



2020 South Dakota Legislature

Senate Bill 28

Introduced by: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation

1 **An Act to repeal provisions regarding the restricted real estate broker's license for**
 2 **auctioneers.**

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

4 **Section 1.** That § 36-21A-1 be AMENDED:

5 **36-21A-1. Definitions.**

6 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 that
 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
 13 or 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
 16 bidder;
- 17 (4) "Auctioneer," any person licensed under this chapter before July 1, 2020, or as a
 18 broker associate or responsible broker who auctions, offers, attempts or agrees to
 19 auction real estate or business opportunities;
- 20 (5) "Broker associate," any broker acting in association with or under the auspices of a
 21 responsible broker;
- 22 (6) "Client," any person, including a seller, landlord, buyer, or tenant, who has entered
 23 into an agency relationship with a real estate licensee;
- 24 (7) "Commission," the South Dakota Real Estate Commission;
- 25 (8) "Consumer," any person seeking or receiving services from a real estate broker;

- 1 (9) "Customer," any party to a real estate transaction who does not have an agency
2 relationship with a licensee;
- 3 (10) "Designated broker," any broker licensee designated by a responsible broker to act
4 for the company in the conduct of real estate brokerage;
- 5 (11) "In-company transaction," any transaction in which both the seller or landlord and
6 the buyer or tenant receive real estate services from the same broker or from
7 licensees associated with the same broker;
- 8 (12) "Licensee," any person holding a license issued pursuant to this chapter;
- 9 (13) "Limited agent," any licensee who has a written agency relationship with both the
10 seller and the buyer in the same in-company transaction;
- 11 (14) "Person," any individual, corporation, limited liability company, partnership, limited
12 partnership, association, joint venture or any other entity, foreign or domestic;
- 13 (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an
14 interest in real property;
- 15 (16) "Responsible broker," any person holding a broker's license issued pursuant to this
16 chapter who is responsible for the real estate activities conducted by those licensees
17 acting in association with or under the auspices of the responsible broker;
- 18 (17) "Served actively," if referring to a real estate salesman or broker associate, having
19 the license on an active status with the commission;
- 20 (18) "Single agent," any licensee who represents only one party to a transaction;
- 21 (19) "Subdivider," a person who causes land to be subdivided into a subdivision for that
22 person or others, or who undertakes to develop a subdivision. The term does not
23 include a public agency or officer authorized by law to create subdivisions;
- 24 (20) "Subdivision," or "subdivided land," any real estate offered for sale and that has
25 been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590
26 and following, 15 U.S.C. 1701 and following, as ~~such~~the Act existed on January 1,
27 1980, or real estate located out of this state that is divided or proposed to be divided
28 into fifty or more lots, parcels, or units;
- 29 (21) "Team," any two or more licensed persons who work under the supervision of the
30 same responsible broker, work together on real estate transactions to provide real
31 estate brokerage services, who are designated as a team by the responsible broker,
32 and have a team leader designated by the responsible broker;
- 33 (22) "Team leader," any person licensed by the commission and designated by ~~his or her~~
34 the person's responsible broker as the leader for ~~his or her~~the person's team. A
35 team leader is responsible for supervising the real estate activities of ~~his or her~~the

1 person's team performed under this chapter, subject to the overall supervision of
2 the responsible broker of the team leader and team members;

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

6 (24) "Transaction broker agreement," a written agreement in which the broker does not
7 represent either the seller or the buyer in a fiduciary capacity. No brokerage
8 relationship may be created or implied by word or action alone, but only by written
9 agreement clarifying the brokerage relationship.

10 **Section 2.** That § 36-21A-33 be AMENDED:

11 **36-21A-33. Denial of application--Reasons.**

12 An application may be denied for any one of the following reasons:

- 13 (1) The applicant has written insufficient funds checks within the calendar year before
14 application or has written an insufficient funds check for the application;
- 15 (2) The applicant has been convicted of a felony or of a misdemeanor involving moral
16 turpitude. If the applicant is a firm, a license may be denied if any partner,
17 associate, director, stockholder, officer or responsible broker has been convicted of
18 a felony or of a misdemeanor involving moral turpitude;
- 19 (3) The applicant has been disciplined by a regulatory agency in relation to activities as
20 a real estate salesperson or broker, broker associate, firm, appraiser, mortgage
21 broker, ~~auctioneer~~ or any other regulated licensee, including insurance, securities,
22 law and commodities trading;
- 23 (4) The applicant has failed to satisfy the requirements as provided by this chapter;
- 24 (5) The applicant has failed the prelicense school examination;
- 25 (6) The applicant has not met education requirements;
- 26 (7) The applicant made deliberate misstatements, deliberate omissions,
27 misrepresentations or untruths in the application; or
- 28 (8) The applicant has a current and unpaid judgment filed against the applicant.

29 **Section 3.** That § 36-21A-47 be AMENDED:

30 **36-21A-47. Restricted broker's license--Issuance--Termination and**
31 **prosecution--Promulgation of rules.**

32 The commission may promulgate rules pursuant to chapter 1-26 to provide for the
33 issuance of a restricted broker's license to ~~auctioneers~~, property managers, mortgage

- 1 brokers, or time-share or residential-rental agents. The licensee may perform only those
- 2 duties specified by the license. If the licensee exceeds the authority granted, the license
- 3 may be terminated and criminal proceedings brought against the licensee.