

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

673B0557

HOUSE BILL NO. 1076

Introduced by: Representatives Chase, Anderson, Bartels, Barthel, Duvall, Finck, Glanzer, Goodwin, Hunhoff, Jensen (Kevin), Lake, Lesmeister, McCleerey, Otten (Herman), Peterson (Kent), Reed, Ring, Rounds, Schoenfish, Smith (Jamie), and York and Senators Schoenbeck, Blare, Cronin, Greenfield (Brock), Jensen (Phil), Otten (Ernie), Rusch, Russell, Smith (VJ), Solano, Steinhauer, and White

1 FOR AN ACT ENTITLED, An Act to revise certain real estate licensee advertising restrictions
2 and grant rule-making authority regarding real estate teams.

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



- 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~~ seller, landlord,
8 buyer, or tenant, who has entered into an agency relationship with a real estate
9 licensee;
- 10 (7) "Commission," the South Dakota Real Estate Commission;
- 11 (8) "Consumer," any person seeking or receiving services from a real estate broker;
- 12 (9) "Customer," any party to a real estate transaction who does not have an agency
13 relationship with a licensee;
- 14 (10) "Designated broker," any broker licensee designated by a responsible broker to act
15 for the company in the conduct of real estate brokerage;
- 16 (11) "In-company transaction," any transaction in which both the ~~seller/landlord~~ seller or
17 landlord and the ~~buyer/tenant~~ buyer or tenant receive real estate services from the
18 same broker or from licensees associated with the same broker;
- 19 (12) "Licensee," any person holding a license issued pursuant to this chapter;
- 20 (13) "Limited agent," any licensee who has a written agency relationship with both the
21 seller and the buyer in the same in-company transaction;
- 22 (14) "Person," any individual, corporation, limited liability company, partnership, limited
23 partnership, association, joint venture or any other entity, foreign or domestic;
- 24 (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an

- 1 interest in real property;
- 2 (16) "Responsible broker," any person holding a broker's license issued pursuant to this
3 chapter who is responsible for the real estate activities conducted by those licensees
4 acting in association with or under the auspices of the responsible broker;
- 5 (17) "Served actively," if referring to a real estate salesman or broker associate, having the
6 license on an active status with the commission;
- 7 (18) "Single agent," any licensee who represents only one party to a transaction;
- 8 (19) "Subdivider," a person who causes land to be subdivided into a subdivision for that
9 person or others, or who undertakes to develop a subdivision. ~~However, this~~ The term
10 does not include a public agency or officer authorized by law to create subdivisions;
- 11 (20) "Subdivision," or "subdivided land," any real estate offered for sale and ~~which that~~
12 has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590
13 and following, 15 U.S.C. 1701 and following, as such Act existed on January 1,
14 1980, or real estate located out of this state ~~which that~~ is divided or proposed to be
15 divided into fifty or more lots, parcels, or units;
- 16 (21) "Team," any two or more licensed persons who work under the supervision of the
17 same responsible broker, work together on real estate transactions to provide real
18 estate brokerage services, who are designated as a team by the responsible broker,
19 and have a team leader designated by the responsible broker;
- 20 (22) "Team leader," any person licensed by the commission and designated by his or her
21 responsible broker as the leader for his or her team. A team leader is responsible for
22 supervising the real estate activities of his or her team performed under this chapter,
23 subject to the overall supervision of the responsible broker of the team leader and
24 team members;

1 advertise in the licensee's individual name an offer to sell or lease property of which the licensee
2 is the owner. The advertisement shall disclose that the owner of the property being sold or
3 leased is a licensee.

4 Section 3. That § 36-21A-89 be amended to read:

5 36-21A-89. The commission may promulgate rules pursuant to chapter 1-26 relating to the
6 administration and enforcement of the provisions of this chapter in the following areas:

- 7 (1) Procedures for conducting the commission's business;
- 8 (2) Procedures and qualifications for application, minimum requirements for
9 examination, procedures for the examination and the administration of the
10 examination, the required score for passing the examination, and procedures for
11 replacement of a license;
- 12 (3) Requirements for dividing a commission with a broker in another state, requirements
13 for application for licensure by reciprocity and the practice of a nonresident licensee
14 in the state;
- 15 (4) Procedures for application to provide classroom instruction or correspondence work
16 for prelicensing education, qualifications of the instructors and facilities, and
17 procedures for approving classroom instruction and correspondence work and for
18 withdrawing the approval;
- 19 (5) Procedures for disciplinary proceedings, including requirements for filing a
20 complaint, dismissal of a complaint, informal and formal resolution of a complaint,
21 formal complaint and answer requirements, final action and review, disqualification
22 of a commission member from a hearing and authorization for per diem and mileage;
- 23 (6) Procedures for declaratory rulings, petitions for rules and contested cases;
- 24 (7) Requirements for a real estate auction and the requirements, duties and

- 1 responsibilities of an auctioneer;
- 2 (8) Requirements for mortgage brokers, including areas such as trust accounts, record-
- 3 keeping, written contracts, full disclosure and restrictions on chargeable costs and
- 4 expenses;
- 5 (9) Requirements for continuing education including procedures for granting a certificate
- 6 of accreditation; notification of a material change in an approved course offering;
- 7 suspension, revocation and denial of course approval; notice to students regarding the
- 8 course and opportunity for comment; auditing; certificates of attendance;
- 9 preregistration and limits on correspondence courses; ~~and~~
- 10 (10) Requirements for property managers, including areas such as trust accounts, auditing,
- 11 contracts, disclosure, disciplinary matters, financial obligations and records, and
- 12 property management accounting; and
- 13 (11) Requirements for establishing and maintaining teams and the requirements, duties,
- 14 and responsibilities of team leaders.