

AN ACT

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

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

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

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

- (1) "Agency," any relationship by which one person acts for or on behalf of a client subject to the client's reasonable direction and control;
- (2) "Agency agreement," a written agreement between a broker and a client that creates a fiduciary relationship between the broker and client. The payment or promise of payment of compensation to a responsible broker does not determine whether an agency relationship has been created between any responsible broker or licensees associated with the responsible broker and a client;
- (3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business property as defined in subdivision 36-21A-6 (3) at public offering to the highest bidder;
- (4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts or agrees to auction real estate or business opportunities;
- (5) "Broker associate," any broker acting in association with or under the auspices of a responsible broker;
- (6) "Client," any person, including a seller, landlord, buyer, or tenant, who has entered into an agency relationship with a real estate licensee;
- (7) "Commission," the South Dakota Real Estate Commission;
- (8) "Consumer," any person seeking or receiving services from a real estate broker;
- (9) "Customer," any party to a real estate transaction who does not have an agency

- relationship with a licensee;
- (10) "Designated broker," any broker licensee designated by a responsible broker to act for the company in the conduct of real estate brokerage;
 - (11) "In-company transaction," any transaction in which both the seller or landlord and the buyer or tenant receive real estate services from the same broker or from licensees associated with the same broker;
 - (12) "Licensee," any person holding a license issued pursuant to this chapter;
 - (13) "Limited agent," any licensee who has a written agency relationship with both the seller and the buyer in the same in-company transaction;
 - (14) "Person," any individual, corporation, limited liability company, partnership, limited partnership, association, joint venture or any other entity, foreign or domestic;
 - (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an interest in real property;
 - (16) "Responsible broker," any person holding a broker's license issued pursuant to this chapter who is responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker;
 - (17) "Served actively," if referring to a real estate salesman or broker associate, having the license on an active status with the commission;
 - (18) "Single agent," any licensee who represents only one party to a transaction;
 - (19) "Subdivider," a person who causes land to be subdivided into a subdivision for that person or others, or who undertakes to develop a subdivision. The term does not include a public agency or officer authorized by law to create subdivisions;
 - (20) "Subdivision," or "subdivided land," any real estate offered for sale and that has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following,

15 U.S.C. 1701 and following, as such Act existed on January 1, 1980, or real estate located out of this state that is divided or proposed to be divided into fifty or more lots, parcels, or units;

- (21) "Team," any two or more licensed persons who work under the supervision of the same responsible broker, work together on real estate transactions to provide real estate brokerage services, who are designated as a team by the responsible broker, and have a team leader designated by the responsible broker;
- (22) "Team leader," any person licensed by the commission and designated by his or her responsible broker as the leader for his or her team. A team leader is responsible for supervising the real estate activities of his or her team performed under this chapter, subject to the overall supervision of the responsible broker of the team leader and team members;
- (23) "Transaction broker," a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction. The term includes the licensees associated with the broker;
- (24) "Transaction broker agreement," a written agreement in which the broker does not represent either the seller or the buyer in a fiduciary capacity. No brokerage relationship may be created or implied by word or action alone, but only by written agreement clarifying the brokerage relationship.

Section 2. That § 36-21A-72 be amended to read:

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

- (1) Each advertisement shall clearly state the name of the firm with which an individual licensee is associated;
- (2) Each advertisement of a real estate team shall clearly state the name of the brokerage

company the team is affiliated with, shall clearly identify the nonlicensed individuals included in the advertisement, and may not contain language that would lead the public to believe that the team is offering real estate brokerage services independent of the real estate broker;

- (3) Each advertisement in which a licensee attempts to secure real estate listings or offers to purchase, sell or lease property, or perform any other act for which a license is required under this chapter, shall clearly disclose that the advertised acts or services are being offered by a licensee; and
- (4) No licensee may make any announcement in any media regarding the sale of property which gives any impression that the property sold for a price other than the actual selling price.

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

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

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

- (1) Procedures for conducting the commission's business;
- (2) Procedures and qualifications for application, minimum requirements for examination, procedures for the examination and the administration of the examination, the required score for passing the examination, and procedures for replacement of a license;
- (3) Requirements for dividing a commission with a broker in another state, requirements for application for licensure by reciprocity and the practice of a nonresident licensee in the state;

- (4) Procedures for application to provide classroom instruction or correspondence work for prelicensing education, qualifications of the instructors and facilities, and procedures for approving classroom instruction and correspondence work and for withdrawing the approval;
- (5) Procedures for disciplinary proceedings, including requirements for filing a complaint, dismissal of a complaint, informal and formal resolution of a complaint, formal complaint and answer requirements, final action and review, disqualification of a commission member from a hearing and authorization for per diem and mileage;
- (6) Procedures for declaratory rulings, petitions for rules and contested cases;
- (7) Requirements for a real estate auction and the requirements, duties and responsibilities of an auctioneer;
- (8) Requirements for mortgage brokers, including areas such as trust accounts, record-keeping, written contracts, full disclosure and restrictions on chargeable costs and expenses;
- (9) Requirements for continuing education including procedures for granting a certificate of accreditation; notification of a material change in an approved course offering; suspension, revocation and denial of course approval; notice to students regarding the course and opportunity for comment; auditing; certificates of attendance; preregistration and limits on correspondence courses;
- (10) Requirements for property managers, including areas such as trust accounts, auditing, contracts, disclosure, disciplinary matters, financial obligations and records, and property management accounting; and
- (11) Requirements for establishing and maintaining teams and the requirements, duties, and responsibilities of team leaders.

An Act to revise certain real estate licensee advertising restrictions and grant rule-making authority regarding real estate teams.

=====

I certify that the attached Act originated in the

HOUSE as Bill No. 1076

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1076
File No. _____
Chapter No. _____

=====

Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State