implied by word or action alone, but  
4                       only by written agreement clarifying the brokerage relationship.

5       Section 2. That chapter 36-21A be amended by adding a NEW SECTION to read:

6       A team leader is responsible for supervising the real estate activities of the leader's team  
7 performed under this chapter subject to the overall supervision by the responsible broker.

8       Section 3. That § 36-21A-71 be amended to read:

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 federally insured financial institution, or failing to keep records relative to the  
21           deposit, which shall contain any information as may be prescribed by this chapter or  
22           the rules promulgated by the 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~~ that 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 salesperson, broker or appraiser; insurance licensee; securities licensee; and other  
14 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) 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 salespersons to establish  
13 and carry on a real estate brokerage business if the broker has only insignificant  
14 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~~ that  
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~~ the provision.  
22 This 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       (41) A team leader failing to provide a list of all team members to the leader's responsible  
2       broker;

3       (42) A responsible broker failing to maintain a record of all team leaders and team  
4       members working under the broker;

5       (43) A team leader failing to utilize advertising that clearly identifies the name under  
6       which the responsible broker does business as filed with the commission; or

7       (44) A team leader using team advertising or a team name that would imply that the team  
8       is a separate entity from the brokerage firm with which the team brokers are licensed.

9       Section 4. That § 36-21A-72 be amended to read:

10       36-21A-72. A licensee who advertises shall comply with the following:

11       (1) Each advertisement shall clearly state the name of the firm with which an individual  
12       licensee is associated;

13       (2) Each team advertisement shall clearly state the name of the firm and the name of the  
14       team with which an individual licensee is associated;

15       (3) Each advertisement in which a licensee attempts to secure real estate listings or offers  
16       to purchase, sell or lease property, or perform any other act for which a license is  
17       required under this chapter, shall clearly disclose that the advertised acts or services  
18       are being offered by a licensee; and

19       ~~(3)~~(4) No licensee may make any announcement in any media regarding the sale of property  
20       which gives any impression that the property sold for a price other than the actual  
21       selling price.

22       Notwithstanding subdivisions (1) to ~~(3)~~(4), inclusive, of this section, a licensee may  
23       advertise in the licensee's individual name an offer to sell or lease property of which the licensee  
24       is the owner. The advertisement shall disclose that the owner of the property being sold or

1 leased is a licensee.

2 Section 5. That § 36-21A-89 be amended to read:

3 36-21A-89. The commission may promulgate rules pursuant to chapter 1-26 relating to the  
4 administration and enforcement of the provisions of this chapter in the following areas:

5 (1) Procedures for conducting the commission's business;

6 (2) Procedures and qualifications for application, minimum requirements for  
7 examination, procedures for the examination and the administration of the  
8 examination, the required score for passing the examination, and procedures for  
9 replacement of a license;

10 (3) Requirements for dividing a commission with a broker in another state, requirements  
11 for application for licensure by reciprocity and the practice of a nonresident licensee  
12 in the state;

13 (4) Procedures for application to provide classroom instruction or correspondence work  
14 for prelicensing education, qualifications of the instructors and facilities, and  
15 procedures for approving classroom instruction and correspondence work and for  
16 withdrawing the approval;

17 (5) Procedures for disciplinary proceedings, including requirements for filing a  
18 complaint, dismissal of a complaint, informal and formal resolution of a complaint,  
19 formal complaint and answer requirements, final action and review, disqualification  
20 of a commission member from a hearing and authorization for per diem and mileage;

21 (6) Procedures for declaratory rulings, petitions for rules and contested cases;

22 (7) Requirements for a real estate auction and the requirements, duties and  
23 responsibilities of an auctioneer;

24 (8) Requirements for mortgage brokers, including areas such as trust accounts, record-

1 keeping, written contracts, full disclosure and restrictions on chargeable costs and  
2 expenses;

3 (9) Requirements for continuing education including procedures for granting a certificate  
4 of accreditation; notification of a material change in an approved course offering;  
5 suspension, revocation and denial of course approval; notice to students regarding the  
6 course and opportunity for comment; auditing; certificates of attendance;  
7 preregistration and limits on correspondence courses; ~~and~~

8 (10) Requirements for property managers, including areas such as trust accounts, auditing,  
9 contracts, disclosure, disciplinary matters, financial obligations and records, and  
10 property management accounting; and

11 (11) Requirements for the duties and responsibilities of team members and team leaders.