



July/August 2015

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[South Dakota Real Estate Commission](#)

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From the Director

I hope you have had a wonderful summer – it sure goes by way too fast. With summer nearing its end, the Fall Caravan will be here soon. This seminar will cover disclosure and ethics. Please plan on attending this worthwhile educational session. Registration information will be available in the next newsletter.

I'd like to welcome Ken Cotton as our newest commissioner. Commissioner Cotton is an Industry member from Wagner. Ken's knowledge of real estate and the law will be a great attribute to the Commission. I look forward to working with Ken. I would also like to congratulate Commissioner Matt Krogman who was recently reappointed by Governor Dugaard to serve a 3-year term. Commissioner Krogman brings a wealth of knowledge to the Commission as an active broker in the Brookings area.

We have been receiving an increasing amount of phone calls, whereby one licensee wants to "tattle" on another licensee for various things, usually advertising violations (Facebook, etc.). As a reminder, if you want us to look into possible violations, we need to have something in writing. We just don't have the staff resources to run down every little issue that somebody wants to report. I would also encourage licensee to solve these kinds of issues on their own – pick up the phone and call the other agent, etc. Whatever the problem is, it is usually better for you to resolve it without our office being involved in the matter. We do not look into possible violations from anonymous written complaints.

The renewal deadline of November 30 will be here before you know it for those holding licenses expiring on December 31, 2015. If you have an active license expiring on this date and fail to complete your continuing education and/or fail to have errors and omissions insurance covering you on January 1, 2016, your license will be placed on inactive status.

Enjoy the rest of your summer!

Fall Education Caravan Dates

Mark your calendars now for the 2015 Fall Education Caravan "Dealing with Disclosure". Marie Spodek is the featured speaker and will discuss ethical duties concerning property condition disclosure issues as well as the new TILA-RESPA mortgage disclosure requirements and how they will impact a real estate agent's fiduciary duties to clients. Here are the dates and locations:

Wednesday, October 14 – Rapid City Rushmore Plaza Civic Center

Thursday, October 15 – Pierre Ramkota

Wednesday, October 21 – Aberdeen Ramkota

Thursday, October 22 – Sioux Falls Ramkota

Friday, October 23 – Sioux Falls Ramkota

Online and mail-in registration will start in early September. The September/October SD Real Estate VIEW newsletter will feature additional information!

Broker Cooperation in a Small Town

The SD Real Estate Commission office is hearing from brokerage companies and buyers/sellers alike in increasing frequency regarding the refusal of listing agents to cooperate with buyer agents in some of our smaller communities.

It is important to note that all of these situations (and this article) have to do with non-REALTORS in rural areas of the state that are NOT part of a Multiple Listing Service.

Here is the basic scenario: Broker A lists a property. Broker B is representing a buyer and wants to show the property to his/her the buyer client. Broker A refuses to cooperate. Broker A tells Broker B and/or the buyer that if the buyer wants to look at the property, the buyer must deal directly with Broker A, as a customer to the transaction.

When a broker and seller enter into an agency agreement, the seller must choose whether or not their broker is to cooperate with other agents. If the seller chooses “Yes” and then the broker refuses to cooperate, the broker has (at the very least!) failed to perform the terms of the written agreement, which may be cause for disciplinary action by the Commission.

But what if the seller chooses “No” to agent cooperation on the agreement? Is it the seller’s right to choose this? Certainly. Could the seller have a good reason not to want their agent to cooperate with other agents? Again, yes it is possible. However, that decision not to cooperate **MUST BE DIRECTED BY THE CLIENT**, not the agent, and only after the client is made fully aware of how that choice may impact the potential to attract buyers.

Unfortunately, many sellers and buyers simply sign whatever agency agreement was put in front of them, without fully understanding what the agreement actually means. While they are responsible for seeking legal advice before entering into any agreement if they do not understand the terms, licensees have a duty to **FULLY** explain these agreements. From SDCL 36-21A-130: Licensees **MUST** “...provide a clear and complete explanation of the broker’s representation of the interest of the seller or buyer...” This is the LAW.

The issue at the center of this is money. The commission percentage is sometimes lower in a small town than what may be charged by brokerage companies in larger areas that participate in an MLS system. Some of these brokerage firms “don’t DO buyer representation here in this area” and so this becomes the basis for why there is an unwillingness to cooperate with firms that do represent buyers.

Although the seller may think they are getting a better deal because of a low commission rate, it may cost in the long run. The seller may actually benefit from his/her agent working with buyer agents. First, cooperation may mean a higher exposure for the listed property, a larger pool of eligible buyers which can lead to competitive bidding, and a higher selling price. Second, the transaction may have a better chance to make it to closing because the buyer has a professional working on their behalf to help them through the process. For the seller’s agent, having another agent represent the buyer can reduce the liability for the seller’s agent by avoiding a potential conflict of interest.

Let’s address a couple of things. First, buyer representation is here...even in SD...even in the small towns. A brokerage company can establish its own agency policy and if buyer representation is not a service the company provides, fine. But, if a buyer already has his/her own agent, that is the BUYER’s choice. It is not up to the seller or the seller’s agent.

Second, cooperation does NOT have to include compensation. These are two different items on the listing agreement. The seller can authorize the agent to cooperate with a buyer’s agent, but that doesn’t mean that the seller’s agent must share the commission. The buyer may need to compensate the agent they have hired to work on their behalf. The buyer’s agent needs to have the discussion with the client about whether they would be willing to pay for their services if the listing agent will not. This needs to happen **LONG** before writing up an offer to purchase.

Broker Cooperation (cont.)

There are compensation strategies that can allow for cooperation between agents. Offering a flat fee to a buyer's agent, or using two different commission rates depending on if a buyer's agents is involved are just a couple of examples.

When sellers are properly informed exactly what the effects the noncooperation may have on their real estate transaction, most are going to want their broker to cooperate with other agents. Uninformed sellers are often unpleasantly surprised when a buyer's agent calls them directly to let them know they have an interested buyer client but could not get passed the listing agent to show the property. This should not be the moment the seller realizes that the little yes/no checkboxes on the listing agreement actually mean something.

The law requires agents to promote the interest of the client with the utmost good faith, loyalty and fidelity. When letting compensation issues dictate the relationship, whose needs are being put first, the client's or the agent's? Can the answer be justified in writing to the Commission office in the event of a complaint?

Buyer agency, flat-fee compensation, transactional brokerage – the practice of real estate has evolved and licensees must keep up. A consumer's choice to have their own representation must be respected.

HUD Charges South Dakota Property Owners with Discriminating Against Resident with Disabilities

Editor's Note – Although the persons charged in this case are not real estate licensees, it is a good reminder that fair housing is a concern in South Dakota.

July 16, 2015 WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) announced that it is charging the owners and landlords of a 36-unit complex in Sioux Falls, SD with violating the Fair Housing Act by initially refusing to allow a resident with disabilities to have an emotional support animal. HUD's charge alleges that even after the resident obtained a support dog, the owners, Robert Christensen, Linda Christensen, and Viking Villas, LLC, placed overly burdensome requirements on the resident's use of the dog.

The Fair Housing Act requires housing providers to make reasonable accommodations in policies or practices when a person with a disability requires such accommodations, including granting waivers to "no-pet" policies for persons who require assistance or support animals. Additionally, the law makes it unlawful to make housing unavailable to any person because of a disability.

"Housing providers need to understand that many persons with disabilities need support animals to assist them in life's daily functions," said Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity. "HUD remains committed to taking action when it learns that housing providers are failing to meet their obligation to provide reasonable accommodations when needed."

The case came to HUD's attention when the woman, who has a mental disability, filed a complaint alleging that the apartment owners initially refused to allow her to have a support animal and asked her to give 60-days' notice to vacate the apartment if she insisted on getting one. When she obtained a dog and requested a reasonable accommodation to keep the animal, the owners requested verification of the animal's proper inoculations and licensure with the city before responding to her request. Upon granting her request, they also required her to sign a "Companion Animal/Pet Policy Agreement" that included discriminatory provisions that (1) allowed the landlords to revoke approval of the animal at their "sole discretion;" (2) imposed size, weight, and breed limitations on assistance animals; (3) required that assistance animals be more than six months old at the time they are acquired; (4) allowed the landlord to enter the apartment to inspect for damage suspected to have been caused by the assistance animal; and (5) allowed the landlord to evict her for failure to comply with any of the agreement's provisions.

HUD Charges (cont.)

Eventually the woman moved out for fear of losing her housing because of her support animal.

HUD's charge will be heard by a United States Administrative Law Judge unless any party to the charge elects to have the case heard in federal district court. If an administrative law judge finds after a hearing that discrimination has occurred, he may award damages to the woman for the harm caused her by the discrimination. The judge may also order injunctive relief and other equitable relief, as well as payment of attorney fees. In addition, the judge may impose fines to vindicate the public interest. If the matter is decided in federal court, the judge may also award punitive damages.

New Licenses

Auctioneer

Peterson, Cody – Avon

Timeshare Agent

Lawler, Jeffrey L - Deadwood

Broker Associate

Anderson, Michaela S – Spearfish
Armstrong, Bailey H – Pierre
Carlin, Jeremy – Rapid City
Engelmann, Matthew C – Miller
Gosch, Spencer R – Glenham
Hix, Amy – Sioux Falls
Jahn, Tracy L – Sioux Falls
Johnson, Jill – Sioux Falls
Lehman, Leah A – Waubay
McCarty, Michele M – Sioux Falls
Munoz, Michael L – Rapid City
Ninceheler, Codi F – Harrisburg
Orr, Michael C – Harrisburg
Pruitt, Ceanna – Sioux Falls
Skott, Eric M – Watertown
Swenson, Christian P – Baltic
Wood, Chase P – Rapid City

Archer, Charity – Jefferson
Bossert, Adam M – Sioux Falls
Dial, Charlie – Sioux Falls
Erckfritz, Bethany L – Sioux Falls
Harr, Samuel J – Brandon
Hoskins, Samuel J – Sioux Falls
Jennings, Dawn R – Aberdeen
Kattenberg, Derek A – Brandon
Lucas, Savannah J – Sioux Falls
Mikla, Christine J – Deadwood
Nelson, Brad N – Tea
O'Donnell, Donovan – Canistota
Pangburn, Merideth, K – Piedmont
Sandage, Nathan J – North Sioux City
Stark, Ian J- Sioux Falls
Vogel, Jennifer I – Sioux Falls
Zacher, Megan S – Sioux Falls

Broker

Bradsky, David A – Rapid City
Johnson, Eric R – Sioux Falls

Hertzel, Justin J – Lincoln, NE
Zachary, Steven W – Woodbury, MN

Salesperson

Gritzmaker, Chad M – Sioux City, IA
Mitchell, Kasey R – Akron, IA
Schlotman, Rita A – Sioux City, IA
Tyler, Suzette M – Quinlan, TX

Keller, David W – Fargo, ND
Popp, Joshua W – Lincoln, NE
Taylor, Brock L – Omaha, NE

Residential Rental Agent

Bartscher, Darin K – Mitchell
Hook, Amy M – Rapid City
Hults, Nathaniel – Sioux Falls
Marsh, Leah M – Spearfish
Winkler, Devin A - Aberdeen

Dagel, Kellie L – Sioux Falls
Howard, Kati – Sioux Falls
Jurries, Bryan – Elk Point
Moody, Christina – Sioux Falls

Home Inspector

Hempel, Timothy L – Sioux Falls
Kranz, Dennis L – Rapid City
Van Ginkel, Travis J – Harrisburg

King, Matt – Pierre
Samona, Jeffery – Spearfish
Wald, Joseph A – Rapid City

Appraiser Update

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New Licensees – May/June 2015

Linda M. Cheers, State-Certified Residential – Frisco, TX
Scott G. Potthoff, State-Certified General – Carroll, IA
John E. Taylor, State-Registered – Sioux Falls, SD
Kenneth Jagers, State-Certified General – Westwood, KS
Kori Dauwen, State-Registered – Lemmon, SD

Review of Cases – January 1 – July 6, 2015

For the period January 1, 2015 through July 6, 2015, the Department has initiated cases for two complaint investigations, one upgrade, and one new applicant claiming experience.

Complaints – Two pending.
Upgrade – One pending.

Notice

“New” Appraisal Experience Log Form In Service and Required

The Appraiser Certification Program has adopted and put into service a new Appraisal Experience Log form as of April 1, 2015.

The Appraisal Experience Log form is utilized by the Appraiser Certification Program for verification of appraisal assignments and acceptable appraisal experience hours to ensure experience requirements have been met by appraisers seeking to upgrade to a higher appraiser classification or for new applicants claiming experience and applying for a certified or licensed appraiser classification.

Beginning on June 1, 2015, appraisal experience must be documented using the new Appraisal Experience Log form found at the Appraiser Certification Program website: <http://dlr.sd.gov/appraisers/forms>. Instructions for completing the form are included in the file. (Please note that this form is unavailable on the State of South Dakota On-line Forms.)

Please note that you may submit the Appraisal Experience Log that you have completed using the “old” log form for experience claimed prior to June 1, 2015. **The Appraiser Certification Program will only accept the new Appraisal Experience Log form for assignments and experience hours claimed on or after June 1, 2015.**

If you have any questions, please feel free to contact Sherry Bren by telephone at 605.773.4608 or by email at sherry.bren@state.sd.us.

Appraisers – 2015 Renewal

NOTICE! The 2015 appraiser renewal applications were mailed the first week in July. The applications are due in the Appraiser Certification Program office by August 17, 2015 for renewal of the certificates for state-certified general, state-certified residential, state-licensed and state-registered appraisers.

2015 Renewal (cont.)

In order to renew your application, you must submit the completed application, applicable renewal fees and verification of the required 28 hours of approved continuing education which includes the 2014-2015 Edition of the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course (USPAP Update). Appraisers are required to complete the 2014-2015 USPAP Update prior to June 30, 2014. If the USPAP Update was not completed by June 30, 2014, there will be a \$100 administrative penalty fee assessed.

[Continuing Education Reporting Period – October 1, 2013 through September 30, 2015]

Supervising Appraisers – 2015 Renewal

NOTICE! The 2015 supervisory appraiser endorsement renewal applications were mailed the first week in July. The applications are due in the Appraiser Certification Program office by August 17, 2015 for renewal of the supervisory appraiser endorsement.

Continuing Education Requirements Duplication Not Allowed

An applicant for renewal may not receive credit for completion of the same continuing education offering within an appraiser's continuing education report period. [ARSD 20:14:13:01]

Continuing Education Not Required

Continuing education is not required if an appraiser's certificate was issued on or after March 30, 2015. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.01(1)]

Partial Continuing Education Requirement

An appraiser is only required to complete fourteen (14) hours of continuing education if the appraiser's certificate was issued on or after October 1, 2014 and prior to March 30, 2015. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.02]

Appraiser Rules Revised Effective June 29, 2015

Changes include:

- Requires three years of experience as a South Dakota reciprocal appraiser in order to be a supervisory appraiser.
- Requires a supervisory appraiser to sign the certification. (Correcting previous language.)
- Adds a provision for limited exemption of qualifications for candidates for appraiser licensing, certification or registration called to active duty in the military.
- Requires applicants for state-registered appraiser classification to complete a Department education program prior to issuance of the registration.
- Clarifies records to be retained by appraisers and made available to the Department.
- Increases application, temporary practice, renewal and upgrade fees for licensed and certified appraiser classifications.
- Adds probation and limit of scope of practice to the disciplinary actions permitted.
- Clarifies when filing a complaint against another appraiser rises to the level of violation of the rules.
- Changes 'state of domicile' to 'home state' for reciprocal applicants.
- Requires continuing education for reciprocal licensees that move to South Dakota.

Appraiser Certification Program Fee Schedule Effective June 29, 2015

Appraiser Category	Application Fee	National Registry Fee	Total Fees Due
Application			
State-Certified General	\$400	\$40	\$440
State-Certified Residential	\$375	\$40	\$415
State-Licensed	\$350	\$40	\$390
State-Registered	\$210	\$0	\$210
Supervising Appraiser			
Supervisor Endorsement	\$150	\$0	\$150
Supervisor Endorsement - Renewal	\$100	\$0	\$100
Reciprocity			
State-Certified General	\$400	\$40	\$440
State-Certified Residential	\$375	\$40	\$415
State-Licensed	\$350	\$40	\$390
Temporary			
State-Certified General	\$200	\$0	\$200
State-Certified Residential	\$200	\$0	\$200
State-Licensed	\$200	\$0	\$200
Application Renewal			
State-Certified General	\$350	\$40	\$390
State-Certified Residential	\$335	\$40	\$375
State-Licensed	\$325	\$40	\$365
State-Registered	\$175	\$0	\$175
Upgrades			
\$200 + Application Fee (see above) for Targeted Category			
Note: If upgrading from State-Registered Appraiser \$200 + Application Fee + \$40 National Registry Fee			

Vacancy – Appraiser Certification Program Advisory Council

The Department of Labor and Regulation, Appraiser Certification Program is seeking nominations for the position of State-Licensed Appraiser.

The Advisory Council is responsible for advising the Department Secretary in matters of program administration, procedure, and policy in order to sustain a program that is consistent with Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 administered by the Appraisal Subcommittee and the uniform standards and qualifications criteria as set by the Appraisal Standards Board and the Appraiser Qualifications Board of The Appraisal Foundation. The council members do not receive compensation for attending meetings or for any travel expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term is four years.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Department of Labor and Regulation, Appraiser Certification Program, 308 South Pierre Street, Pierre, South Dakota 57501.

The nomination should include the appraiser's name, address, appraiser title and the reason that you believe you or the person you have nominated should be appointed to the Advisory Council. Any person nominated for this position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI of FIRREA and its impact on the appraiser profession, and be highly respected by other appraiser professionals.

Please submit nominations to the Department no later than September 1, 2015. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.