South Dakota Real Estate Commission
221 West Capitol Ave. Suite 101
Pierre, South Dakota 57501
Tel: 605.773.3600
Fax: 605.773.7175
dlr.sd.gov/realestate
dlr.realestate@state.sd.us

South Dakota Real Estate License Laws & Administrative Rules

SDCL 36-21A, SDCL 43-15A, SDCL 43-15B,
SDCL 43-4-37 to 57, SDCL 43-32,
And ARSD 20:69 as of October 5, 2020

COPYRIGHT © 1967-2020 BY THE STATE OF SOUTH DAKOTA, REPRINTED BY PERMISSION.

The laws contained in this pamphlet are reprinted with the permission of the Code Commission. You are advised that the legislature amends these laws from time to time and that the laws contained here may be superseded by acts of the legislature. The current session laws and the codified laws of the State supersede any law that is in conflict with a law published in this pamphlet.

TABLE OF CONTENTS
SOUTH DAKOTA REAL ESTATE COMMISSION

		Page
Chapter 36-21A	Real Estate Licensing	1 – 34
Chapter 43-15A	Condominiums	35 – 39
Chapter 43-15B	Time-Share Estates	40 – 41
Chapter 43-32	Lease of Real Property	42 – 48
Chapter 21-16	Forcible Entry and Detainer	49 – 50
Chapter 43-4	Transfer of Property	51 – 68
Article 20:69	Administrative Rules	69 – 155
20:69:01	Definitions	69 – 69
20:69:02	General Rules	70 – 72
20:69:03	Licensing and Licenses	73 – 79
20:69:04	Prelicensing Education	80 – 90
20:69:05	Disciplinary Proceedings	91 – 94
20:69:06	Real Estate Auctioneer Licenses	95 – 99
20:69:07	Condominiums	100 – 102
20:69:08	Mortgage Brokers	103 – 105
20:69:09	Real Estate Appraisers	106 – 106
20:69:10	Standards of Professional Appraisal Practice	106 – 107
20:69:11	Postlicensing and Continuing Education	108 – 120
20:69:12	Time-Share Estates	121 – 134
20:69:13	Time-Share Agents	135 – 140
20:69:14	Property Managers	141 – 144
20:69:14.01	Residential Rental Agents	145 – 146
20:69:15	Errors and Omissions Insurance	147 – 150
20:69:16	Disclosure	151 – 153
20:69:17	Agreements	154 – 154
20:69:18	Real Estate Teams	155 – 155

CHAPTER 21A
REAL ESTATE LICENSING

Section

36-21A-1	Definition of terms.
36-21A-2	Advertisement and advertising defined.
36-21A-3	Appraisal defined.
36-21A-4	Repealed.
36-21A-5	"Association" defined.
36-21A-6	Real estate broker and broker defined.
36-21A-7	"Moral turpitude" defined.
36-21A-8	Repealed.
36-21A-9	Inactive license defined.
36-21A-10	"Property manager" defined.
36-21A-11	"Real estate" and "realty" defined.
36-21A-12	Real estate salesperson defined.
36-21A-12.1	"Residential rental agent" defined--Promulgation of rules for licensing requirements.
36-21A-12.2	Broker price opinion and comparative market analysis defined.
36-21A-13	Real estate commission created--Composition.
36-21A-14	Terms of commission members--Vacancies.
36-21A-15	Quorum of commission.
36-21A-16	Commission continued within Department of Labor and Regulation--Records and reports.
36-21A-17	Seal of commission.
36-21A-18	Executive director--Duties.
36-21A-19	Salary of executive director--Employment of other personnel--Expenditures.
36-21A-20	Office of executive director--Records and property maintained.
36-21A-21	Meetings of commission.
36-21A-22	Filing or notice to the commission--Date of filing or notice.
36-21A-23	Compensation and expenses of commission members.
36-21A-24	Real estate courses and institutes conducted by commission.
36-21A-25	Assistance provided to libraries, licensees, institutes and foundations.
36-21A-26	List of licensees and other information to be available.
36-21A-27	Licensees not qualified for exceptions.
36-21A-28	Active license required for certain acts.
36-21A-29	Persons and entities exempt from licensure.
36-21A-30	Reputation, age, competence, and citizenship required for license--Prior rejection or revocation of license.
36-21A-30.1	Education requirement for broker associate license applicants.
36-21A-30.2	Education requirements for initial licensure as broker associate.
36-21A-31	Experience and education required of applicant for responsible broker's license.
36-21A-32	Waiver of experience requirement on responsible broker applicant's refusal to associate--Relocation or acceptance of unfair contract not required.
36-21A-33	Denial of application.
36-21A-34	Repealed.
36-21A-34.1	Requirements for upgrade to broker associate license.
36-21A-34.2	Repealed.
36-21A-35	Application for license--Contents--Oath or affirmation.

36-21A-36	Written examination--Time and place--Contents.
36-21A-36.1	Application for license--Time limit.
36-21A-37	License required for real estate firm.
36-21A-38	Responsible broker to represent corporation, limited liability company, partnership or association and sign application--Termination of affiliation--Fee.
36-21A-39	Dissolution of corporation, partnership, limited liability company, or association--Return of license.
36-21A-40	Repealed.
36-21A-41	Qualification by examination required.
36-21A-42	Repealed.
36-21A-43	Examination reciprocity with other states.
36-21A-44	Issuance of license to successful applicant--Association with broker--Authority to conduct business.
36-21A-45	Repealed.
36-21A-46	Repealed.
36-21A-46.1	Responsible broker, salesperson, or broker associate permitted to form certain business entities--Conditions.
36-21A-47	Restricted broker's license--Termination and prosecution if licensee exceeds authority.
36-21A-48	Exemption from property manager's license for operators of state and federal housing units.
36-21A-49	Application fee for individual licensure.
36-21A-50	Conditions for issuing of license or reinstatement after revocation or suspension.
36-21A-51	Repealed.
36-21A-52	Registration of place of business--Change of location.
36-21A-53	Branch office name.
36-21A-54	Reciprocal privileges extended to nonresident licensees--Licensees from states not granting full reciprocity.
36-21A-55	Transaction of business subjects nonresidents to personal jurisdiction--Service of process--Delivery of copy of process or pleading to executive director.
36-21A-56	Written notice of change of association--Statement of registration--Salesman placed on inactive status.
36-21A-57	Repealed.
36-21A-58	Renewal of license by salesperson or broker associate not associated with responsible broker--Restrictions on inactive salesperson or broker associate.
36-21A-59	Repealed.
36-21A-60	Additional fees.
36-21A-61	Biennial registration--Cancellation upon failure to register.
36-21A-62	Biennial proof by licensees of continuing education--Persons exempt.
36-21A-63	Approved courses for continuing education--List maintained--Standards.
36-21A-64	License inactive until proof of continuing education provided.
36-21A-65	Exceptions to continuing education requirements.
36-21A-66	Late renewal application--Fee.
36-21A-67	Licensees entering United States armed forces--Application for reinstatement-Timing and requirements--Waiver of continuing education.
36-21A-68	Grounds for revocation of license--Criminal prosecution--Setting minimum fees not impaired--Suspension, reprimand, and monetary penalties.
36-21A-69	Repealed.
36-21A-69.1	Responsible broker to surrender associate licenses.
36-21A-70	Revocation or suspension of firm license following discipline of responsible broker.

36-21A-71	Acts constituting unprofessional conduct.
36-21A-72	Restrictions on licensee advertising.
36-21A-73	Repealed.
36-21A-74	Preservation of records.
36-21A-75	Closing statements to be furnished by brokers.
36-21A-76	Cobrokerage transaction--Money held in broker's trust account.
36-21A-77	Purchaser deposits in unconsummated transactions.
36-21A-78	Substantiation of information in listing agreement--Latent defects.
36-21A-79	Broker's responsibility for activities of affiliated licensees.
36-21A-80	Handling of money received by broker for principal.
36-21A-81	Disbursement pursuant to written agreement of trust funds where purchase agreement does not close.
36-21A-82	Deposit slip and ledger sheet for special trust account--Records maintained--Notice to commission as to financial institution and name of account.
36-21A-83	Records kept by broker remitting immediately to principal.
36-21A-84	Completed transaction required for compensation of broker--Promulgation of rules for exceptions.
36-21A-85	Repealed.
36-21A-86	Procedure on revocation of license--Appeal.
36-21A-87	Violation of chapter as misdemeanor.
36-21A-88	Action for compensation of unlicensed persons prohibited.
36-21A-89	Promulgation of rules for administration and enforcement of this chapter.
36-21A-89.1	Repealed.
36-21A-90	Promulgation of rules establishing uniform standards of professional appraisal practice.
36-21A-91	Actions for injunction--Attorney fees and costs.
36-21A-92	Repealed.
36-21A-93	Application for subdivision certificate--Fee--Contents--Additional information.
36-21A-94	Proof by subdivider of ability to provide promised public improvements--Security.
36-21A-95	Investigation of application and inspection of out-of-state real estate--Expenses borne by applicant.
36-21A-96	Designation of executive director of commission as agent for service of process.
36-21A-97	Issuance of certificate--Annual fee--Cancellation or renewal of certificate--Investigation.
36-21A-98	Recording of instrument conveying interest in subdivision.
36-21A-99	Cease and desist orders to prevent subdivision sales provisions violations.
36-21A-100	Contracts violating subdivision sale provisions void and unenforceable--Recovery of money paid plus interest.
36-21A-101	Establishment of real estate recovery fund--Purpose.
36-21A-102	Minimum balance in recovery fund--Separate fee payable to restore minimum balance.
36-21A-103	Notice to commission of claims against recovery fund--Intervention by commission.
36-21A-104	Application by unsatisfied judgment creditor for payment of loss from recovery fund-- Maximum payment--Service on commission and judgment debtor--Hearing on application for payment--Continuances.
36-21A-105	Facts to be shown at hearing by applicant for payment from recovery fund.
36-21A-106	False statement in proceedings against recovery fund as perjury.
36-21A-107	Burden of proof as to fraud or conversion--Presumption when original action was contested by debtor.

36-21A-108 Defense by commission of action against recovery fund--Motion for dismissal--Compromise.
36-21A-109 Defense by judgment debtor in action against recovery fund.
36-21A-110 Payment from recovery fund ordered only on valid cause of action--Prior judgment only prima facie evidence.
36-21A-111 Order for payment from recovery fund.
36-21A-112 Maximum liability of fund for acts of one licensee.
36-21A-113 Deferred payment of authorized claim--Interest.
36-21A-114 Suspension of license when payment from fund authorized--Repayment to fund required for reinstatement.
36-21A-115 Subrogation of fund to rights under judgment paid--Assignment.
36-21A-116 Other disciplinary powers unimpaired--Effect of repayment to fund.
36-21A-117, 36-21A-118. Transferred.
36-21A-119 Errors and omissions insurance required of salesmen and brokers.
36-21A-120 Group insurance coverage authorized--Independent errors and omissions coverage.
36-21A-121 Commission to determine conditions of errors and omissions coverage.
36-21A-122 Notice of terms and conditions of errors and omissions--Certificate of coverage.
36-21A-123 Repealed.
36-21A-124 Employment status--Independent contractor.
36-21A-125 "Adverse material fact" defined.
36-21A-126 "Brokerage" defined.
36-21A-127 "Confidential information" defined.
36-21A-128 Informative acts that do not constitute representation.
36-21A-129 "Substantive contact" defined.
36-21A-130 Agency agreements--Requirements.
36-21A-131 Licensee--Limited relationships.
36-21A-132 Duties and obligations of licensee representing seller or landlord.
36-21A-133 Disclosure of client information by seller's or landlord's agent.
36-21A-134 Seller's agent has no fiduciary duty to customer.
36-21A-134.1 No duty to disclose sex offender information.
36-21A-135 Seller's agent may show other properties.
36-21A-136 Duties and obligations of licensee representing buyer or tenant.
36-21A-137 Buyer's or tenant's agent not to disclose certain information without written authority-- Exceptions.
36-21A-138 Buyer's agent has no fiduciary duty to customer.
36-21A-138.1 No duty to volunteer sex offender information--Actual knowledge must be disclosed upon inquiry.
36-21A-139 Buyer's agent may show property to competing clients.
36-21A-140 Licensee as limited agent--Written consent of all parties required--Duties and obligations.
36-21A-141 Certain information not to be disclosed by limited agent without written consent.
36-21A-141.1 Appointment of licensee to act as appointed agent of client to exclusion of other licensees--Limited agent--Information--Rules.
36-21A-142 Limited agent not to disclose certain information about one client to another without written authority--Exceptions.
36-21A-143 "Subagency" defined.
36-21A-144 Transaction broker--Duties and obligations.
36-21A-145 Transaction broker not responsible for--Independent inspections--Statements by seller--Finances.

36-21A-146 Certain information not to be disclosed by transaction broker without written consent.
36-21A-147 Office policies--Relationships--Written disclosure.
36-21A-148 Client, licensee not liable for misrepresentation made by the other--Exception.
36-21A-149 Duties under common law.
36-21A-150 Duties of broker or licensee after transaction finished.
36-21A-151 Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check.

36-21A-1. Definition of terms. 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 before July 1, 2020, or as a broker associate or responsible broker 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 the 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 the person’s responsible broker as the leader for the person’s team. A team leader is responsible for supervising the real estate activities of the person’s 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.

36-21A-2. Advertisement and advertising defined. For the purposes of this chapter, an advertisement or advertising is any attempt, by publication or broadcast, whether oral, written or otherwise, to induce a person to use the services of a licensed real estate broker, real estate salesman or real estate firm.

36-21A-3. Appraisal defined. For the purposes of this chapter, an appraisal or an evaluation is the act or process of developing an opinion of value of real estate for another and for compensation.

36-21A-4. Repealed by SL 2013, ch 177, § 4.

36-21A-5. "Association" defined. For the purposes of this chapter, an association is any body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. It is an unincorporated society and not a partnership. It is a body of persons invested with some, yet not full, corporate rights and powers.

36-21A-6. Real estate broker and broker defined. For the purposes of this chapter, a broker or a real estate broker is any person who does any of the following:

(1) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of an interest in real property, or a mobile or manufactured home that has been registered under the provisions of chapters 32-3 to 32-5B, inclusive, unless licensed under chapter 32-7A to sell used mobile or manufactured homes, or advertises or holds himself out as engaged in such activities;

(2) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, negotiates or offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real property;
(3) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of any business opportunity or business, or its goodwill, inventory or fixtures, or any interest therein;
(4) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, offers, sells or attempts to negotiate the sale of property that is subject to the registration requirements concerning subdivided land;
(5) Charges a fee for undertaking to promote the sale or lease of real property by means of listing in a publication primarily for such purpose;
(6) Engages wholly or in part in the business of selling real property to the extent that a pattern of selling real property is established, unless exempted under the provisions of this chapter;
(7) Is employed by or on behalf of any owner of lots or other parcels of real property for compensation or consideration to sell the real property or any part thereof;
(8) Appraises, evaluates, offers, attempts or agrees to appraise or evaluate real property unless licensed or certified to appraise under some other provision of South Dakota law. Any person performing an appraisal or evaluation pursuant to this subdivision shall comply with the uniform standards established by the secretary pursuant to § 36-21B-3;
(9) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, prepares or offers to prepare a broker price opinion or a comparative market analysis;
(10) Auctions, offers, attempts or agrees to auction real estate unless licensed to auction real property under some other provision of South Dakota law; or
(11) Buys or offers to buy or sell or otherwise deals in options to buy real property.

36-21A-7. "Moral turpitude" defined. For the purposes of this chapter, moral turpitude is any act done contrary to honesty and good morals. It is also an act of baseness, vileness or depravity in the private and social duties which man owes to his fellowman or to society in general.

36-21A-8. Repealed by SL 1997, ch 275, § 3.

36-21A-9. Inactive license defined. For the purposes of this chapter, an inactive license is any license that has been placed on inactive status for any of the following reasons:
(1) At the request of the licensee;
(2) Failure to designate a responsible broker;
(3) Cessation of being associated with a responsible broker or a licensed firm;
(4) Failure to notify the commission of a change of registered address;
(5) Failure of the licensee's responsible broker to maintain an active license;
(6) Failure to provide proof of errors and omissions insurance upon renewal;
(7) Failure of a nonresident real estate salesperson, who establishes residency in South Dakota, to successfully complete the education requirement for upgrade to broker associate within the prescribed timeframe; or
(8) Failure to provide proof of the necessary hours of continuing education.

No licensee whose license is on inactive status may perform any of the actions enumerated within this chapter prior to reactivation of the inactive license.

36-21A-10. "Property manager" defined. For the purposes of this chapter, a property manager is any person who for a fee, commission or other valuable consideration or with the intent or expectation of receiving a fee, commission or consideration negotiates or attempts to negotiate the rental, exchange or leasing or any real estate or of the improvements on it; lists real estate exchanges, rentals or leases; collects rents or attempts to collect rents for real estate; or advertises or holds himself out as engaged in any of the foregoing activities.

The term also includes any person who engages in the business of charging a fee or contracting for the collection of a fee in connection with a contract under which he undertakes to prompt the renting or leasing of real estate through its listing in a publication issued primarily for this purpose or through referral of information concerning the rentals or leases.

36-21A-11. "Real estate" and "realty" defined. For the purposes of this chapter, real estate or realty is any interest or estate in real property or the property's improvements or fixtures whether corporeal, incorporeal, freehold or nonfreehold, and whether the real property is situated in this state or elsewhere, and includes leaseholds, condominiums, air rights and mineral rights.

36-21A-12. Real estate salesperson defined. For the purposes of this chapter, a real estate salesperson is any person who for compensation or consideration is associated with a responsible broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of real property, or of the property's improvements, or any business opportunity or business, or its goodwill, inventory, or fixtures, or any interest therein, or to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of a mobile or manufactured home which has been registered under the provisions of chapters 32-3 to 32-5B, inclusive. A salesperson may perform a broker price opinion or comparative market analysis for purposes of purchase, sale, lease, rental, or exchange of real property.

36-21A-12.1. "Residential rental agent" defined -- Promulgation of rules for licensing requirements. For the purposes of this chapter, a residential rental agent is any person who for compensation or consideration is associated with a real estate broker or property manager to negotiate or attempt to negotiate the rental or leasing of residential property, or collect rents or attempt to collect rents. The Real Estate Commission may promulgate rules pursuant to chapter 1-26 to establish requirements for licensing a residential rental agent.

36-21A-12.2. Broker price opinion and comparative market analysis defined. For the purposes of this chapter, the terms, broker price opinion and comparative market analysis, mean an estimate prepared by a licensed broker or salesperson that details the probable selling price or leasing price of a particular parcel of or interest in real property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable properties, but does not include an automated valuation model. A broker price opinion or a comparative market analysis is not an appraisal.

36-21A-13. Real estate commission created -- Composition. There is created a South Dakota Real Estate Commission. The commission consists of five members appointed by the Governor. The members may not all be of the same political party. Three members shall be active real estate brokers; two shall be members of the public.

36-21A-14. Terms of commission members -- Vacancies. Each member of the commission shall be appointed for a term of three years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's term shall serve for the unexpired portion of the term. The appointment to an unexpired term is not considered a full term.

36-21A-15. Quorum of commission. A majority of the commission, in meetings duly assembled, may perform and exercise all of the duties and powers of the commission. Actions of the commission shall be taken upon a majority vote of those members present.

36-21A-16. Commission continued within Department of Labor and Regulation--Records and reports. The commission shall be an adjunct of the Department of Labor and Regulation, and shall retain all its prescribed functions, including administrative functions. The commission shall submit such records, information and reports in the form and at such times as required by the secretary of labor and regulation. However, the commission shall report at least annually.

36-21A-17. Seal of commission. The commission shall adopt a seal with South Dakota Real Estate Commission engraved thereon, by which it shall authenticate its proceedings.

36-21A-18. Executive director -- Duties. The commission shall employ an executive director who shall perform the following duties:

(1) Keep a record of all proceedings, transactions, communications and official acts of the commission;
(2) Be custodian of all moneys received;
(3) Deposit all moneys in depositories designated by the commission;
(4) Be custodian of all records of the commission; and
(5) Such other duties as the commission may require.

36-21A-19. Salary of executive director -- Employment of other personnel -- Expenditures. The commission may employ personnel as may be necessary to carry out the provisions of this chapter.

36-21A-20. Office of executive director -- Records and property maintained. The location of the office of the executive director shall be at such places within the state as the commission may designate. The commission shall maintain all of its files, records, and property at the office of the executive director.

36-21A-21. Meetings of commission. The commission shall meet annually and at other times upon call by the executive director, chairperson, or upon a written request of three or more members of the commission. The place of meeting of the commission shall be at the office of the executive director or other places within South Dakota as designated by the commission.

36-21A-22. Filing or notice to the commission -- Date of filing or notice. Whenever any filing or notice to the commission is provided for, the filing or notice shall be delivered in person or mailed to the commission at its principal place of business. The date of the filing or notice is the date upon which the document is received at the principal place of business of the commission.

36-21A-23. Compensation and expenses of commission members. The compensation and reimbursement of expenses provided by law for members of the commission shall be paid from the funds of the commission.

36-21A-24. Real estate courses and institutes conducted by commission. The commission may conduct, hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses in connection therewith, which courses or institutes shall be open to the licensees. The commission may charge a reasonable fee for such courses and institutes.

36-21A-25. Assistance provided to libraries, licensees, institutes and foundations. The commission may assist libraries, licensees, institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys and programs for the benefit of the real estate business and the elevation of the real estate business.

36-21A-26. List of licensees and other information to be available. The executive director of the commission shall make available a list of the names and addresses of all persons licensed by the commission under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the commission determines to be of interest to the public. The commission may charge a reasonable fee to persons who request the list.

36-21A-27. Licensees not qualified for exceptions. Any person licensed under this chapter does not qualify for the exceptions set forth in this chapter including any transaction in which that person has a personal interest.

36-21A-28. Active license required for certain acts. No person, unless exempted under this chapter, may offer, attempt or agree to perform, or perform any act enumerated within this chapter without an active license issued by the commission. No person may collect compensation as a licensee under this chapter without having first complied with the provisions of this chapter.

36-21A-29. Persons and entities exempted from licensure. This chapter does not apply to the following:

(1) Any person who as a bona fide owner or lessor, performs any of the acts described in §§ 36-21A-6 and 36-21A-12 with reference to property owned, or leased by the person, or to any regular employees thereof, if such acts are performed in the regular course of, or as an incident to the management of such property or investment in such property;
(2) Any public officer while performing the officer's duties;
(3) Any person owning and operating a cemetery and selling lots solely for use as burial plots;
(4) Any person acting as a receiver, trustee, personal representative, guardian or under court order, or while acting under authority of a deed, trust, or will;
(5) Any custodian, janitor, or employee of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes prospective tenants with information relative to the rental of the unit, terms and conditions of leases required by the owner or manager and similar information;
(6) Any owner, manager, or employee of a business holding a lodging license while engaging in the lodging business;
(7) Any attorney at law, admitted to practice in South Dakota, unless the attorney holds himself or herself out to be in the real estate business or solicits real estate business, in which event the attorney may obtain a real estate license without examination, but the attorney is otherwise subject to the provisions of this chapter;

(8) Any bank, bank holding company or subsidiary thereof, credit union, trust company, savings and loan association, public utility or any land mortgage or farm loan association organized under the laws of this state or the United States, if engaged in the transaction of business within the scope of its corporate powers as provided by law;
(9) Any person or company whose business practice is to collect a fee or compensation to publish real estate listings in print, electronic, or other media;
(10) Any person holding, in good faith, a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing, or exchange of real property if such acts are not of a recurrent nature and done with the intention of evading this chapter;
(11) Any employee of any person enumerated in this section whose principal duties are other than those duties described in §§ 36-21A-6 and 36-21A-12, if engaged in the specific performance of the employee's duties; and
(12) Any person employed or contracted by a licensee to call or take bids in an auction.

36-21A-30. Reputation, age, competence, and citizenship required for license -- Prior rejection or revocation of license. A license shall be granted only to persons of reputable character who have attained the age of eighteen years; who are competent to transact the business of a licensee in a manner as to safeguard the interest of the public; and whose application for a license has not been rejected, except for the reason that the applicant failed any examination required by this chapter, in this or any other state within one year prior to the date of application; or whose license has not been revoked in this or any other state within five years prior to date of application. No one except a citizen of the United States of America, or resident of South Dakota, is eligible to secure a license as a broker, except as otherwise provided by this chapter.

36-21A-30.1. Education requirement for broker associate license applicants. An applicant for a broker associate license must have completed one hundred sixteen class hours of education in a course of study approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. The commission may adopt rules, pursuant to chapter 1-26, to specify requirements for the course, qualifications of an instructor, and criteria for an independent study or distance education course.

36-21A-30.2. Education requirements for initial licensure as broker associate. Any broker associate receiving initial licensure as a broker associate after June 30, 2009, shall complete sixty class hours of education in a course of study approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. The broker associate shall complete the sixty class hours in prescribed subject matter by the second active renewal deadline with thirty class hours completed during the initial active licensing period and thirty class hours completed during the second active licensing period. The thirty class hours completed during the initial active licensing period and second active licensing period apply towards the continuing education requirements for license renewal. The commission shall promulgate rules, pursuant to chapter 1-26, to specify requirements for the course, qualifications of an instructor, and criteria for an independent study or distance education course.

36-21A-31. Experience and education required of applicant for responsible broker's license. An applicant for a responsible broker's license shall have served actively for two years as a licensed salesperson or broker associate, or a combination thereof, and shall furnish evidence of completion of fifteen additional class hours beyond the broker associate level in a course approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. If the applicant for a responsible broker's license meets all requirements

except the fifteen-additional-class-hours requirement, the commission or executive director may approve the applicant for a responsible broker's license if the applicant certifies in writing to furnish the commission with evidence of completion of the fifteen-additional- class-hours requirement within six months of the date of the approval. The commission may adopt rules, pursuant to chapter 1-26, to specify requirements for the course of study. Any person licensed as a broker associate under § 36-21A-34.1 shall, in addition to the education requirements of this section, complete the broker examination requirements to qualify as a responsible broker. Any broker licensed prior to July 1, 1996, is exempt from these requirements.

36-21A-32. Waiver of experience requirement on responsible broker applicant's refusal to associate -- Relocation or acceptance of unfair contract not required. If otherwise qualified, the requirement of two years serving as a salesperson or broker associate may be waived if the applicant for a responsible broker's license certifies that the applicant has been refused association as a salesperson or broker associate by at least three licensed responsible brokers within sixty days before the application. The responsible brokers named in the application as having refused to associate shall be contacted by the commission to determine whether the attempt by the salesperson or broker associate to associate was in good faith. If the commission determines that there were not three good faith applications to associate by the salesperson or broker associate with a responsible broker or that the applicant has refused association with a responsible broker, the two-year period may not be waived. No applicant may be forced to relocate in order to associate with a responsible broker. If the applicant's reason for refusing to associate are the terms of the contract with the responsible broker, the applicant's refusal to associate with the responsible broker does not count as a refusal if the commission decides the contract is unfair to the salesperson or broker associate.

36-21A-33. Denial of application. An application may be denied for any one of the following reasons:

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

36-21A-34. Repealed by SL 2002, ch 180, § 5.

36-21A-34.1. Requirements for upgrade to broker associate license. An active licensed nonresident real estate salesperson, who establishes residency in South Dakota, shall upgrade to a broker associate license by completing the following before the current license expires: complete forty hours of prescribed education in a course approved by the commission; submit a broker associate license application; and submit the required license application fee.

A resident real estate salesperson, whose license is on inactive status and who wishes to be an active licensee, shall upgrade to a broker associate license by completing the following prior to activation:

complete forty hours of prescribed education in a course approved by the commission before submitting a broker associate license application; submit a broker associate license application; and submit the required license application fee.

The commission shall promulgate rules, pursuant to chapter 1-26, to specify requirements for the course and examination.

36-21A-34.2. Repealed by SL 2013, ch 177, § 13.

36-21A-35. Application for license -- Contents -- Oath or affirmation. An application for a license shall be in writing upon forms furnished by the commission and shall contain such data and information as the commission may require and shall be verified on oath or affirmation under penalty of perjury.

36-21A-36. Written examination -- Time and place -- Contents. An applicant for a license shall submit to a written examination to be conducted by the commission at such times and places as it may direct. The commission shall determine the contents of the examination.

36-21A-36.1. Application for license -- Time limit. Upon notification in writing that the person has passed the examination, the person shall file the appropriate application for license with all the required documents to the commission within sixty days of the notice date. If the person fails to file an application and proof of required education within the sixty-day period, the person's registration and all rights deriving from a passing score are canceled.

36-21A-37. License required for real estate firm. No partnership, association, limited liability company, or corporation may perform the services of a real estate broker as described in § 36-21A-6, nor may a licensee associate or work for any partnership, association, limited liability company, or corporation performing any services described in § 36-21A-6, until such time as the partnership, association, limited liability company, or corporation is licensed by the commission.

36-21A-38. Responsible broker to represent corporation, limited liability company, partnership or association and sign application--Termination of affiliation--Fee. No license may be granted to a corporation, limited liability company, partnership or association, unless the corporation, limited liability company, partnership, or association designates a responsible broker who will represent the corporation, limited liability company, partnership, or association. A nonlicensed individual may have an ownership interest in any corporation, limited liability company, partnership, or association through which a responsible broker engages in professional real estate activity. However, no nonlicensed individual may control or supervise the professional real estate activity of any real estate licensee associated with the firm. No nonlicensed individual may have any ownership interest in a sole proprietorship that engages in professional real estate activity. The responsible broker shall sign the application for the license. Upon the termination of a responsible broker's affiliation with the firm, the firm shall name a new responsible broker and notify the commission in writing. The application fee for a firm license shall be set out by rule, promulgated by the commission pursuant to chapter 1-26, and may not exceed one hundred dollars.

36-21A-39. Dissolution of corporation, partnership, limited liability company, or association -- Return of license. Upon dissolution of a corporation, partnership, limited liability company, or association, the responsible broker shall immediately return the firm license to the commission.

36-21A-40. Repealed by SL 2011, ch 180, § 5.

36-21A-41. Qualification by examination required. No person may be licensed until qualified by examination, except as otherwise provided by this chapter.

36-21A-42. Repealed by SL 2001, ch 208, § 1.

36-21A-43. Examination reciprocity with other states. An applicant who holds an active license in another state and who has successfully passed the real estate licensing examination in that same state may obtain a similar level of licensure in South Dakota if the applicant successfully passes the state portion of the examination in South Dakota.

36-21A-44. Issuance of license to successful applicant -- Association with broker -- Authority to conduct business. Upon passing the examination and completion of the other requirements, a license shall be issued to the successful applicant. Upon receiving the license and associating with a broker, he may conduct the business authorized by the license.

36-21A-45. Repealed by SL 2013, ch 177, § 16.

36-21A-46. Repealed by SL 2011, ch 180, § 6.

36-21A-46.1. Responsible broker, salesperson or broker associate permitted to form certain business entities -- Conditions. A responsible broker may, or a real estate salesperson or broker associate employed by or otherwise associated with a responsible broker may, form a business corporation or limited liability company under the following conditions:

(1) The business corporation or limited liability company does not engage in real estate transactions as a third-party agent or in any other capacity requiring a license under this chapter;
(2) The business corporation or limited liability company does not advertise or otherwise hold itself out as a real estate brokerage company;
(3) The responsible broker is not relieved of any obligation to supervise the employed or associated licensee or any other requirement of this chapter or the rules promulgated pursuant to this chapter;
(4) The employed or associated licensee is not relieved of any personal liability for any licensed activities by interposing the corporate or limited liability form;
(5) The business corporation or limited liability company is owned solely by a broker, a salesperson, or by that licensee and that licensee's spouse, or by that licensee and other licensees within the same firm as that licensee; and
(6) The business corporation or limited liability company is approved by and registered with the commission. The registration fee for an approved business corporation or limited liability company shall be established by rule promulgated pursuant to chapter 1-26. The fee may not exceed one hundred dollars.

36-21A-47. Restricted broker's license -- Termination and prosecution if licensee exceeds authority. The commission may promulgate rules pursuant to chapter 1-26 to provide for the issuance of a restricted broker's license to property managers, mortgage brokers, or time-share or residential-rental agents. The licensee may perform only those duties specified by the license. If the licensee exceeds the authority granted, the license may be terminated and criminal proceedings brought against the licensee.

36-21A-48. Exemption from property manager's license for operators of state and federal housing units. A person who has contracted with the South Dakota Housing Development Authority or

the United States to operate housing units or has contracted with the United States in a subsidy program on behalf of the tenants is exempt from obtaining a property manager's license to manage those properties.

36-21A-49. Application fee for individual licensure. The commission shall set, by rule promulgated pursuant to chapter 1-26, an application fee not to exceed four hundred dollars. This fee shall accompany an application for individual licensure.

36-21A-50. Conditions for issuing of license or reinstatement after revocation or suspension. The commission may require a person whose license was revoked or suspended to meet and perform certain conditions before issuing or reinstating a license to that person. Such conditions may include the following:

(1) Restitution of moneys;
(2) Restitution of property;
(3) Periodic reports to the commission;
(4) Fines, costs, and monetary penalties.

36-21A-51. Repealed by SL 2013, ch 177, § 20.

36-21A-52. Registration of place of business -- Change of location. Each person licensed under this chapter shall register the following place of business with the commission:

(1) For a broker associate or real estate salesperson, the licensee's responsible broker's place of business; or
(2) For a responsible broker or restricted broker, the licensee's main place of business where all work files are physically maintained and where the commission may send official communication.

In case of removal from the registered address, the licensee and responsible broker shall give written notice to the commission before the removal or within ten days after removal. Failure of a licensee to register a new place of business shall result in that person's license being placed on inactive status.

36-21A-53. Branch office name. A branch office shall operate under the same name as the parent office.

36-21A-54. Reciprocal privileges extended to nonresident licensees -- Licensees from states not granting full reciprocity. No nonresident licensee regularly engaged in the real estate business as a vocation, who maintains a definite place of business and is licensed by a state which offers the same privileges to licensees of this state, may be required to maintain a place of business within this state. The commission shall recognize the license issued by another state as qualification for a license in South Dakota. A licensee from a state that does not grant full reciprocity to licensees from South Dakota shall, in order to be licensed in South Dakota, meet the same requirements that the licensees' state requires of South Dakota licensees. The commission may adopt rules pursuant to chapter 1-26 to implement this section.

36-21A-55. Transaction of business subjects nonresidents to personal jurisdiction -- Service of process -- Delivery of copy of process or pleading to executive director. The holding of a license issued under the provisions of this chapter or participating in a transaction for which a license is required by this chapter is the transaction of business within the state, and a nonresident licensee or unlicensed person so defined is subject to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

Service of process shall be made upon corporate licensees as provided by chapter 59-11 and otherwise as provided by chapter 15-6.

Any person licensed under this chapter shall deliver a copy of any process or pleading to which that licensee is a party to the executive director of the commission within ten days of its being served by or upon him. Failure to file with the executive director is not jurisdictional in any action to which a licensee under this chapter may be a party.

36-21A-56. Written notice of change of association -- Statement of registration -- Salesman placed on inactive status. A licensee shall give written notice to the commission of a change of association and of the name of the licensed broker or firm with whom he is about to associate. The broker or firm with whom the licensee was associated and the broker and firm with whom the licensee is about to be associated shall also give written notice to the commission. The commission shall issue a statement of registration to the licensee. The commission shall place a salesman on inactive status until he is registered as being associated with another broker or firm.

36-21A-57. Repealed by SL 2013, ch 177, § 21.

36-21A-58. Renewal of license by salesperson or broker associate not associated with responsible broker -- Restrictions on inactive salesperson or broker associate. A salesperson or broker associate who is not associated with a responsible broker may renew the license by submitting the renewal fee, together with the completed renewal application on which the licensee has noted inactive status. An inactive salesperson or broker associate whose license has been renewed may not engage in the real estate business until the licensee secures a new responsible broker.

36-21A-59. Repealed by SL 2013, ch 177, § 22.

36-21A-60. Additional fees. Fees include the following:

(1) Certificate of licensee, a fee not to exceed fifteen dollars;
(2) For each additional office or place of business, a biennial fee not to exceed thirty dollars;
(3) For each change of office or place of business, a fee not to exceed fifteen dollars;
(4) For each statement of registration of change of association, a fee not to exceed fifteen dollars; and
(5) For each duplicate license, if the original license is lost or destroyed and affidavit made thereof, a fee not to exceed fifteen dollars.

36-21A-61. Biennial registration -- Cancellation upon failure to register. A licensee, either active or inactive, shall register every two years with the commission and pay a fee set by rule promulgated by the commission pursuant to chapter 1-26 not to exceed two hundred dollars. The application for renewal of a license shall be made to the commission by November thirtieth of the year the current license expires. Failure of a person or firm to register results in the expiration of the license on December thirty-first.

36-21A-62. Biennial proof by licensees of continuing education -- Persons exempt. An individual licensee shall provide to the commission proof of participation in the following required number of hours of approved continuing education in the preceding two-year period:

(1) Responsible broker, broker associate, salesperson, auctioneer, or property manager: not less than twenty-four hours; or
(2) Residential rental agent: not less than twelve hours.

Attorneys licensed in South Dakota and time-share agents are exempt from this section.

36-21A-63. Approved courses for continuing education -- List maintained -- Standards. The commission may accept attendance at approved lectures, seminars or courses as continuing education. The commission shall maintain a current list of approved sessions or courses of instruction. The commission shall, by rule promulgate pursuant to chapter 1-26, set standards and fees for the approval of seminars or courses as continuing education.

36-21A-64. License inactive until proof of continuing education provided. An individual licensee who submits a renewal registration application but does not provide proof of continuing education, as required by § 36-21A-62, shall be an inactive licensee until proof of such continuing education has been provided to the commission.

36-21A-65. Exceptions to continuing education requirements. The commission may make exception from continuing education requirements for licensees not engaged in public practice, or for reasons of health, military service or other good cause. However, if such licensee returns to public practice, he shall meet such continuing education requirements as the commission may determine.

36-21A-66. Late renewal application -- Fee. A licensee who fails to meet the renewal requirements of § 36-21A-61 may file a late registration application and pay a late registration fee in an amount not to exceed twenty dollars for each month or fraction of a month that has passed since November thirtieth. The fee shall be set by the commission by rule promulgated pursuant to chapter 1-26. No late application may be accepted by the commission after June thirtieth. A licensee may not perform any of the actions enumerated within this chapter prior to the commission renewing the license.

36-21A-67. Licensees entering United States armed forces -- Application for reinstatement -- Timing and requirements -- Waiver of continuing education. Any person licensed under this chapter, entering the United States armed forces and whose registration under § 36-21A-61 lapses during his service, may be reinstated to his license, without examination, upon his separation from the armed forces other than by dishonorable discharge. The application for reinstatement shall be made within six months of the separation and shall be accompanied by a copy of a discharge or papers of separation. Continuing education hours that accrue during the time that a licensee was in the armed forces may be waived. The commission may adopt rules pursuant to chapter 1-26 to provide for certification of eligibility, waiver of continuing education and administration.

36-21A-68. Grounds for revocation of license -- Criminal prosecution -- Setting minimum fees not impaired -- Suspension, reprimand, and monetary penalties. A license issued under this chapter may be revoked by the commission upon proof of unprofessional conduct on the part of the licensee. For the purposes of this chapter, the term unprofessional conduct does not impair the right of a licensee to set minimum fees chargeable for his services. Unprofessional conduct is not the basis for criminal prosecution unless otherwise declared unlawful. The commission may also impose a suspension, reprimand, or a monetary penalty not to exceed two thousand five hundred dollars, or a combination of revocation, suspension, reprimand or monetary penalty. Any moneys collected from the monetary penalty shall be deposited into the fund of the commission.

36-21A-69. Repealed by SL 2013, ch 177, § 27.

36-21A-69.1. Responsible broker to surrender associate licenses. If the commission suspends or revokes the license of a responsible broker, the responsible broker shall return the licenses of any associate licensee to the commission at the time the order suspending or revoking the broker's license becomes final.

36-21A-70. Revocation or suspension of firm license following discipline of responsible broker. If the commission suspends, revokes, or takes any other action against a responsible broker, the action may apply to the responsible broker's firm and the firm license may be revoked, suspended, or otherwise disciplined. Each licensee shall terminate the licensee's relationship with the disciplined firm if the firm's license has been revoked or suspended.

36-21A-71. Acts constituting unprofessional conduct. Unprofessional conduct includes the following:

(1) Violating any provisions of this chapter or any rule promulgated by the commission;
(2) Making a material false statement in the licensee's application for a license or in any information furnished to the commission;
(3) Making any substantial and willful misrepresentation with reference to a transaction which is injurious to any party;
(4) Making any false promise or advertisement of a character such as to influence, persuade or induce a party to a transaction to the party's injury or damage;
(5) Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others, commingling funds of others with the licensee's own, failing to keep the funds of others in an escrow or trust account with a federally insured financial institution, or failing to keep records relative to the deposit, which shall contain any information as may be prescribed by this chapter or the rules promulgated by the commission pursuant to chapter 1-26 relative thereto;
(6) Being convicted, or pleading guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of a misdemeanor involving moral turpitude or a felony arising under the laws of this state or under the laws of the United States or any other state that would be a misdemeanor involving moral turpitude or a felony under the laws of this state;
(7) Claiming or taking any secret or undisclosed amount of compensation or the failure of a licensee to reveal to the licensee's principal or employer the full amount of compensation in connection with any acts for which a license is required under this chapter;
(8) Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under the licensee's control, concerning a transaction under investigation by the commission;
(9) Offering real property for sale or lease without the knowledge and prior written consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or the owner's authorized agent;
(10) Any violation of federal or state fair housing requirements;
(11) Failing or refusing upon demand to furnish copies including reproductions of any document pertaining to any transaction dealing with real estate to a person whose signature is affixed thereto;
(12) Paying compensation or commission in connection with a transaction to any person who is not licensed under this chapter;
(13) Failing to disclose to an owner in writing the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease;
(14) Failure by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what the same was disbursed, and to retain true copies of the statements in the broker's files; also failure to date and sign the closing statement;

(15) Any other conduct which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of the licensee's license privilege;
(16) Accepting employment or compensation for appraising real estate contingent upon reporting a predetermined value or issuing an appraisal report on real estate in which the licensee has an undisclosed interest;
(17) The revocation or suspension of any other license held by a person licensed under this chapter. Any other license includes being licensed as an attorney; real estate salesperson, broker or appraiser; insurance licensee; securities licensee; and other similar regulated occupation, trade or profession;
(18) Using, proposing the use, agreeing to the use or knowingly permitting the use of two or more contracts of sale, earnest money agreements or loan applications, one of which is not made known to the prospective lender or the loan guarantor, to enable the purchaser to obtain a larger loan than the true sales price would allow or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain;
(19) Failing to promptly give a copy of an offer to purchase to the purchaser;
(20) Failing to promptly give the seller every written offer to purchase obtained;
(21) Upon obtaining an acceptance of the offer signed by the seller, failing to promptly give a copy of it to both purchaser and seller;
(22) Failing to make certain that all of the terms and conditions of the transaction are included in the offer to purchase;
(23) Giving a title opinion upon the merchantability of the title to property in any transaction in which the licensee participated;
(24) Preparing any legal document, giving any legal advice, or otherwise engaging in the practice of law. Preparation of the following documents is exempt from this provision:
    a) Agency agreements or extensions;
    b) Offers to purchase;
    c) Offers to lease;
    d) Acceptances; and
    e) Closing statements;
(25) Permitting the use of a broker's license to enable licensed salespersons to establish and carry on a real estate brokerage business if the broker has only insignificant control of the affairs of the business conducted;
(26) Taking a net listing whereby a licensee agrees to take as compensation the proceeds of a sale over and above the selling price agreed in the listing contract;
(27) Failing to put in writing all guarantees of sale and other guarantees made by a licensee to the person listing the property for sale;
(28) Failing to put in writing any agreement to furnish or sell a warranty;
(29) Attempting to solicit or attempting to secure listings without first advising the owner that the licensee is a licensee and is engaged in real estate brokerage;
(30) Failing to protect and promote the interests of the client whom the licensee has undertaken to represent to the best of the licensee's ability;
(31) Failing to deal fairly with all parties to a transaction;
(32) Committing any act constituting or demonstrating bad faith, incompetency or fraudulent dealings;
(33) Using the licensee's position to gain undue influence over a prospective buyer, seller, landlord, or tenant, using the licensee's position to coerce a buyer, seller, landlord, or tenant, or using duress on a buyer, seller, landlord, or tenant;
(34) Issuing an insufficient funds check;
(35) In a business enterprise that requires licensing by the commission, associating in any manner with another person who has had a license suspended or revoked by action of the commission while the suspension or revocation is in effect. This prohibition includes a

corporation, a partnership, an association, a single proprietorship, and an employer-employee relationship. A licensee may act as an agent in a real estate transaction for a person who has had a license suspended or revoked by the commission if the transaction is one that would occur in the ordinary course of the licensee's business;

(36) Buying, selling, leasing, or exchanging real property under the auspices of a partnership or corporation of which the licensee owns an interest if it is indicated that the purchase or sale is being made by a private party not licensed by the real estate commission;

(37) Making a listing contract or any other contract with the licensee's principal which allows the licensee to purchase or lease the listed property and charge a commission thereon without obtaining the written consent of the principal to such provision. This written consent shall be in addition to the signing of any listing contract;

(38) Accepting a note or other nonnegotiable instrument or anything of value not readily negotiable as earnest money on a contract or offer to purchase without the written permission of the licensee's principal; or

(39) Selling, buying, exchanging or leasing real property in a manner indicating that the licensee is not licensed under this chapter; or

(40) Improperly influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal by coercion, extortion, or bribery; withholding or threatened withholding of payment of an appraisal fee; conditioning the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached; requesting the appraiser report a predetermined opinion, conclusion, or valuation or the desired valuation of any person; or any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, and impartiality. This subdivision does not apply to the following acts:

(a) Requesting an appraiser to consider additional, appropriate property information;

(b) Providing further detail, substantiation, or explanation of the appraiser's value conclusion;

(c) Correcting errors in the appraisal report;

(d) Withholding payment of an appraisal fee based upon a bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by the Department of Labor and Regulation;

(e) Retaining a real estate appraiser from panels or lists on a rotating basis; or

(f) Supplying the appraiser with information the appraiser is required to analyze under the appraisal standards adopted by the Department of Labor and Regulation such as agreements of sale, options, or listings of the property to be valued.

36-21A-72. Restrictions on licensee advertising. 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 advertisements, 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.

36-21A-73. Repealed by SL 1998, ch 229, § 28.

36-21A-74. Preservation of records. A licensee shall preserve for four years all listings, offers to purchase, closing statements and other records relating to any real estate transaction.

36-21A-75. Closing statements to be furnished by brokers. The listing broker shall furnish a closing statement to the seller. The selling broker shall furnish a closing statement to the buyer.

36-21A-76. Cobrokerage transaction -- Money held in broker's trust account. Any earnest money paid in a cooperative or cobrokerage transaction shall be held in a broker's trust account unless otherwise agreed to by the buyer and seller.

36-21A-77. Purchaser deposits in unconsummated transactions. If for any reason the seller fails, refuses, neglects or is unable to consummate the transaction as provided in the purchase contract, and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned. This deposit shall be returned to the purchaser at once.

36-21A-78. Substantiation of information in listing agreement -- Latent defects. On taking a listing, a licensee shall substantiate that the information taken in the listing agreement is accurate. As far as latent defects are concerned, it is not a violation of this section if the licensee disclosed to the buyer that the listing information or parts of the listing information are solely the representations of the seller.

36-21A-79. Broker's responsibility for activities of affiliated licensees. A responsible broker is responsible for the real estate activities conducted by affiliated licensees, whether as employees or independent contractors.

36-21A-80. Handling of money received by broker for principal. A responsible broker shall remit immediately to the responsible broker's principal all money received by the responsible broker belonging to the principal unless, by the terms of a written employment contract, the responsible broker is authorized to retain possession of the money until the final settlement and consummation of the transaction. In that event the responsible broker shall deposit the money in a federally insured financial institution in a special trust account on the first legal banking day after the acceptance of the contract. The account shall be reconciled to the bank statements, trust ledger, and check register at least monthly. The money may not be used by the responsible broker except in connection with the transaction as authorized by the principal.

36-21A-81. Disbursement pursuant to written agreement of trust funds where purchase agreement does not close. If an accepted offer and agreement to purchase does not close, a broker may not disburse any funds held in trust, relative to such real estate transaction, except pursuant to a written instruction of all parties to the transaction or pursuant to a court order.

36-21A-82. Deposit slip and ledger sheet for special trust account -- Records maintained -- Notice to commission as to financial institution and name of account. The broker shall at the time of making the deposit make a deposit slip clearly stating the name of the principal for whom it is deposited. In addition, the broker shall maintain in his office an individual ledger sheet for his principal showing the amount deposited in trust and any expenditures therefrom. The ledger sheet, deposit slip and any other

record shall be made available for inspection by the commission upon request. The deposit slip and ledger sheet shall be kept as a part of the records of the broker at least four years from the closing of the transaction. A broker shall notify the commission of the name of the financial institution in which the trust account is maintained and also the name of the account on forms provided by the commission.

36-21A-83. Records kept by broker remitting immediately to principal. A responsible broker who remits immediately to the principal all money received by the responsible broker belonging to the principal without using a trust account shall maintain for at least four years the records that completely disclose all financial dealings between the principal and the responsible broker.

36-21A-84. Completed transaction required for compensation of broker -- Promulgation of rules for exceptions. No responsible broker is entitled to any part of the money paid to the responsible broker in any transaction as part of the responsible broker's compensation until the transaction has been consummated or terminated. The commission may promulgate rules, pursuant to chapter 1-26, to make reasonable exceptions to this section.

36-21A-85. Repealed by SL 1998, ch 229, § 29, effective January 1, 1999.

36-21A-86. Procedure on revocation of license -- Appeal. No license may be revoked except in compliance with chapter 1-26. An appeal from the decision of the commission may be taken as provided by chapter 1-26.

36-21A-87. Violation of chapter as misdemeanor. Unless punishable under Title 22, a person violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor.

36-21A-88. Action for compensation of unlicensed persons prohibited. No action or suit may be instituted, nor recovery be had, in any court of this state by a person for compensation for an act done or service rendered, the doing or rendering of which is prohibited under the provisions of this chapter, to other than persons licensed under this chapter, unless such person was licensed under this chapter at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for the contemplated act or service.

36-21A-89. Promulgation of rules for administration and enforcement of this chapter. 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, use of unlicensed persons to call or take bids, 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.

36-21A-89.1. Repealed by SL 2005, ch 230, § 3.

36-21A-90. Promulgation of rules establishing uniform standards of professional appraisal practice. The commission may promulgate rules pursuant to chapter 1-26 establishing uniform standards of professional appraisal practice.

36-21A-91. Actions for injunction -- Attorney fees and costs. The commission may commence actions for injunction for unprofessional conduct or, as an alternate to criminal proceedings, for violation of this chapter, chapters 43-15A and 43-15B or rules promulgated pursuant thereto. The commencement of one proceeding by the commission constitutes an election. The commission may also commence actions for injunctions against any person or entity that engages in the practice of real estate pursuant to this chapter without a license issued by the commission. In any action where an injunction is granted, the court shall award the commission attorney fees and costs of the investigation and proceedings.

36-21A-92. Repealed by SL 2013, ch 177, § 33.

36-21A-93. Application for subdivision certificate -- Fee -- Contents -- Additional information. Before subdivided land is offered for sale the subdivider shall apply in writing for a subdivision certificate to the commission on a form furnished by the commission and approved by the attorney general. The application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. The application shall contain the following information and supporting documents:
(1) The name, address and business status of the applicant;
(2) If the applicant is a partnership, the names and addresses of the partners;
(3) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;
(4) The legal description and area of the real estate to be offered for sale, including maps and recorded plats showing the area involved;
(5) The name and address of the legal owner of the real estate to be offered for sale;
(6) A certified, audited financial statement fully disclosing the current financial condition of the developer;
(7) A statement of the condition of the title of the subdivided lands, including encumbrances as of a specified date within thirty days of the application;
(8) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances, if any, with dates as to recording, along with the

documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his interest in the real estate to the interest of a purchaser of the real estate;

(9) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used. The contracts shall contain a provision entitling the purchaser, if he has not seen the land, to an unconditional right to rescind the contract and the unconditional right of refund of all payments made under the contract after inspecting the land if inspection is made within a time provided in the contract which may not be less than four months from the date of the contract and if the demand for refund or rescission of the contract is made within twenty days of the inspection. Any payment made by the purchaser shall be held in trust in a bank located in this state for four months or twenty days after inspection, whichever occurs first, and no portion of the payment may be expended for any purpose before the expiration of the trust period. The rescission period may be waived by the purchaser;

(10) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied;

(11) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it considers necessary.

36-21A-94. Proof by subdivider of ability to provide promised public improvements -- Security. No application may be approved by the commission unless the subdivider offers satisfactory proof of his ability to provide promised public improvements including water, sewer, gas and streets. Satisfactory proof shall be in the form of performance bonds or other security.

36-21A-95. Investigation of application and inspection of out-of-state real estate -- Expenses borne by applicant. The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating the real estate and its proposed sale in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses before the investigation.

36-21A-96. Designation of executive director of commission as agent for service of process. Before the approval of an application, the applicant shall file with the commission a designation in writing that appoints the executive director of the commission to act as the applicant's agent, upon whom all judicial and other process or legal notices directed to the applicant may be served. Service upon the designated agent is personal service upon the applicant. Copies of the appointment, certified by the executive director of the commission, are sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original. In the written designation, the applicant shall agree that any lawful process against the applicant, which is served upon the agent, shall be of the same legal force and validity as if served upon the applicant and that the authority shall continue in force so long as any liability remains outstanding in this state.

36-21A-97. Issuance of certificate -- Annual fee -- Cancellation or renewal of certificate -- Investigation. If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus ten dollars for each one hundred lots or fraction thereof computed on the number of lots in the original application shall be due and payable on or before January first of each year. Failure to remit annual fees when due shall automatically cancel the certificate. The certificate may remain valid if the commission determines from satisfactory investigation that the certificate should be renewed. Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission information as may be requested by the

commission. If an investigation is required, the cost of making the investigation shall be paid by the certificate holder in advance.

36-21A-98. Recording of instrument conveying interest in subdivision. An instrument conveying an interest in the subdivided real estate shall be in recordable form and the subdivider or buyer may record such instrument in the county where the real estate is located and in the office where deeds are recorded.

36-21A-99. Cease and desist orders to prevent subdivision sales provisions violations. The executive director, with the consent of the commission, may issue a cease and desist order upon determination that the provisions of §§ 36-21A-93 to 36-21A-98, inclusive, have been or are about to be violated.

36-21A-100. Contracts violating subdivision sale provisions void and unenforceable -- Recovery of money paid plus interest. Failure to comply with the provisions of §§ 36-21A-93 to 36-21A-98, inclusive, make any contract entered into in this state void and unenforceable. Money paid under that contract to the certificate holder, together with interest at the Category A rate of interest as established in § 54-3-16 from date of the payment, may be recovered in a civil action.

36-21A-101. Establishment of real estate recovery fund -- Purpose. The commission shall establish and maintain a real estate recovery fund, which shall be used to provide a source for payment of unsatisfied judgments obtained by persons aggrieved by the acts of a person licensed under this chapter. The commission shall maintain one hundred thousand dollars in the fund to be used strictly for the purpose of recovery of unsatisfied judgments against licensees. The moneys deposited in the fund shall be invested by the commission by establishing an account with the state investment council pursuant to chapter 4-5, and all interest and profits derived from such investment, if the fund exceeds one hundred thousand dollars, shall be transferred to the commission's general fund. The interest and profits shall be retained in the fund until its total reaches one hundred thousand dollars.

36-21A-102. Minimum balance in recovery fund -- Separate fee payable to restore minimum balance. If at the end of any calendar year the amount remaining in the real estate recovery fund is less than one hundred thousand dollars, every person registering pursuant to this chapter shall pay, in addition to the biennial registration fee, a separate fee in an amount declared sufficient by the commission to restore the balance in the fund to at least one hundred thousand dollars.

36-21A-103. Notice to commission of claims against recovery fund -- Intervention by commission. A person commencing an action that may result in the filing of a claim against the real estate recovery fund shall serve a copy of the summons and complaint upon the commission within ten days of service upon the defendant. The commission may intervene in the action pursuant to § 15-6-24(a).

36-21A-104. Application by unsatisfied judgment creditor for payment of loss from recovery fund -- Maximum payment -- Service on commission and judgment debtor -- Hearing on application for payment -- Continuances. If any person obtains a final judgment in any court of competent jurisdiction against a person licensed under this chapter, on grounds of fraudulent, deceptive or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, and which cause of action accrued on or after July 1, 1977, the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews, appeals and execution and levy, file a verified application in the circuit court, sixth circuit, Hughes county, for an order directing payment out of the real estate recovery fund of the amount of actual and direct loss in the transaction up

to the sum of fifteen thousand dollars of the amount remaining unpaid upon the judgment. Nothing in this chapter may obligate the fund for more than fifteen thousand dollars for each person. A copy of the verified application shall be served upon the commission and upon the judgment debtor, and a certificate or affidavit of such service filed with the court. The court shall conduct a hearing upon the application thirty days after service of the application upon the commission. Upon petition of the commission, the court shall continue the hearing up to an additional sixty days, and upon a showing of good cause may continue the hearing for such further period as the court considers appropriate.

36-21A-105. Facts to be shown at hearing by applicant for payment from recovery fund. At the hearing the applicant shall show the following:

(1) He is not a spouse of the judgment debtor, or the personal representative of such spouse;
(2) If he is licensed under this chapter, he was not acting as a principal or agent in a real estate transaction;
(3) He has complied with all the requirements of §§ 36-21A-101 to 36-21A-115, inclusive;
(4) He has obtained a judgment stating the amount thereof and the amount owing thereon at the date of the application;
(5) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment;
(6) If he has discovered property or other assets owned by the judgment debtor and liable to be applied in satisfaction of the debt he shall further show that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;
(7) Any amount recovered from the judgment debtor or debtors and any amount recovered in out-of-court settlements as to particular defendants, if any, have been applied to the actual and compensatory damages awarded by the court;
(8) He has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the real estate recovery fund; and
(9) He is making the application within one year after the judgment becomes final, or within one year after the termination of any review or appeal of the judgment.

36-21A-106. False statement in proceedings against recovery fund as perjury. Any person who knowingly files with the commission any notice, statement or other document required under §§ 36-21A-101 to 36-21A-115, inclusive, which is false or untrue or contains any material misstatement of fact is guilty of perjury.

36-21A-107. Burden of proof as to fraud or conversion -- Presumption when original action was contested by debtor. If an applicant's judgment is by default, stipulation or consent, or if the action against the licensee was defended by a trustee in bankruptcy, the applicant has the burden of proving his cause of action for fraudulent, deceptive or dishonest practices or conversion of trust funds. Otherwise, the judgment creates a rebuttable presumption of the alleged fraudulent, deceptive or dishonest practices or alleged conversion of trust funds.

36-21A-108. Defense by commission of action against recovery fund -- Motion for dismissal -- Compromise. The commission may defend any action on behalf of the fund and shall have recourse to all appropriate means of defense and review including examination of witnesses. The commission may move the court at any time to dismiss the application if it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the petition, and the judgment referred to therein, does not

form the basis for a meritorious recovery claim within the purview of §§ 36-21A-101 to 36-21A-115, inclusive. The commission shall give written notice to the applicant and judgment debtor ten days before the date set for hearing such motion. The commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party. It is not bound by any prior compromise or stipulation of the judgment debtor.

36-21A-109. Defense by judgment debtor in action against recovery fund. The judgment debtor may defend any such action on his own behalf and shall have recourse to all appropriate means of defense and review including examination of witnesses.

36-21A-110. Payment from recovery fund ordered only on valid cause of action -- Prior judgment only prima facie evidence. If the court proceeds upon an application, it shall order payment out of the real estate recovery fund only upon a determination that the applicant has a valid cause of action, and has complied with the provisions of §§ 36-21A-101 to 36-21A-115, inclusive. The judgment shall be only prima facie evidence of such cause of action and is not conclusive.

36-21A-111. Order for payment from recovery fund. If the court finds after the hearing that the claim should be levied against the portion of the fund allocated for the purpose of recovery of unsatisfied judgments, the court shall enter an order directed to the commission requiring payment from the fund in the amount payable upon the claim.

36-21A-112. Maximum liability of fund for acts of one licensee. The liability of the fund for the acts of a licensee, when acting as such and occurring before the date of the court order entered pursuant to §§ 36-21A-101 to 36-21A-115, inclusive, is terminated whenever such order authorizes payments from the fund for judgments or unsatisfied portions thereof, in an aggregate amount of fifteen thousand dollars on behalf of such licensee.

36-21A-113. Deferred payment of authorized claim -- Interest. If, at any time, the money deposited in the fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate recovery fund, satisfy those unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the Category A rate of interest as established in § 54-3-16.

36-21A-114. Suspension of license when payment from fund authorized -- Repayment to fund required for reinstatement. If the commission pays from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license shall automatically be suspended upon the effective date of an order by the court authorizing payment from the fund. No licensee may be reinstated or issued a license until he has repaid in full the amount paid from the fund on his account plus interest thereon at the Category A rate of interest as established in § 54-3-16. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

36-21A-115. Subrogation of fund to rights under judgment paid -- Assignment. If, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid. The judgment creditor shall assign all his right, title and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment shall be deposited to the fund.

36-21A-116. Other disciplinary powers unimpaired -- Effect of repayment to fund. Nothing contained in §§ 36-21A-101 to 36-21A-115, inclusive, limits the authority of the commission to take

disciplinary action against any licensee under other provisions of this chapter. The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of §§ 36-21A-101 to 36-21A-115, inclusive.

36-21A-117, 36-21A-118. Transferred to §§ 36-21B-3, 36-21B-7.

36-21A-119. Errors and omissions insurance required of salesmen and brokers. The real estate commission shall adopt rules, pursuant to chapter 1-26, requiring as a condition of licensure that all real estate salesman and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

36-21A-120. Group insurance coverage authorized -- Independent errors and omissions coverage. The Real Estate Commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

36-21A-121. Commission to determine conditions of errors and omissions coverage. The Real Estate Commission shall determine the terms and conditions of coverage required by § 36-21A-119, including the minimum limits of coverage, the permissible deductible and the permissible exceptions.

36-21A-122. Notice of terms and conditions of errors and omissions -- Certificate of coverage. Each licensee shall be notified of the required terms and conditions of coverage at least thirty days before the biennial license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the Real Estate Commission.

36-21A-123. Repealed by SL 2001, ch 209, § 1.

36-21A-124. Employment status -- Independent contractor. For purposes of determining employment status, any broker, broker associate, and salesperson who is a natural person and licensed under this chapter is engaged in an independently established profession. Any such licensee is an independent contractor if:

(1) The licensed broker with whom the licensee is affiliated does not specify by other than general policy the time, method, and location of the licensee's services; and
(2) The licensed broker with whom the licensee is affiliated compensates the licensee on the basis of work performed without withholding and remitting federal income and social security taxes; and
(3) The licensed broker with whom the licensee is affiliated provides only incidental supplies, equipment, and facilities, while the licensee assumes responsibility for vehicular, educational, and other significant professionally related expenses; and
(4) Either party to the relationship may terminate it at will and without liability.

36-21A-125. "Adverse material fact" defined. For the purposes of this chapter, an adverse material fact is information that negatively affects the value of the property or a party's ability to perform its obligations in a real estate transaction. Adverse material facts include:

(1) Any environmental hazards affecting the property which are required by law to be disclosed;
(2) Any material defects in the property;
(3) Any material defects in the title to the property which are anticipated to survive the closing; and

(4) Any material limitation on the client's ability to perform under the terms of the contract.

36-21A-126. "Brokerage" defined. For the purposes of this chapter, a brokerage is the business or occupation of a real estate broker. The term includes licensees associated with the broker who have been assigned management duties.

36-21A-127. "Confidential information" defined. For the purposes of this chapter, confidential information is any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of the information is authorized in writing by the client or disclosure of this information is required by law or the information becomes public knowledge. The term, confidential information, does not include material facts about the physical condition of the property.

36-21A-128. Informative acts that do not constitute representation. For the purposes of this chapter, initial acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of representation on behalf of a consumer include the following:

(1) Responding to phone inquiries by consumers as to the availability and pricing of real estate services;
(2) Responding to phone inquiries from a consumer concerning the price or location of real property;
(3) Attending an open house and responding to questions about the property from a consumer;
(4) Setting an appointment to view property;
(5) Responding to questions of consumers walking into a licensee's office concerning real estate services offered on particular properties;
(6) Describing a property or the property's condition in response to a consumer's inquiry;
(7) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
(8) Referring a person to another broker or service provider;
(9) Providing a one-time showing of one property only to a potential buyer or lessee.

36-21A-129. "Substantive contact" defined. For the purposes of this chapter, substantive contact is any performance beyond initial acts described in § 36-21A-128 and includes discussion of:

(1) Any specific financial qualifications of the buyer; or
(2) The selling or buying motives or objectives of the seller or buyer, in which the consumer may divulge any confidential personal or financial information, which if disclosed to the other party, could harm that party's bargaining position.

36-21A-130. Agency agreements -- Requirements. Any agency agreement in which a broker represents a seller or lessor shall be in writing and shall contain the proper legal description, the price and terms, the date of authorization, the expiration date, the type of agency relationship established, compensation to be paid, authorization to cooperate with or compensate other brokers, and the signatures of all parties. The licensee who obtains the agreement shall give the person signing a copy of the agreement.

Any agency agreement in which a broker represents a buyer or tenant shall be in writing and shall contain a description of the type and geographical area of property sought by the client, the type of agency relationship established, the compensation to be paid, the date of authorization, the date of expiration, and the signatures of all parties. The licensee who obtains the agreement shall give the person signing a copy of the agreement.

An agency agreement between a broker and a buyer, seller, or lessee may not include a provision for automatic renewal of the agreement at expiration. A property management agreement may include a

provision for automatic renewal at expiration if it contains a provision for written cancellation on terms agreeable to all parties to the agreement.

When entering into an agency agreement, a broker shall provide a clear and complete explanation of the broker's representation of the interests of the seller/landlord or buyer/tenant. If the broker represents more than one party in a transaction, the agreement shall state how the representation may be altered. The agreement shall require authorization of all parties to the transaction before the broker initiates any transaction in which the broker would represent all parties.

An agency agreement shall be signed by the responsible broker. However, the responsible broker may authorize a salesperson or broker associate to sign agreements on behalf of the responsible broker.

The commission may promulgate rules pursuant to chapter 1-26 to provide for uniform provisions in any agency agreement under this section.

36-21A-131. Licensee -- Limited relationships. Any licensee performing services authorized by § § 36-21A-119 to 36-21A-150, inclusive, is limited to the following relationships:

(1) Single agent:
  (a) Seller/landlord agent;
  (b) Buyer/tenant agent;
(2) Limited agent;
(3) Subagent; and
(4) Transaction broker.

36-21A-132. Duties and obligations of licensee representing seller or landlord. Any licensee representing a seller or landlord has the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;
(2) To exercise reasonable skill and care for the client;
(3) To promote the interest of the client with the utmost good faith, loyalty, and fidelity, including:
  (a) Seeking a price and terms which are acceptable to the client. However, the licensee is not obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
  (b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;
  (c) Disclosing to the client all adverse material facts actually known by the licensee; and
  (d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
(4) To account in a timely manner for all money and property received; and
(5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes, or regulations.

36-21A-133. Disclosure of client information by seller's or landlord's agent. Without the express written authority of the seller or landlord, no licensee acting as a seller's or landlord's agent may disclose any confidential information about the client unless disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a seller's agent for making any required or permitted disclosure.

A seller's agent does not terminate the seller's agency relationship by making any required or permitted disclosures.

36-21A-134. Seller's agent has no fiduciary duty to customer. No licensee acting as a seller's or landlord's agent owes any fiduciary duty or obligation to a customer. A licensee shall provide disclosure of all adverse material facts known by the licensee to any customer.

No seller's or landlord's agent owes any duty to conduct an independent inspection of the property.

36-21A-134.1. No duty to disclose sex offender information. No licensee representing a seller or landlord has a duty to investigate, volunteer, or disclose information regarding a registered sex offender residing on or near the property.

36-21A-135. Seller's agent may show other properties. A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers and may list competing properties for sale or lease without breaching any duty or obligation to the client.

36-21A-136. Duties and obligations of licensee representing buyer or tenant. Any licensee representing a buyer or tenant has the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;
(2) To exercise reasonable skill and care for the client;
(3) To promote the interest of the client with the utmost good faith, loyalty, and fidelity, including:
  (a) Seeking a price and terms which are acceptable to the client. However, the licensee is not obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
  (b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
  (c) Disclosing to the client adverse material facts known by the licensee; and
  (d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
(4) To account in a timely manner for all money and property received; and
(5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

36-21A-137. Buyer's or tenant's agent not to disclose certain information without written authority -- Exceptions. Without the express written authority of the buyer or tenant, no licensee acting as a buyer's or tenant's agent may disclose any confidential information about the client unless disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

A buyer's agent does not terminate the buyer's agency relationship by making any required or permitted disclosures.

36-21A-138. Buyer's agent has no fiduciary duty to customer. No licensee acting as a buyer's or tenant's agent owes any fiduciary duty or obligation to a customer. A licensee shall provide disclosure of all adverse material facts known by the licensee to any customer.

No buyer's or tenant's agent owes any duty to conduct an independent investigation of the client's financial condition.

36-21A-138.1. No duty to volunteer sex offender information -- Actual knowledge must be disclosed upon inquiry. No licensee representing a buyer or tenant has a duty to investigate or volunteer information regarding a registered sex offender residing on or near the property. However, upon inquiry by the licensee's client, the licensee representing a buyer or tenant shall disclose to the client any actual knowledge that the licensee may have regarding a registered sex offender residing on or near the property.

36-21A-139. Buyer's agent may show property to competing clients. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section does not prohibit a buyer's or tenant's agent from showing competing clients the same property and from assisting competing clients in attempting to purchase or lease a particular property.

36-21A-140. Licensee as limited agent -- Written consent of all parties required -- Duties and obligations. A licensee may act as a limited agent only with the informed written consent of all parties to the transaction. A limited agent is an agent for both the seller and the buyer and has the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;
(2) To exercise reasonable skill and care for the client;
(3) To present all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
(4) To disclose to the client adverse material facts known by the licensee;
(5) To advise the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
(6) To account in a timely manner for all money and property received; and
(7) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

36-21A-141. Certain information not to be disclosed by limited agent without written consent. The following information may not be disclosed by a limited agent without the informed written consent of the client to whom the information pertains:

(1) That a buyer is willing to pay more than the asking price or lease rate offered for the property;
(2) That a seller is willing to accept less than the asking price or lease rate for the property;
(3) What the motivating factors are for any client, buying, selling, or leasing the property; and
(4) That a client will agree to financing terms other than those offered.

36-21A-141.1. Appointment of licensee to act as appointed agent of client to exclusion of other licensees -- Limited agent – Information -- Rules. A real estate brokerage entering into an agency agreement may, through the responsible broker, appoint to the client those licensees affiliated with the brokerage who will act as appointed agents of that client to the exclusion of all other licensees affiliated with the brokerage. The appointment shall be in writing. A responsible broker is not a limited agent solely because the broker makes an appointment pursuant to this section. However, any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction is a limited agent and shall comply with the provisions governing limited agents.

When an agent is appointed pursuant to this section, each client, the real estate brokerage, and any appointed licensee is considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the client, the real estate brokerage, and the appointed agent.

The commission shall promulgate rules pursuant to chapter 1-26 to establish appointed agent procedures regarding disclosure and confidentiality.

36-21A-142. Limited agent not to disclose certain information about one client to another without written authority -- Exceptions. Without the express written authority of a client, no limited agent may disclose to one client any confidential information about the other client unless the disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a limited agent for making any required or permitted disclosure.

A limited agent does not terminate the limited agency relationship by making any required or permitted disclosures.

36-21A-143. "Subagency" defined. For the purposes of this chapter, a subagency is any situation in which a responsible broker or licensees associated with the broker act for another broker's client with written permission of the client. The subagent owes the same obligations and responsibilities to the client as does the client's broker.

36-21A-144. Transaction broker -- Duties and obligations. Any licensee acting as a transaction broker has the following duties and obligations:

(1) To perform the terms of any written agreement made with the customer;
(2) To exercise reasonable skill and care for the customer;
(3) To present all offers in a timely manner;
(4) To account in a timely manner for all money and property received;
(5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances including fair housing and civil rights statutes or regulations; and
(6) To disclose to the customer all adverse material facts known by the licensee.

No licensee acting as a transaction broker may advise any party to a transaction to the detriment of another party.

36-21A-145. Transaction broker not responsible for -- Independent inspections -- Statements by seller -- Finances. No licensee acting as a transaction broker has any duty to:

(1) Conduct an independent inspection of the property for the benefit of any party to the transaction;
(2) Independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant, or qualified third-party inspector; or
(3) Conduct an independent investigation of the buyer's or tenant's financial condition.

36-21A-146. Certain information not to be disclosed by transaction broker without written consent. The following information may not be disclosed by the transaction broker without the informed written consent of the customer:

(1) That a buyer is willing to pay more than the asking price or lease rate offered for the property;
(2) That a seller is willing to accept less than the asking price or lease rate for the property;
(3) What the motivating factors are for any customer, buying, selling, or leasing the property;
(4) That a customer will agree to financing terms other than those offered; and
(5) Any confidential information about a party to the transaction to the other party unless the disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation.

36-21A-147. Office policies -- Relationships -- Written disclosure. Every responsible broker shall develop and maintain a written office policy that specifically sets forth agency and brokerage relationships that the broker may establish. At the first substantive contact with a seller or buyer who has not entered into a written agreement with a broker, the licensee shall:

(1) Disclose in writing to that person the types of agency and brokerage relationships the broker is offering to that person; and
(2) Provide that person with a written copy of a disclosure on a form prescribed by the commission.

The written disclosure shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure does not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

After a seller and buyer have entered into a written agency or brokerage agreement with a broker, no other licensee is required to make the disclosures required by this section.

The commission may prescribe the disclosure form by rules promulgated pursuant to chapter 1-26.

36-21A-148. Client, licensee not liable for misrepresentation made by the other -- Exception. No client or customer is liable for any misrepresentation made by the licensee arising out of their agency or brokerage agreement unless the client or customer knew of the misrepresentation.

No licensee is liable for a misrepresentation of the licensee's client arising out of the agency agreement unless the licensee knew of the misrepresentation.

In any agency or brokerage relationship, the licensees, each client or customer, and the real estate brokerage are required to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the clients or customers, the real estate brokerage, and its licensees.

36-21A-149. Duties under common law. This section supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of any licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state.

36-21A-150. Duties of broker or licensee after transaction finished. Unless otherwise provided in the agreement or by law, no broker and licensee associated with that broker engaged as a seller's/landlord's or buyer's/tenant's agent, subagent, limited agent, or transaction broker owes any further duty or obligation to a client or customer after termination, expiration, completion, or performance of the agency or brokerage agreement, except for the following duties:

(1) Accounting for all moneys and property related to and received during the engagement; and

(2) Keeping confidential all information received during the course of the engagement.

36-21A-151. Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check. Each applicant for licensure and registration under this chapter in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the commission shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the commission all information obtained as a result of the criminal background check. This information shall be obtained prior to licensure of the applicant. The commission may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the commission. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

CHAPTER 15A
CONDOMINIUMS

Section

43-15A-1.	Definition of terms.
43-15A-2.	Estates subject to chapter.
43-15A-3.	Establishment of condominium project -- Master deed or lease.
43-15A-4.	Particulars required in master deed or lease.
43-15A-5.	Common areas defined.
43-15A-6.	Joint or common ownership.
43-15A-7.	Exclusive and common rights of owners.
43-15A-8.	Recording of transfers and encumbrances of individual units.
43-15A-9.	Recording of master deeds and leases -- Tax inapplicable to original recordation.
43-15A-10.	Notice of intent to sell domestic condominium -- Contract voidable if notice not given.
43-15A-11.	Fee to accompany notice of intent -- Questionnaire -- Form and content.
43-15A-12.	Inspection of condominium project.
43-15A-13.	Waiver of initial inspection.
43-15A-14.	Filing fee and inspection expenses to accompany notice of intent -- Payment to inspector.
43-15A-15.	Deposit and expenditure of fees.
43-15A-16.	Public report of examination findings -- Status of report.
43-15A-17.	Commission report required before offer to sell or taking reservations to purchase.
43-15A-18.	Supplementary report on investigations made after final or substitute report issued -- True copy to purchasers.
43-15A-19.	Copy of reports issued to prospective purchaser before binding contract for sale -- Time to read copy -- Receipt.
43-15A-20.	True copies to be exact reproductions of commission's reports.
43-15A-21.	Receipts kept by developer -- Inspection -- Duration.
43-15A-22.	Material change in offering prohibited without written notice.
43-15A-23.	Deposits held in escrow until delivery of deed.
43-15A-24.	Management or recreation facility contract period limited -- Subsequent contracts by council of co-owners.
43-15A-25.	False statement, fraud or violation of provisions as misdemeanor.
43-15A-26.	Investigation of developer suspected of violations -- Examination of books -- Developers to keep records available.
43-15A-27.	Chapter supplemental to other laws -- Conflict of laws.
43-15A-28.	Validation of previously established vertical and horizontal property regimes and condominiums -- Deadline for enforcing rights -- Notice of pendency.
43-15A-29.	Lien for erection, repair or improvement of a single development -- Apportionment of liens.
43-15A-30.	Promulgation of rules to administer and enforce chapter.

43-15A-1. Definition of terms. Terms as used in this chapter mean:

(1) "Commission," the South Dakota Real Estate Commission;

(2) "Co-owner," any person, firm, corporation, limited liability company, partnership, association, trust, or legal entity, or any combination thereof who owns a condominium within the project;

(3) "Council of co-owners," all co-owners of the condominium;

(4) "Master deed" or "master lease," the deed or lease recording the property of the condominium;
(5) "Project," the entire parcel of real property divided or to be divided into condominiums, including all structures on the property;
(6) "Property," land whether leasehold or fee simple and the buildings or building, all improvements and structures on the land and all easements, rights and appurtenances belonging to the land;
(7) "To record," to record pursuant to the laws of this state relating to the recordation of deeds.

43-15A-2. Estates subject to chapter. "Condominium," as used in this chapter, unless the context otherwise requires, shall mean an estate in real property consisting of an undivided interest in portions of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building or industrial and commercial building on such real property, such as, but not restricted to, an apartment, office, or store. A condominium may include in addition a separate interest in other portions of real property. Such estate may, with respect to the duration of its enjoyment, be either an estate of inheritance or perpetual estate, an estate for life, or an estate for years.

43-15A-3. Establishment of condominium project -- Master deed or lease. Whenever a developer, the sole owner, or the co-owners of a building or buildings expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated by § 43-15A-4, their desire to submit their property to the formation of a condominium established by this chapter, there shall be thereby established a condominium project.

43-15A-4. Particulars required in master deed or lease. The master deed or lease to which § 43-15A-3 refers shall express the following particulars:
(1) The description of the land, whether leased or in fee simple, and the building or buildings, expressing their respective areas;
(2) The general description and the number of each condominium, expressing its area, location, and any other data necessary for its identification;
(3) The description of the common areas of the building or buildings; and
(4) The provisions requiring the council of co-owners to maintain insurance on the condominium.

43-15A-5. Common areas defined. "Common areas," as used in this chapter, unless the context otherwise requires and unless otherwise provided in the master deed or lease, includes:
(1) The land whether fee simple or leased, on which the building or buildings stand;
(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits and communication ways;
(3) The basements, flat roofs, yards, gardens, recreation facilities, and parking areas, unless otherwise provided or stipulated;
(4) The premises for the lodging of janitors or persons in charge of the building or buildings, except as otherwise provided or stipulated;
(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, pumps, and the like;
(6) The elevators, garbage incinerators, and in general all devices or installations existing for common use; and
(7) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

43-15A-6. Joint or common ownership. Any condominium may be jointly or commonly owned by more than one person.

43-15A-7. Exclusive and common rights of owners. Any condominium owner shall have an exclusive right to his condominium and shall have a common right to a share, with other co-owners, in the common areas of the property.

43-15A-8. Recording of transfers and encumbrances of individual units. Provisions shall be made for the recordation of the individual condominiums on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordation.

43-15A-9. Recording of master deeds and leases -- Tax inapplicable to original recordation. The register of deeds of the county recording any master deed or lease shall receive the sum of seventy-five dollars for the first fifty pages plus two dollars per page for each page or fraction thereof exceeding fifty pages. A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are deeds. However, no state or local recordation tax upon the value of the property transferred shall apply to the deed or portion thereof recorded solely for the purpose of complying with the provisions of § 43-15A-3.

43-15A-10. Notice of intent to sell domestic condominium -- Contract voidable if notice not given. Prior to the time when a domestic condominium project is to be offered for sale in this state, the developer shall notify the real estate commission in writing of his intention to sell such offerings. If the developer fails to notify the commission as provided in this chapter, the purchaser may at his option void the contract for sale.

43-15A-11. Fee to accompany notice of intent -- Questionnaire -- Form and content. The notice of intention to sell shall be accompanied by a fee of twenty-five dollars for each condominium unit up to a maximum of five hundred dollars and by a verified copy of a questionnaire provided by the commission which has been properly completed by the developer. The questionnaire will be in such form and content as will require full disclosure of all material facts, including, but not limited to:

(1) A full disclosure of rights and privileges to common areas;
(2) The sales price of each unit;
(3) Down payment requirement;
(4) Interest rate on mortgages;
(5) Estimated annual property tax attributable to the condominium;
(6) Estimated annual fire and hazard insurance attributable to condominium; and
(7) The amount to be charged to the purchaser under the maintenance contract and under what circumstances the costs may be raised.

43-15A-12. Inspection of condominium project. After appropriate notification has been made pursuant to §§ 43-15A-10 and 43-15A-11, an inspection of the condominium project may be made by the Real Estate Commission.

43-15A-13. Waiver of initial inspection. The Real Estate Commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within thirty days after notification of intention is properly filed pursuant to §§ 43-15A-10 and 43-15A-11 will be construed a waiver of such inspection.

43-15A-14. Filing fee and inspection expenses to accompany notice of intent -- Payment to inspector. When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the Real Estate Commission to be necessary to cover the actual expenses of such inspection, not to exceed seventy-five dollars a day for each day

consumed in the examination of the project plus reasonable first-class transportation expenses, which shall be paid pursuant to § 43-15A-15 as a fee to the board representative inspecting such project.

43-15A-15. Deposit and expenditure of fees. The fees collected in this chapter shall be deposited and expended according to the rules promulgated pursuant to chapter 1-26 by the Real Estate Commission.

43-15A-16. Public report of examination findings -- Status of report. When the Real Estate Commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts available. A public report shall be construed to be neither an approval nor a disapproval of a project.

43-15A-17. Commission report required before offer to sell or taking reservations to purchase. No unit in a condominium project may be offered for sale until the Real Estate Commission has issued a final or substitute public report thereon, nor may reservations to purchase be taken until the commission has issued a preliminary, final, or substitute public report.

43-15A-18. Supplementary report on investigations made after final or substitute report issued -- True copy to purchasers. If, after a final or substitute public report has been issued, the Real Estate Commission decides to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the commission may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, the developer shall issue a true copy thereof to all purchasers.

43-15A-19. Copy of reports issued to prospective purchaser before binding contract for sale -- Time to read copy -- Receipt. No developer may enter into a binding contract or agreement for the sale of any unit in a condominium project until a true copy of the Real Estate Commission's final or substitute public report thereon with all supplementary public reports, if any, has been issued and given to the prospective purchaser who has been given no less than ten days to read same, and, his receipt taken therefor.

43-15A-20. True copies to be exact reproductions of commission's reports. The true copies of the Real Estate Commission's public reports shall be an exact reproduction of those prepared by the commission.

43-15A-21. Receipts kept by developer -- Inspection -- Duration. Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the Real Estate Commission or its deputies, for a period of three years from the date the receipt was taken.

43-15A-22. Material change in offering prohibited without written notice. It is a Class 1 misdemeanor for the developer of the project, after an offering is submitted to the Real Estate Commission, to materially change the setup or value or use of such offering without first notifying the commission in writing of such intended change and substantially notifying all purchasers and prospective buyers of such change.

43-15A-23. Deposits held in escrow until delivery of deed. Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

43-15A-24. Management or recreation facility contract period limited -- Subsequent contracts by council of co-owners. No management or recreation facility contract may be entered into by a developer for a period of longer than two years. All subsequent management or recreation facility contracts shall be made by council of co-owners.

43-15A-25. False statement, fraud, or violation of provisions as misdemeanor. Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and a person who, with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a project contains a written statement that is false or fraudulent, issues, circulates, publishes, or distributes the same, or causes the same to be issued, circulated, published, or distributed, or who, in any other respect, violates or fails to comply with the provisions set forth in §§ 43-15A-10 to 43-15A-26, inclusive, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any order, decision, demand, or requirement of the Real Estate Commission under §§ 43-15A-10 to 43-15A-26, inclusive, is guilty of a Class 1 misdemeanor.

43-15A-26. Investigation of developer suspected of violations -- Examination of books -- Developers to keep records available. If the Real Estate Commission has reason to believe that a developer is violating any provision set forth in §§ 43-15A-10 to 43-15A-26, inclusive, or the rules of the commission promulgated pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records, and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain records of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

43-15A-27. Repealed by SL 1980, ch 294, § 20.

43-15A-28. Validation of previously established vertical and horizontal property regimes and condominiums -- Deadline for enforcing rights -- Notice of pendency. Any vertical and horizontal property regime established pursuant to former chapter 43-15, or any condominium established pursuant to chapter 43-15A recorded before January 1, 1992, in the office of the register of deeds of the county in which the land is located, which was in compliance with former chapter 43-15 or chapter 43-15A, respectively, is hereby declared to be valid.

If any person had any vested right in any real property conveyed under either of said chapters, and no action or proceeding to enforce such right was begun prior to July 1, 1993, such right shall be forever barred; and no action or proceeding so brought shall be of any force or effect or maintainable in any court of this state unless, prior to July 1, 1993, there was recorded in the office of the register of deeds of the county in which the real property affected is located, a notice of the pendency of such action, in accordance with the provision of chapter 15-10.

43-15A-29. Lien for erection, repair, or improvement of a single development -- Apportionment of liens. A lien holder who contributes to the erection, alteration, repair, or other general improvement of a single development of condominiums shall apportion his demand among the condominiums affected and shall assert a lien for a proportionate part upon each and upon the ground appurtenant to each respectively.

43-15A-30. Promulgation of rules to administer and enforce chapter. The Real Estate Commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter.

CHAPTER 15B
TIME-SHARE ESTATES

Section

43-15B-1.	"Time-share" defined.
43-15B-2.	Restrictions on sales.
43-15B-3.	Registration of projects.
43-15B-4.	Fee for registration.
43-15B-5.	Inspection fee.
43-15B-6.	Rules.
43-15B-7.	Sale of unregistered project prohibited -- Exception -- Issuance of restricted licenses.
43-15B-8.	Forfeited registration -- Restoration -- Fee.
43-15B-9.	Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check.

43-15B-1. "Time-share" defined. For purposes of this chapter, the term "time-share" means the right to use and occupy a living unit, of which the use and occupancy right is divided among persons holding similar interests within that living unit according to a fixed or variable time schedule on a periodic basis and allotted from the use or occupancy into which the time-share project is divided. There is no distinction between a "time-share use" and a "time-share estate."

43-15B-2. Restrictions on sales. No person may sell, convey, present for sale, or advertise any interest in a time-share project unless he complies with the provisions of this chapter.

43-15B-3. Registration of projects. Any time-share project shall be registered annually with the Real Estate Commission.

43-15B-4. Fee for registration. Application for initial registration under § 43-15B-3 shall be accompanied by a fee set by rule promulgated pursuant to chapter 1-26 not to exceed twenty-five dollars per unit. The total fee may not exceed one thousand dollars per time-share project.

43-15B-5. Inspection fee. The Real Estate Commission may charge an inspection fee in the amount of seventy-five dollars per day for each day estimated to be consumed in the examination of the project, plus additional reasonable expenses, which shall be paid to the commission representative inspecting a project.

43-15B-6. Rules. The Real Estate Commission shall promulgate rules pursuant to chapter 1-26 to implement the provisions of this chapter.

43-15B-7. Sale of unregistered project prohibited -- Exception -- Issuance of restricted licenses. No person may offer to sell in this state any time-share project, or offer to sell outside the state any time-share in a time-share project located within this state without first registering the time-share project with the South Dakota Real Estate Commission. The sale or transfer of a time-share project by an owner other than the developer or sales agent is exempt from this chapter. The Real Estate Commission may issue restricted brokers' or salesmen's licenses for time share brokers or salesmen pursuant to § 36-21-28.1.

43-15B-8. Forfeited registration -- Restoration -- Fee. If a time-share project is not renewed by the date set by the commission by rule promulgated pursuant to chapter 1-26 the registration for such

project is forfeited. A forfeited registration may be restored within ninety days upon payment of a registration fee set by the commission by rule promulgated pursuant to chapter 1-26 not to exceed twenty-five dollars per unit. The total fee may not exceed two hundred fifty dollars per time-share project.

43-15B-9. Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check. Each applicant for licensure and registration under this chapter in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the commission shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the commission all information obtained as a result of the criminal background check. This information shall be obtained prior to licensure of the applicant. The commission may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the commission. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

CHAPTER 32
LEASE OF REAL PROPERTY

Section

43-32-1.	Leasing of real property defined.
43-32-2.	Limited term of lease -- Agricultural land -- Municipal lots.
43-32-3.	Hiring of real property presumed for one year -- Exception.
43-32-4.	Hiring of lodgings -- Length of term -- Presumption.
43-32-5.	Lease of real property for more than one year -- Written contract necessary.
43-32-6.	Obligations of lessor of real property -- Tenant's remedies against lessor.
43-32-6.1.	Maximum security deposit for residential premises -- Larger deposit by mutual agreement.
43-32-7.	Repealed.
43-32-8.	Residential lessor to keep premises in repair -- Disrepair caused by lessee -- Agreements for repairs in lieu of rent -- Liability to third persons unaffected.
43-32-9.	Failure of lessor to repair premises -- Lessee's remedies.
43-32-10.	Preservation of premises by lessee.
43-32-11.	Use of premises when leased for particular or specified purpose -- Responsibility of lessee -- Rescission of contract.
43-32-12.	Time for payment of rent -- Agricultural and wildland -- Lodging -- Termination of hiring.
43-32-13.	Modification of lease -- Written notice by landlord, effect -- Termination by tenant.
43-32-14.	Retention of possession by lessee after expiration of hiring -- Acceptance of rent by lessor -- Renewal of hiring -- Terms.
43-32-15.	Renewal of hiring of real property presumed unless notice given of termination.
43-32-16.	Tenant receiving notice of adverse proceedings -- Duty to inform landlord.
43-32-17.	Attornment of tenant to stranger, validity -- Consent of landlord -- Judgment.
43-32-18.	Termination of lease by landlord before end of agreed term -- Use of premises by tenant contrary to agreement -- Neglect of tenant to make repairs.
43-32-19.	Termination of lease by tenant -- Neglect of landlord to place tenant in quiet possession of premises -- Neglect to keep premises in good condition -- Destruction of premises.
43-32-20.	Assignment of lease by lessee -- Breach of agreement -- Recovery of possession -- Remedies of lessor -- Exception -- Security for loan.
43-32-21.	Assignment of lease by lessor -- Breach of agreement -- Remedies of lessee -- Covenants excepted.
43-32-22.	Termination of lease -- Agreed term -- Mutual consent -- Acquisition of superior title by tenant.
43-32-22.1.	Continuation of farm lease absent notice -- Time for notice -- Termination without notice in case of default -- Grassland included.
43-32-23.	Termination of lease at pleasure of either party -- Death or incapacity to contract -- Exception.
43-32-24.	Return of security deposit after termination of tenancy -- Withholding -- Itemized accounting -- Forfeiture of withholding rights -- Punitive damages.
43-32-25.	Small amount of tenant's property left on premises presumed abandoned -- Disposal by lessor.
43-32-26.	Storage of tenant's valuable property left on premises -- Lien -- Disposal as abandoned after waiting period.
43-32-27.	Cause of action against lessor for retaliatory conduct.
43-32-28.	Lessee's remedies for retaliatory conduct by lessor.

43-32-29. Rights and remedies preserved.
43-32-30. Disclosure of knowledge of existence of prior manufacturing of methamphetamines.
43-32-31. Notice to vacate and remove mobile or manufactured home from leased property.
43-32-32. Reasonable notice of landlord's intent to enter – Contents.
43-32-33. Service animal and disability defined.
43-32-34. Landlord permitted to require documentation of disability requiring service animal – Exceptions.
43-32-35. Service animal documentation requirements.
43-32-36. Eviction for false claims of disability requiring service animal or fraudulent documentation – Damages.

43-32-1. Leasing of real property defined. Leasing is a contract by which one (the lessor or landlord) gives to another (the lessee or tenant) temporary possession and use of real property for reward and the lessee agrees to return such property to the lessor at a future time.

43-32-2. Limited term of lease -- Agricultural land -- Municipal lots. No lease or grant of agricultural land for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

No lease or grant of any municipal lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid.

43-32-3. Hiring of real property presumed for one year -- Exception. A hiring of real property, other than lodgings in places where there is no usage on the subject, is presumed to be for one year from its commencement unless otherwise expressed in the hiring.

43-32-4. Hiring of lodgings -- Length of term -- Presumption. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the hiring is presumed to be monthly.

43-32-5. Lease of real property for more than one year -- Written contract necessary. No agreement for the leasing of real property or an interest therein for a longer period than one year is valid unless the same, or some note or memorandum thereof, be in writing, signed by the lessor or his agent thereunto authorized in writing.

43-32-6. Obligations of lessor of real property -- Tenant's remedies against lessor. A lessor shall deliver the leased premises to the lessee and secure his quiet enjoyment thereof against all lawful claimants.

If the lessor of residential property unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may sue for injunctive relief, recover possession by suit, or terminate the rental agreement and, in any case, recover from the lessor damages in an amount equal to two months rent and the return of any advance rent and deposit paid to the lessor by the lessee.

43-32-6.1. Maximum security deposit for residential premises -- Larger deposit by mutual agreement. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, shall be deemed to be a security deposit. A lessor of residential premises may not demand or receive a security deposit, however denominated, in an

amount or value in excess of one month's rent except that a larger deposit may be agreed upon between the lessor and the lessee where special conditions pose a danger to maintenance of the premises.

43-32-7. Repealed by SL 1983, ch 13, § 29.

43-32-8. Residential lessor to keep premises in repair -- Disrepair caused by lessee -- Agreements for repairs in lieu of rent -- Liability to third persons unaffected. In every hiring of residential premises, whether in writing or parol, the lessor shall keep the premises and all common areas in reasonable repair and fit for human habitation and in good and safe working order during the term of the lease except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control. The lessor shall maintain in good and safe working order and condition all electrical, plumbing, or heating systems of the premises, except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control.

The parties to a lease or hiring of residential premises may not waive or modify the requirements imposed by this section; however, the lessor may agree with the lessee that the lessee shall perform specified repairs or maintenance in lieu of rent.

The provisions of this section shall be in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease. Nothing in this section shall be construed to alter the liability of the lessor or lessee of residential premises for injury to third parties.

43-32-9. Failure of lessor to repair premises -- Lessee's remedies. If within a reasonable time after notice to the lessor of conditions requiring repair to make the premises fit for human habitation and to place the same in good and safe working order which the lessor ought to repair he neglects to do so, the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions.

If the cost of necessary repairs exceeds one month's rent, after written notice stating the specific reason for the withholding, the lessee may withhold payment of rent and immediately deposit it in a separate bank or savings and loan account, written evidence of such action to be provided to the lessor upon deposit, maintained only for the purpose of making repairs until such time as the lessor makes the repairs, at which time the lessee shall release the deposit to the lessor or until sufficient money is accumulated in the account for the lessee to cause the repairs to be made and paid for.

43-32-10. Preservation of premises by lessee. In every hiring of residential premises, whether in writing or parol, the lessee shall preserve the premises, appliances, appurtenances, and other leased personality in good condition, and repair all deteriorations or damage thereto occasioned by his negligent, willful or malicious conduct or such conduct of persons acting under his direction or control.

43-32-11. Use of premises when leased for particular or specified purpose -- Responsibility of lessee -- Rescission of contract. If premises are leased for a particular and specified purpose the tenant must not use the premises for other purposes; and if he does, the landlord may hold him responsible for the safety of the premises during such use, at all events, or he may treat the contract as thereby rescinded.

43-32-12. Time for payment of rent -- Agricultural and wildland -- Lodging -- Termination of hiring. When there is no contract or usage to the contrary, the rent of agricultural and wildland is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

43-32-13. Modification of lease -- Written notice by landlord, effect -- Termination by tenant. In all leases of lands or tenements or of any interest therein from month to month the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, modify the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. The tenant may terminate his lease effective the first day of the next month by providing notice of termination to the landlord within fifteen days of receipt by the tenant of the notice of modification.

43-32-14. Retention of possession by lessee after expiration of hiring -- Acceptance of rent by lessor -- Renewal of hiring -- Terms. If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

43-32-15. Renewal of hiring of real property presumed unless notice given of termination. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in § 43-32-14 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the same at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

43-32-16. Tenant receiving notice of adverse proceedings -- Duty to inform landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver to him, if in writing.

43-32-17. Attornment of tenant to stranger, validity -- Consent of landlord -- Judgment. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

43-32-18. Termination of lease by landlord before end of agreed term -- Use of premises by tenant contrary to agreement -- Neglect of tenant to make repairs. A landlord may terminate a lease and reclaim the premises before the end of the agreed term:

(1) When the tenant uses or permits a use of the premises in a manner contrary to the lease agreement; or

(2) When the tenant does not within a reasonable time after request make such repairs as he may be bound to make.

43-32-18.1. Eviction of tenant – Limitations. A lease governing residential property may not include any term that authorizes the eviction of a tenant who calls or otherwise seeks assistance from the law enforcement or other emergency responders because of an alleged incident of domestic abuse, unlawful sexual behavior, or stalking.

Nothing in this chapter authorizes the eviction of a tenant solely because the tenant of a member of the tenant's household is the victim of alleged domestic abuse, unlawful sexual behavior, or stalking.

43-32-19. Termination of lease by tenant -- Neglect of landlord to place tenant in quiet possession of premises -- Neglect to keep premises in good condition -- Destruction of premises. A tenant may terminate a lease before the end of the term:

(1) The landlord does not, within a reasonable time after written request, fulfill obligations, if any, as to placing and securing the tenant in quiet possession of the premises or putting the premises into good condition or repairing the same;

(2) The greater part of the leased premises or that part which was, and which the landlord had at the time of leasing, reason to believe was the material inducement to the tenant to enter into the lease, is destroyed, from any other cause than the ordinary negligence of the tenant; or

(3) The tenant meets the provisions of § 43-32-19.1.

43-32-19.1. Domestic abuse – Unlawful sexual behavior – Stalking – Termination of lease – Notice requirements. If a tenant or a member of the tenant's household is the victim of alleged domestic abuse, unlawful sexual behavior, or stalking, the tenant may terminate the lease and vacate the rental unit without penalty for early termination on or before a specified date, provided:

(1) The tenant notifies the landlord in writing that the termination is due to the tenant's fear of imminent danger or injury to the tenant or to a member of the tenant's household; and

(2) The tenant attached to the notice:

(a) A police report regarding an alleged incident of domestic abuse, unlawful sexual behavior, or stalking, signed during the thirty-day period immediately preceding the date of the notice;

(b) A protection order issued during the thirty-day period immediately preceding the date of the notice, in response to an alleged incident of domestic abuse, unlawful sexual behavior, or stalking; or

(c) Documentation signed by a licensed health care provider indicating that:

(i) During the thirty-day period immediately preceding the date of the notice, the provider examined the tenant or a member of the tenant's household;

(ii) The examination was within the provider's scope of practice; and

(iii) As a result of the examination, the provider has reasonable cause to believe that the tenant or a member of the tenant's household was a victim of alleged domestic abuse, unlawful sexual behavior, or stalking.

A tenant who provides a notice of termination in accordance with this section is not liable to pay any otherwise applicable early termination fee or the rent applicable to the month following that in which the tenant vacates the premises.

43-32-19.2. Contact information – Disclosure – Limitation. If in accordance with a termination authorized by § 43-32-19.1 a tenant provides to the landlord a forwarding address or other contact information, the landlord may not disclose that information to any person except with the consent of the tenant or as required by law.

43-32-20. Assignment of lease by lessee -- Breach of agreement -- Recovery of possession -- Remedies of lessor -- Exception -- Security for loan. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

43-32-21. Assignment of lease by lessor -- Breach of agreement -- Remedies of lessee -- Covenants excepted. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

43-32-22. Termination of lease -- Agreed term -- Mutual consent -- Acquisition of superior title by tenant. A lease is terminated:

(1) By the expiration of the agreed term;

(2) By the mutual consent of the parties;
(3) By the tenant acquiring a title to the leased premises superior to that of the landlord.

43-32-22.1. Continuation of farm lease absent notice -- Time for notice -- Termination without notice in case of default -- Grassland included. In the case of farm tenants, occupying and cultivating agricultural land of forty acres or more, under an oral lease, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other by September first, whereupon the tenancy shall terminate March first following. The tenancy may not continue because of absence of notice if there is default in the performance of the existing rental agreement. For the purpose of this section, agricultural land includes grassland, either native or tame.

43-32-23. Termination of lease at pleasure of either party -- Death or incapacity to contract -- Exception. If a lease is terminable at the pleasure of one of the parties, it is terminated by notice to the other of such party's death or incapacity to contract. In other cases it is not terminated by such death or incapacity.

43-32-24. Return of security deposit after termination of tenancy -- Withholding -- Itemized accounting -- Forfeiture of withholding rights -- Punitive damages. Every lessor of residential premises shall, within two weeks after the termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from such deposit only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within forty-five days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of residential premises who fails to comply with this section shall forfeit all rights to withhold any portion of such deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of residential premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

43-32-24.1. Commercial security deposits. For the purposes of this section, the term, commercial premises, means any real property for lease that does not consist of residential property, agricultural land, or any quantity of municipal lots. A lessor of commercial premises shall, within sixty days after the termination of the tenancy and receipt of the tenant’s mailing address or delivery instructions, return any security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from the deposit only the amounts reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within ninety days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of a commercial premises who fails to comply with this section shall forfeit all rights to withhold any portion of the deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of commercial premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

43-32-25. Small amount of tenant's property left on premises presumed abandoned -- Disposal by lessor. The property of a lessee, the total reasonable value of which does not exceed five hundred dollars, left on leased residential premises by the lessee for ten days after the lessee has quit the premises, is presumed to have been abandoned by the tenant and the lessor of the residential premises may dispose of the abandoned property.

43-32-26. Storage of tenant's valuable property left on premises -- Lien -- Disposal as abandoned after waiting period. The property of a lessee, of a total reasonable value exceeding five hundred dollars, left on leased residential premises by the lessee after the lessee has quit the premises, shall be stored by the lessor. The lessor shall have a lien on the property to the extent of the costs of handling and storing the property. After storing the property for thirty days or more the lessor may treat the property as abandoned and dispose of it.

43-32-27. Cause of action against lessor for retaliatory conduct. A cause of action may arise in favor of a lessee and against a lessor of residential property, including a manufactured or mobile home community owner, for retaliation by the lessor against the lessee if the lessor increases rents above fair market value; if the lessor decreases electric, gas, water, or sewer services; or if the lessor gives the lessee notice to vacate the premises when such notice is not based upon a breach of the terms of the lease; subsequent to any of the following special events:

(1) The lessor has received written notice from the lessee or a governmental agency that the lessee has complained to a governmental agency charged with responsibility for enforcement of a building or housing code violation applicable to the premises and materially affecting health and safety, and the complaint is determined to be reported in good faith; or

(2) The lessee has given written notice to the lessor of a condition requiring repair pursuant to § 43-32-9; or

(3) The lessee has organized or become a member of a tenant's union or organization.

It shall be a defense to this cause of action that the notice to vacate the premises was given by the lessor more than one hundred eighty days after the occurrence of a special event. The failure of the lessor to renew any written lease prior to or upon its expiration, is not retaliation.

43-32-28. Lessee's remedies for retaliatory conduct by lessor. If the lessor acts in violation of § 43-32-27, the lessee is entitled to the remedies provided in § 43-32-6. The court may award the lessee reasonable attorney's fees, not to exceed five hundred dollars.

43-32-29. Rights and remedies preserved. All other rights or remedies of the lessor and the lessee pursuant to any other provision of the law are preserved, except as modified by §§ 43-32-27 and 43-32-28.

43-32-30. Disclosure of knowledge of existence of prior manufacturing of methamphetamines. In any hiring of a residential premises, any lessor who has actual knowledge of the existence of any prior manufacturing of methamphetamines on the premises shall disclose that information to any lessee or any person who may become a lessee. If the residential premises consists of two or more housing units, the disclosure requirements provided by this section only apply to the unit where there is knowledge of the existence of any prior manufacturing of methamphetamines.

43-32-31. Notice to vacate and remove mobile or manufactured home from leased property. Any person who leases real property to an owner of a mobile or manufactured home shall, if the property is developed for an alternate use, give no less than ninety days notice to vacate and remove the home from the real property. The provisions of this section do not apply if the notice is based upon a breach of the terms of a lease.

43-32-32. Reasonable notice of landlord's intent to enter -- Contents. Except in case of an emergency or if it is impracticable to do so, a landlord or landlord's agent shall give the tenant reasonable notice of the landlord's intent to enter and enter only at reasonable times. Twenty-four hours written notice is presumed to be a reasonable notice unless alternate methods of notification or times for entry are mutually agreed upon between the landlord and tenant in the lease. The notice shall specify date or dates of entry, a period of time during normal business hours for entry, and the purpose of intended entry. The notice shall also specify a means for which the tenant may request to reschedule the entry.

43-32-33. Service animal and disability defined. For the purposes of §§ 43-32-34 to 43-32-36, inclusive, the term, service animal, refers to any animal that serves a role for an individual with a disability as an emotional support animal, any therapy animal, or any assistance animal, and the term, disability, is a physical or mental impairment that substantially limits one or more major life activities of a person.

43-32-34. Landlord permitted to require documentation of disability requiring service animal -- Exceptions. A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling unit, if the tenant asserts a disability requiring under any provision of law that a service animal or assistance animal be allowed as an accommodation on the rented premises. A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord.

43-32-35. Service animal documentation requirements. The supporting documentation shall confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. The documentation shall originate from a licensed health care provider who does not operate in this state solely to provide certification for service or assistance animals.

43-32-36 Eviction for false claims of disability requiring service animal or fraudulent documentation -- Damages. If a person is found to have knowingly made a false claim of having a disability that requires the use of a service animal or assistance animal or of knowingly providing fraudulent supporting documentation in connection with such a claim, a lessor may evict a lessee and the lessor is entitled to a damage fee, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.

CHAPTER 16
FORCIBLE ENTRY AND DETAINER

Section

21-16-1.	Grounds for maintenance of action.
21-16-2.	Notice to quit required before commencement of proceedings -- Service and return.
21-16-3.	Jurisdiction of courts.
21-16-4.	Joinder of actions.
21-16-5.	Survival of cause despite death of plaintiff.
21-16-6.	Verified complaint required -- Service with summons -- Procedure as in other actions.
21-16-7.	Time allowed for appearance by defendant -- Undertaking required for adjournment.
21-16-8.	Time action brought on for trial -- Special venire in jury cases.
21-16-9.	Certification to circuit court of title and boundary questions raised in magistrate court.
21-16-10.	Judgment for plaintiff -- Elements included.
21-16-11.	Attorney fees taxed as costs.
21-16-12.	Time of serving execution.

21-16-1. Grounds for maintenance of action. An action of forcible entry and detainer, or of detainer only, is maintainable:

(1) If a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property or the occupied structure of another, and detains the same;

(2) If a party, after entering peaceably upon real property or an occupied structure, turns out by force, threats, or menacing conduct, the party in possession;

(3) If a party by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property, or occupied structure, whether the same was acquired peaceably or otherwise;

(4) If a lessee in person or by subtenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due;

(5) If a party continues in possession after a sale of the real property or occupied structure under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed or instrument of ownership;

(6) If a party continues in possession after a judgment in partition, or after a sale under an order or decree of a circuit court;

(7) If a lessee commits waste upon the leased premises, or does or fails to perform any act which, under the terms of the lease operates to terminate the same.

The term, occupied structure, used in this chapter is defined in subdivision 22-1-2(28).

21-16-2. Notice to quit required before commencement of proceedings -- Service and return. In all cases arising under subdivisions 21-16-1(4), (5), and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.

21-16-3. Jurisdiction of courts. Any circuit court or magistrate court presided over by a magistrate judge has jurisdiction in any case of forcible entry and detainer, or of detainer only, of real property or an occupied structure within its county.

21-16-4. Joinder of actions. An action under the provisions of this chapter cannot be brought in connection with any other except for rents and profits or damages but the plaintiff may bring separate actions for the same if he so desire.

21-16-5. Survival of cause despite death of plaintiff. The legal representative of a person who might have been plaintiff, if alive, may bring an action under this chapter after his death.

21-16-6. Verified complaint required -- Service with summons -- Procedure as in other actions. The complaint must be in writing and verified by the plaintiff or his agent or signed by his attorney, and served with a summons, and the procedure, except as otherwise provided, shall be the same as in other actions in the court where the action is pending.

21-16-7. Time allowed for appearance by defendant -- Undertaking required for adjournment. The time for appearance and pleading shall be four days from the time of service on the defendant, and no adjournment or continuance shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety to be approved by the court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

21-16-8. Time action brought on for trial -- Special venire in jury cases. An action under this chapter may be brought on for trial upon two days' notice after issue is joined. If a jury trial be demanded and no jury is in attendance on the day the action is noticed for trial, the court shall cause a special venire to issue as in cases where extra jurors are required, and proceed to impanel a jury and try the action as in other civil cases.

21-16-9. Certification to circuit court of title and boundary questions raised in magistrate court. If the title to or boundary of the real property or the title to an occupied structure in any wise comes in question, in magistrate court, the case shall be certified to the circuit court as provided by rule of the Supreme Court.

21-16-10. Judgment for plaintiff -- Elements included. If the finding of the court or the verdict of the jury be in favor of the plaintiff, the judgment shall be for the delivery of possession to the plaintiff, and for rents and profits or damages, where the same are claimed in the complaint, and for costs.

21-16-11. Attorney fees taxed as costs. In any case of forcible entry and detainer, or detainer only, the court may tax as a part of the costs in the case, to the prevailing party, reasonable attorney fees, whether a trial is had or not, if prevailing party is represented by a licensed attorney.

21-16-12. Time of serving execution. No execution for possession can be served except in the daytime.

CHAPTER 4
TRANSFER OF PROPERTY

Section

43-4-1.	Transfer of property defined.
43-4-2.	Property subject to transfer -- Rights of trustee, conservator or personal representative.
43-4-3.	Property not subject to transfer.
43-4-4.	Voluntary transfer of property defined.
43-4-5.	Transfer without writing where not required by statute.
43-4-6.	Transfer in writing a grant.
43-4-7.	Grant takes effect upon delivery by grantor -- Presumption as to delivery.
43-4-8.	Absolute delivery of grant required -- Conditional delivery ineffective.
43-4-9.	Constructive delivery of grant -- Agreement of parties.
43-4-10.	Constructive delivery of grant to stranger for benefit of grantee.
43-4-11.	Escrow delivery of grant.
43-4-12.	Redelivery of grant does not transfer title.
43-4-13.	Grant interpreted as contract.
43-4-14.	Construction of grant -- Limitations -- Operative words.
43-4-15.	Irreconcilable parts of grant -- Prevailing part.
43-4-16.	Grantee favored in interpretation of grant -- Exception.
43-4-17.	Title transferred -- Intention of parties.
43-4-18.	Incidents included with thing transferred.
43-4-19.	Transfer of present interest and benefit of condition or covenant.
43-4-20.	Definition of terms.
43-4-21.	Imposition and amount of real estate transfer fee.
43-4-22.	Exemptions from real estate transfer fee.
43-4-23.	Exempt transfers to be marked.
43-4-24.	Collection of real estate transfer fee by register -- Amount stamped on face of deed.
43-4-25.	Disposition of proceeds of real estate transfer fee collections -- Records of register.
43-4-26.	Falsification of value of real estate or false claim of exemption as misdemeanor.
43-4-27.	Satisfaction of bequest, devise, or transfer in trust by distribution of assets in kind at values determined for federal estate tax purposes -- Appreciation or depreciation in value considered.
43-4-28.	Effective date of application of provisions as to distributions at values determined for federal estate tax purposes.
43-4-29 to 43-4-36.	Repealed
43-4-37.	Definition of terms for required disclosures in certain real estate transfers.
43-4-38.	Buyer furnished completed disclosure statement prior to written offer-- Amendment.
43-4-39.	Terminating written offer made prior to disclosure statement.
43-4-40.	Liability for defect disclosed in statement.
43-4-41.	Good faith disclosure required.
43-4-42.	Liability for failure to comply with disclosure statement requirements.
43-4-43.	Application of disclosure statement requirements.
43-4-44.	Property condition disclosure statement.
43-4-45.	Repealed.
43-4-46.	Transfer defined.

43-4-47. Private transfer fee defined.
43-4-48. Private transfer fee obligation defined.
43-4-49. Private transfer fee obligations after June 30, 2011 unenforceable.
43-4-50. Liability for private transfer fee obligations recorded or entered into after June 30, 2011
43-4-51. Disclosure of private transfer fee obligations.
43-4-52. Notices of private transfer fee obligation to be recorded for obligations imposed before July 1, 2011—Contents.
43-4-53. Amendment to notice of transfer fee.
43-4-54. Effect of failure to record notice of private transfer fee obligation.
43-4-55. Effect of failure to provide written statement of private transfer fee payable within thirty days of request.
43-4-56. Affidavit concerning request for and failure to provide written statement of transfer fee—Recording-Contents.
43-4-57. Recorded affidavit constitutes prima facie evidence of stated facts.

43-4-1. Transfer of property defined. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

43-4-2. Property subject to transfer -- Rights of trustee, conservator, or personal representative. Property of any kind may be transferred to a person, estate, trust, conservatorship, personal representative of an estate, conservator of an estate, or trustee, except as otherwise provided by this chapter.

In those cases where a trustee, conservator, or personal representative of an estate holds title to property, he holds it in a fiduciary capacity for the purposes of administration. In those cases where the trust, conservatorship, or estate itself is the grantee or transferee, the trustee, conservator, or personal representative thereof shall have the same rights, powers, duties, and liabilities with respect to the property so transferred as if the deed or other instrument of transfer had named the trustee, conservator, or personal representative as grantee or transferee.

43-4-3. Property not subject to transfer. A mere possibility, not coupled with an interest, cannot be transferred.

A mere right of reentry, or of repossession for breach of a condition subsequent, cannot be transferred to anyone except the owner of the property affected thereby.

43-4-4. Voluntary transfer of property defined. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

43-4-5. Transfer without writing where not required by statute. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

43-4-6. Transfer in writing a grant. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this title includes all these instruments, unless it is specially applied to real property.

43-4-7. Grant takes effect upon delivery by grantor -- Presumption as to delivery. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

A grant duly executed is presumed to have been delivered at its date.

43-4-8. Absolute delivery of grant required -- Conditional delivery ineffective. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon discharged of any condition on which the delivery was made.

43-4-9. Constructive delivery of grant -- Agreement of parties. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery.

43-4-10. Constructive delivery of grant to stranger for benefit of grantee. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered where it is delivered to a stranger for the benefit of a grantee, and his assent is shown or may be presumed.

43-4-11. Escrow delivery of grant. A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depository, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

43-4-12. Redelivery of grant does not transfer title. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

43-4-13. Grant interpreted as contract. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this chapter.

43-4-14. Construction of grant -- Limitations -- Operative words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

If the operative words of a grant are doubtful, recourse may be had to its recitals to assist construction.

43-4-15. Irreconcilable parts of grant -- Prevailing part. If several parts of a grant are absolutely irreconcilable, the former part prevails.

43-4-16. Grantee favored in interpretation of grant -- Exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

43-4-17. Title transferred -- Intention of parties. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has, unless a different intention is expressed or is necessarily implied.

43-4-18. Incidents included with thing transferred. The transfer of a thing transfers also all its incidents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

43-4-19. Transfer of present interest and benefit of condition or covenant. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

43-4-20. Definition of terms. Terms used in §§ 43-4-20 to 43-4-26, inclusive, mean:

(1) "Consideration," any type of property or thing of legal value, whether delivered in the past, present, or to be delivered in the future. The term includes like-kind exchanges of property;

(2) "Deed," any instrument for the purpose of transferring or conveying the fee title to real property;
(3) "Register," the register of deeds of any county in the State of South Dakota; and
(4) "Value," in the case of any deed not a gift, the amount of the full consideration therefor paid, or to be paid.

43-4-21. Imposition and amount of real estate transfer fee. A fee is hereby imposed at the rate of fifty cents for each five hundred dollars of value or fraction thereof upon the privilege of transferring title to real property in the State of South Dakota, which fee shall be paid by the grantor.

43-4-22. Exemptions from real estate transfer fee. The fee imposed by § 43-4-21 does not apply to any transfer of title:
(1) Recorded before July 1, 1968;
(2) By or to the United States of America, this state, or any instrumentality, agency, or political subdivision of either;
(3) Solely in order to provide for or to release security for a debt or obligation;
(4) Which confirms or corrects a deed previously executed and recorded;
(5) Between husband and wife, or parent and child with only nominal actual consideration therefor;
(6) On sale for delinquent taxes or assessments, sheriffs' deeds, other deeds issued in foreclosure actions or proceedings or deeds issued in lieu of foreclosure actions or proceedings;
(7) On partition;
(8) Pursuant to any mergers or consolidations of corporations or limited liability companies or plans of reorganization by which substantially all of the assets of corporations or limited liability companies are transferred;
(9) By a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock;
(10) Pursuant to decrees of distribution entered in any decedent's estate;
(11) Between an individual grantor, or grantors, and a corporation, where the grantor or grantors and the owner of the majority of the capital stock of the corporation are the same person;
(12) Between any corporation and its stockholders or creditors, or between any limited liability company and its members or creditors, if to effectuate a dissolution of the corporation or limited liability company it is necessary to transfer the title of real property from the corporate entity to the stockholders or creditors;
(13) On cemetery lots and grave sites;
(14) Between an individual grantor, or grantors, and a limited or general partnership if the grantor or grantors and the owner of the majority interest in the limited or general partnership are the same person;
(15) Between a fiduciary and a beneficiary of the fiduciary or between a fiduciary and a third party, if the transfer or conveyance is to accommodate the fiduciary relationship;
(16) Between individuals, regardless of the relationship, if the conveyance is an absolute gift without consideration of any kind in return for the conveyance;
(17) Pursuant to a decree of divorce, annulment, or separate maintenance or pursuant to a settlement agreement approved or adopted by a decree of divorce, annulment, or separate maintenance;
(18) For which no consideration was given;
(19) Between any limited liability company and its members.

43-4-23. Exempt transfers to be marked. Each transfer of title not subject to the fee as provided in § 43-4-21, shall have the words "exempt from transfer fee" stated thereon and indicate the applicable subdivision of § 43-4-22 under which the exemption is claimed.

43-4-24. Collection of real estate transfer fee by register -- Amount stamped on face of deed. At the time any deed evidencing a transfer of title subject to the fee imposed by § 43-4-21 is offered for recordation, the register shall collect the amount of the fee due thereon based upon the value declared and shall cause the amount of the fee so collected to be impressed by a stamp in red ink on the face of the deed after recordation.

43-4-25. Disposition of proceeds of real estate transfer fee collections -- Records of register. The proceeds of all fees collected under § 43-4-21 shall be remitted on a monthly basis to the credit of the county general fund by the register, who shall obtain a receipt therefor from the county treasurer and keep such records as may be prescribed by the state auditor general.

43-4-26. Falsification of value of real estate or false claim of exemption as misdemeanor. No person may intentionally falsify the value of transferred real estate to the register or intentionally claim a transfer to be "exempt from transfer fee" with knowledge that the transfer does not fall within the exemptions provided in this chapter and to pay an insufficient fee or no fee on such transfer as provided in § 43-4-21. A violation of this section is a Class 1 misdemeanor.

43-4-27. Satisfaction of bequest, devise, or transfer in trust by distribution of assets in kind at values determined for federal estate tax purposes -- Appreciation or depreciation in value considered. Whenever under any last will, or trust indenture, the executor, trustee, or other fiduciary is required to, or has an option to, satisfy a bequest, devise, or transfer in trust to or for the benefit of the surviving spouse, or other beneficiary, in kind at the values as finally determined for federal estate tax purposes, the executor, trustee, or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, satisfy such bequest, devise, or transfer by distribution of assets, including cash, fairly representative of the appreciation or depreciation in the value of all properties available for distribution in satisfaction of such bequest, devise, or transfer.

43-4-28. Effective date of application of provisions as to distributions at values determined for federal estate tax purposes. The provisions of § 43-4-27 shall apply to wills of the kind mentioned of all decedents dying before or after July 1, 1968, and to all trust indentures of the kind mentioned, whether made before or after July 1, 1968, and to the distributions of assets under all such wills or trust indentures, made after July 1, 1968, but it shall not apply to any distributions made prior to July 1, 1968, and shall not impose any liability or obligation upon any fiduciary as a result of any distribution prior to July 1, 1968.

43-4-29 to 43-4-36. Repealed by SL 1995, ch 167, § 184.

43-4-37. Definition of terms for required disclosures in certain real estate transfers. Terms used in §§ 43-4-38 to 43-4-44, inclusive, mean:

(1) "Buyer," a person negotiating or attempting to become an owner of residential real property by means of a transfer which is subject to §§ 43-4-38 to 43-4-44, inclusive;
(2) "Disclosure statement," the property condition disclosure statement as provided in § 43-4-44;
(3) "Residential real property," all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure;
(4) "Seller," an owner of residential real property;

(5) "Transfer," a sale, exchange, installment sale contract, lease with an option to purchase, other option to purchase, or a ground lease coupled with improvements.

43-4-38. Buyer furnished completed disclosure statement prior to written offer -- Amendment. The seller of residential real property shall furnish to a buyer a completed copy of the disclosure statement before the buyer makes a written offer. If after delivering the disclosure statement to the buyer or the buyer's agent and prior to the date of closing for the property or the date of possession of the property, whichever comes first, the seller becomes aware of any change of material fact which would affect the disclosure statement, the seller shall furnish a written amendment disclosing the change of material fact.

43-4-39. Terminating written offer made prior to disclosure statement. If the disclosure statement or a material amendment to the disclosure statement is delivered to the buyer after the buyer has made a written offer, the buyer may terminate the offer by delivering a written notice of termination to the seller or the seller's agent within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

43-4-40. Liability for defect disclosed in statement. Except as provided in § 43-4-42, a seller is not liable for a defect or other condition in the residential real property being transferred if the seller truthfully completes the disclosure statement.

43-4-41. Good faith disclosure required. The seller shall perform each act and make each disclosure in good faith.

43-4-42. Liability for failure to comply with disclosure statement requirements. A transfer that is subject to §§ 43-4-37 to 43-4-44, inclusive, is not invalidated solely because a person fails to comply with §§ 43-4-37 to 43-4-44, inclusive. However, a person who intentionally or who negligently violates §§ 43-4-37 to 43-4-44, inclusive, is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure. In any court action pursuant to this section, the court may award costs and attorney fees to the prevailing party. Nothing in this section precludes or restricts any other rights or remedies of the buyer or seller.

43-4-43. Application of disclosure statement requirements. Sections 43-4-37 to 43-4-44, inclusive, do not apply to the following transfers:

(1) Transfers pursuant to court order, including transfers ordered by probate court in the administration of an estate, transfers between spouses resulting from a judgment of dissolution of marriage or legal separation, transfer pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, transfers by government agencies, and transfers resulting from a decree for specific performance;
(2) Transfers to a mortgagee by a mortgagor in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property by foreclosure or by a deed in lieu of foreclosure or transfers by a collateral assignment of beneficial interest;
(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
(4) Transfers from one co-owner to one or more other co-owners;
(5) Transfers made to a spouse, a child, a parent, a sibling, a grandchild, or a grandparent;
(6) Transfers of newly constructed residential real property which has never been occupied.

43-4-44. Property condition disclosure statement. The following form shall be used for the property condition disclosure statement:

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT
RESIDENTIAL-SDCL 43-4-44

Seller(s)_____
Property Address_____
Property Legal Description_____

This Disclosure Statement concerns the real property identified above and offered for sale. This disclosure is required by law to be completed by sellers of real property and given to potential buyers. This form can have important legal consequences. If you do not understand this form, you should seek advice from a competent source.

Seller states that the information contained in this disclosure fully reflects the Seller's knowledge of the matters disclosed as of the date affixed to the form. If any material fact changes prior to closing, the seller MUST disclose that change in a written amendment to this disclosure statement and give the same to the buyer.

This statement is a DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY in compliance with South Dakota law § 43-4-38. It is NOT A WARRANTY of ANY KIND by the Seller or anyone representing any party in a transaction. It is NOT A SUBSTITUTE FOR ANY INSPCETIONS OR WARRANTIES either party may wish to obtain.

Seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

If the answer to any of the following requires more space for explanation, please fully explain in comments or on an attached separate sheet.

I. LOT OR TITLE INFORMATION

1. When did you purchase or build the home? _____/_____
Month Year

	LOT OR TITLE INFORMATION	Yes	No	Do Not Know	N/A	Comments
2.	Are there any recorded liens or financial instruments against the property, other than a first mortgage?					
3.	Are there any unrecorded liens or financial instruments against the property, other than a first mortgage; or have any materials or services been					

	provided in the past one hundred twenty days that would create a lien against the property under chapter 44-9?					
4.	Are there any easements which have been granted in connection with the property (other than normal utility easements for public water and sewer, gas and electric service, telephone service, cable television service, drainage, and sidewalks)?					
5.	Are there any problems related to establishing the lot lines/boundaries?					
6.	Do you have a location survey in your possession or a copy of the recorded plat?					If yes, attach a copy.
7.	Are you aware of any encroachments or shared features, from or on adjoining property (i.e. fences, driveway, sheds, outbuildings, or other improvements)?					
8.	Are you aware of any covenants or restrictions affecting the use of the property in accordance with local law?					If yes, attach a copy.
9.	Are you aware of any current or pending litigation, foreclosure, zoning, building code or restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning changes, or changes that could affect your property?					
10.	Is the property currently occupied by the owner?					
11.	Does the property currently receive the owner-occupied					

	tax reduction pursuant to SDCL 10-13-39?					
12.	Is the property currently part of a property tax freeze for any reason?					
13.	Is the property leased?					
14.	If leased, does the property use comply with applicable local ordinances?					
15.	Does this property or any portion of this property receive rent?					If yes, how much $_____ and how often _____
16.	Do you pay any mandatory fees or special assessments to a homeowners' or condominium association?					If yes, what are the fees or assessments? $_____ per _____ (i.e. annually, semi-annually, monthly) Payable to whom: _____ For what purpose: _____
17.	Are you aware if the property has ever had water in either the front, rear, or side yard more than forty-eight hours?					
18.	Is the property located in a flood plain?					
19.	Are federally protected wetlands located upon any part of the property?					
20.	Are you aware of any private transfer fee obligations, as defined pursuant to § 43-4-48, that would require a buyer or seller of the property to pay a fee or charge upon the transfer of the property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property?					If yes, what are the fees or charges? $_____ per _____ (i.e. annually, semi-annually, monthly)

Additional Comments _____

_____

II. STRUCTURAL INFORMATION

	STRUCTURAL INFORMATION	Yes	No	Do Not Know	N/A	Comments
1.	Are you aware of any water penetration in the walls, windows, doors, basement, or crawl space?					
2.	Have any water damage related repairs been made?					
	Are there any unrepaired water-related damages that remain?					
3.	Are you aware if drain tile is installed on the property?					
4.	Are you aware of any interior cracked walls, ceilings or floors, or cracks or defects in exterior driveways, sidewalks, patios, or other hard surface areas?					
5.	Type of roof covering: _____					
6.	Are you aware of any roof leakage, past or present?					
7.	Is there any existing unrepaired damage to the roof?					
8.	Are you aware of insulation in ceiling/attic?					
9.	Are you aware of insulation in walls?					
10.	Are you aware of insulation in the floors?					
11.	Are you aware of any pest infestation or damage, either past or present?					
	Are you aware of the property having been treated or repaired for any pest infestation or damage?					If yes, who treated it and when?
12.	Are you aware of any work upon the property which required a building, plumbing, electrical, or any other permit?					
13.	Was a permit obtained for work performed upon the property?					
	Was the work approved by an inspector as required by local or state ordinance?					

14.	Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods, hail, or snow)?					
15.	Have any insurance claims been made for damage to the property?					
16.	Was an insurance payment received for damage to the property?					
17.	Has the damage to the property been repaired?					
18.	Are there any unrepaired damages to the property from the insurance claim?					
19.	Are you aware of any problems with sewer blockage or backup, past or present?					
20.	Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank, or drain on the property into any adjoining lake, stream, or waterway?					

Additional Comments _____

_____

III. SYSTEMS/UTILITIES INFORMATION

	SYSTEMS/UTILITIES INFORMATION	Working	Not Working	None	Not Included	Comments
1.	Air Conditioning System					Age of System, if known:
2.	Air Exchanger					
3.	Air Purifier					
4.	Attic Fan					
5.	Bathroom Whirlpool and Controls					
6.	Burglar Alarm & Security System					
7.	Ceiling Fan					
8.	Central Air - Electric					
9.	Central Air – Water Cooled					
10.	Cistern					
11.	Dishwasher					
12.	Disposal					
13.	Doorbell					
14.	Fireplace					
15.	Fireplace Insert					

16.	Garage Door(s)					
17.	Garage Door Opener(s)					
18.	Garage Door Control(s)					
19.	Garage Wiring					
20.	Home Heating System(s) Type:					Age of System, if known:
21.	Hot Tub and Controls					
22.	Humidifier					
23.	In Floor Heat					
24.	Intercom					
25.	Light Fixtures					
26.	Microwave					
27.	Microwave Hood					
28.	Plumbing and Fixtures					
29.	Pool and Equipment					
30.	Propane Tank – Select One: ___Leased ___Owned					
31.	Radon System					
32.	Sauna					
33.	Septic/Leaching Field					
34.	Sewer Systems/Drains					
35.	Smart Home System					Smart Home System includes:
36.	Smoke/Fire Alarm					
37.	Solar House – Heating					
38.	Sump Pump(s)					
39.	Switches and Outlets					
40.	Underground Sprinkler and Heads					
41.	Vent Fan – Kitchen					
42.	Vent Fan – Bathroom					
43.	Water Heater – Select One: ___ Electric ___ Gas					Age of System, if known:
44.	Water Purifier, Select One: ___ Leased ___ Owned					
45.	Water Softener, Select One: ___ Leased ___ Owned					
46.	Well and Pump					
47.	Wood Burning Stove					

Additional Comments _____

_____

IV. HAZARDOUS CONDITIONS

Are you aware of any existing hazardous conditions of the property and are you aware of any tests having been performed?

If the answer is yes to any of the questions below, please explain in additional comments or on an attached separate sheet.

	HAZARDOUS CONDITIONS	Existing Conditions		Tests Performed		Comments
		Yes	No	Yes	No	
1.	Methane Gas					
2.	Lead Paint					
3.	Radon Gas (House)					
4.	Radon Gas (Well)					
5.	Radioactive Materials					
6.	Landfill, Mineshaft					
7.	Expansive Soil					
8.	Mold					
9.	Toxic Materials					
10.	Urea Formaldehyde Foam Insulations					
11.	Asbestos Insulation					
12.	Buried Fuel Tanks					
13.	Chemical Storage Tanks					
14.	Fire Retardant Treated Plywood					
15.	Production of Methamphetamines					
16.	Use of Methamphetamines					

V. MISCELLANEOUS INFORMATION

	MISCELLANEOUS INFORMATION	Yes	No	Do Not Know	N/A	Comments
1.	Is the street or road located at the end of the driveway to the property public or private? Public ____ Private ____					
2.	Is there a written road maintenance agreement?					

	If yes, attach a copy of the maintenance agreement.					
3.	Has the fireplace/wood stove/chimney flue been cleaned? If yes, please provide date of service.					
4.	Since you have owned the property, are you aware of a human death by homicide or suicide occurring on the property?					
5.	Is the water source (select one) _____ public or _____ private					If private, what is the date and result of the last water test?
6.	Is the sewer system (select one) _____public or _____ private					If private, what is the date of the last time septic tank was pumped?
7.	Are there broken window panes or seals?					
8.	Are there any items attached to the property that will not be left, such as: towel bars, mirrors, curtain rods, window coverings, light fixtures, clothes lines, swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, tv mounts, speakers, etc.?					If yes, please list:
9.	Are you aware of any other material facts which have not been disclosed on this form?					If yes, please explain:

Additional Comments _____

_____

VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

_____

_____

_____

CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below. If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

_____ _____
Seller Date Seller Date

THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

_____ _____
Buyer Date Buyer Date

43-4-45. Repealed by SL 2005, ch 230, § 2.

43-4-46. Transfer defined. For the purposes of §§ 43-4-47 to 43-4-57, inclusive, the term, transfer, means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

43-4-47. Private transfer fee defined. For the purposes of §§ 43-4-48 to 43-4-57, inclusive, the term, private transfer fee, means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The term, private transfer fee, does not include the following:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property if such additional consideration is payable on a onetime basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration and payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for

waiving, releasing, or not exercising the option or right upon the transfer of the property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

43-4-48. Private transfer fee obligation defined. For the purposes of §§ 43-4-47 to 43-4-57, inclusive, the term, private transfer fee obligation, means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant, or agreement, or to any successor or assign, upon a subsequent transfer of an interest in the real property.

43-4-49. Private transfer fee obligations after June 30, 2011 unenforceable -- Private transfer fee obligations before June 30, 2011 not presumed valid and enforceable. Any private transfer fee obligation recorded or entered into in this state after June 30, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state after June 30, 2011, is void and unenforceable. No private transfer fee obligation recorded or entered into in this state before June 30, 2011, is presumed valid and enforceable.

43-4-50. Liability for private transfer fee obligations recorded or entered into after June 30, 2011. Any person who records or enters into an agreement imposing a private transfer fee obligation in the person's favor after June 30, 2011, is liable for any damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and any attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal, rather than the agent.

43-4-51. Disclosure of private transfer fee obligations. Private transfer fee obligations shall be disclosed as follows:

(1) For transfers of real property subject to the disclosure requirements contained in §§ 43-4-38 to 43-4-44, inclusive, disclosure of any private transfer fee obligations shall be made using the property condition disclosure statement set forth in § 43-4-44;

(2) For transfers of real property not subject to the disclosure requirements contained in §§ 43-4-38 to 43-4-44, inclusive, each seller of real property shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement shall include a description of the private transfer fee obligation and include a statement that private transfer fee obligations are subject to certain prohibitions pursuant to §§ 43-4-46 to 43-4-57, inclusive. The written document must contain a statement with the following language:

A private transfer fee obligation has been imposed with respect to this property. A private transfer obligation may lower the value of this property. State law prohibits the creation of private transfer fee obligations pursuant to § 43-4-49 and requires certain notice procedures to be followed with respect to private transfer fee obligations pursuant to §§ 43-4-52 to 43-4-57, inclusive.

43-4-52. Notices of private transfer fee obligation to be recorded for obligations imposed before July 1, 2011 -- Contents. For any private transfer fee obligation imposed prior to July 1, 2011, the receiver of the fee shall, prior to December 31, 2011, record in the office of the register of deeds in the county in which the real property subject to the private transfer fee is located, a separate document that meets all of the following requirements:

(1) The title of the document shall be Notice of Private Transfer Fee Obligation in at least fourteen point boldface type;
(2) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or such other basis by which the transfer fee is to be calculated;
(3) If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at one hundred thousand dollars, two hundred fifty thousand dollars, and five hundred thousand dollars;
(4) The date or circumstances under which the private transfer fee obligation expires, if any;
(5) The purpose for which the funds from the private transfer fee obligation will be used;
(6) The name of the person to which funds are to be paid and specific contact information regarding where the funds are to be sent;
(7) The acknowledged signature of the payee; and
(8) The legal description of the real property burdened by the private transfer fee obligation.

43-4-53. Amendment to notice of transfer fee. The person to whom the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but such amendment shall contain the recording information of the notice of transfer fee which it amends and the legal description of the property burdened by the private transfer fee obligation.

43-4-54. Effect of failure to record notice of private transfer fee obligation. If the payee fails to comply fully with § 43-4-52, the grantor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and in so doing is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation. In such event, the real property thereafter shall be conveyed free and clear of such transfer fee and private transfer fee obligation.

43-4-55. Effect of failure to provide written statement of private transfer fee payable within thirty days of request. If the payee fails to provide a written statement of the transfer fee payable within thirty days of the date of a written request for such statement sent to the address shown in the notice of transfer fee, the grantor, on recording of the affidavit required under § 43-4-56, may convey any interest in the real property to any grantee without payment of the transfer fee and is not subject to any further obligation under the private transfer fee obligation. In such event the real property shall be conveyed free and clear of the transfer fee and private transfer fee obligation.

43-4-56. Affidavit concerning request for and failure to provide written statement of transfer fee -- Recording -- Contents. An affidavit stating the facts enumerated under § 43-4-57 shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a conveyance pursuant to § 43-4-55 of real property unburdened by a private transfer fee obligation. An affidavit filed under this section shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the

owner of such real property at the time of the signing of such affidavit, a reference to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

43-4-57. Recorded affidavit constitutes prima facie evidence of stated facts. If recorded, an affidavit as described in § 43-4-56 constitutes prima facie evidence that:

(1) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(2) The person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.

ARTICLE 20:69
REAL ESTATE BROKERS AND SALESPERSONS

Chapter

20:69:01	Definitions.
20:69:02	General rules.
20:69:03	Licensing and licenses.
20:69:04	Prelicensing education.
20:69:05	Disciplinary proceedings.
20:69:06	Real estate auctioneer licenses.
20:69:07	Condominiums.
20:69:08	Mortgage brokers.
20:69:09	Real estate appraisers, Repealed.
20:69:10	Standards of professional appraisal practice.
20:69:11	Postlicensing and continuing education.
20:69:12	Time-share estates.
20:69:13	Time-share agents.
20:69:14	Property managers.
20:69:14.01	Residential rental agents.
20:69:15	Errors and omissions insurance.
20:69:16	Disclosure.
20:69:17	Agreements.

CHAPTER 20:69:01
DEFINITIONS

Section	
20:69:01:01	Definitions.

20:69:01:01. Definitions. Words defined in SDCL chapter 36-21A have the same meaning when used in this article.

Source: SL 1975, ch 16, § 1; 3 SDR 34, effective November 3, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:01:01, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-89.

CHAPTER 20:69:02
GENERAL RULES

Section

20:69:02:01	Repealed.
20:69:02:02	Commission action.
20:69:02:03	Petition for declaratory ruling.
20:69:02:04	Commission action on petition.
20:69:02:05	Number of copies of petition for declaratory ruling -- Electronic filing.
20:69:02:06	Number of copies of petition for promulgation of rule -- Electronic filing.
20:69:02:07	Petition for contested case hearing.
20:69:02:08	Petition for review of decision on contested case.

20:69:02:01. Official office. Repealed.

Source: SL 1975, ch 16, § 1; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:02:01, 20 SDR 18, effective August 16, 1993; repealed, 24 SDR 172, effective June 16, 1998.

20:69:02:02. Commission action. The commission may take any action by a mail ballot or by a conference telephone call. In case of a conference telephone call, the executive director shall participate in the call and take minutes of the commission action. In case of a mail ballot, the results of the mail ballot shall be included in the minutes. A mail ballot or conference telephone call is a meeting of the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:02:03.01, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-21.

20:69:02:03. Petition for declaratory ruling. Any person wishing the commission to issue its ruling as to the applicability to that person of a statutory provision, rule, or order of the commission may file a petition with the commission in substantially the following form:

State of South Dakota
South Dakota Real Estate Commission

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the South Dakota Real Estate Commission for its declaratory ruling in regard to the following:

1. The state statute or South Dakota Real Estate Commission rule or order in question is: (here identify and quote the pertinent statute, rule, or order);
2. The facts and circumstances which give rise to the issue to be answered by the commission's declaratory ruling are:
3. The precise issue to be answered by the commission's declaratory ruling is:

Dated at (city and state), this _____ day of _____ 20__.

_____
(Signature of petitioner)

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:07:01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-15, 36-21A-89.

20:69:02:04. Commission action on petition. Upon receipt of a petition for a declaratory ruling, the commission may request from the petitioner any other information it requires for the issuance of its ruling. Following the receipt of the petition, the commission shall issue its declaratory ruling and serve a copy of it by mail on the petitioner.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:07:02, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-15, 1-26-25.

20:69:02:05. Number of copies of petition for declaratory ruling -- Electronic filing. A person filing a petition for declaratory ruling under this chapter shall file an original and seven copies with the commission. The executive director may reject any petition if it is not submitted with the required number of copies. However, the executive director may accept a petition for declaratory ruling in an electronic format if it is readily accessible by the commission and in a format that can be downloaded, printed, or otherwise maintained as a record for future reference. A petitioner who files a petition for declaratory ruling in electronic format, shall submit one copy of the original.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:07:03, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(6).
Law Implemented: SDCL 1-26-15, 36-21A-89.

20:69:02:06. Number of copies of petition for promulgation of rule -- Electronic filing. A person filing a petition for the initiation, repeal, or amendment of a rule must file an original and seven copies with the commission. The executive director may reject any petition if it is not submitted with the required number of copies. However, the executive director may accept a petition in an electronic format that is readily accessible by the commission and in a format if it can be downloaded, printed, or otherwise maintained as a record for future reference. A petitioner who files a petition in electronic format, shall submit one copy of the original.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:08:03, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(6).
Law Implemented: SDCL 1-26-13, 36-21A-89.

Cross-Reference: Petition for rules, SDCL 1-26-13.

20:69:02:07. Petition for contested case hearing. A person aggrieved by any action of the commission taken without a hearing may, within 30 days following the date of the commission action, petition the commission for a hearing to be held at a time and place established by the commission. The hearing is a contested case.

Source: SL 1975, ch 16, § 1; 5 SDR 21, effective September 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:09:01, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-16, 1-26-18.

Cross-Reference: Procedure to follow in contested cases, SDCL 1-26-16 to 1-26-29.

20:69:02:08. Petition for review of decision on contested case. Within 10 days after receipt of the commission's decision, a party to the hearing may file a petition with the commission for review of its decision. The commission, in its discretion, may deny the petition, order a rehearing, or direct any other proceedings it considers appropriate. Upon rehearing or other proceedings, the commission may affirm, reverse, or modify its earlier decision. Notice of the commission's decision on the petition to review shall be served by mail on the petitioner and other affected parties.

Source: SL 1975, ch 16, § 1; 5 SDR 21, effective September 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:09:06, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-18, 1-26-25.

CHAPTER 20:69:03
LICENSING AND LICENSES

Section

20:69:03:01	Application for license by examination.
20:69:03:02	Proof of education to accompany application.
20:69:03:02.01	Proof of passing score to accompany application.
20:69:03:03	Repealed.
20:69:03:04	Authority to take examination.
20:69:03:04.01	Registering for examination.
20:69:03:05	Failure to appear for examination.
20:69:03:06	Administration of examination.
20:69:03:06.01	Testing service.
20:69:03:07	Passing score on licensing examination.
20:69:03:08	Cheating on examination.
20:69:03:09	Reinstatement of licensees discharged from armed forces.
20:69:03:10	Application fee -- Brokers and salespersons.
20:69:03:11	Repealed.
20:69:03:12	Application fee -- Firm license.
20:69:03:12.01	Registration fee -- Broker or associate licensee business corporation or limited liability company.
20:69:03:13	Biennial renewal fee -- Broker.
20:69:03:14	Biennial renewal fee -- Salesperson.
20:69:03:15	Biennial renewal fee -- Firm.
20:69:03:16	Office management.
20:69:03:17	Commission split -- Out-of-state.
20:69:03:18	Transferred.
20:69:03:19	Advance compensation.
20:69:03:20	Repealed
20:69:03:21	Reciprocal agreements.
20:69:03:22	Nonresident licensee as applicant -- Certificate of licensure required.
20:69:03:22.01	Nonresident licensee -- Renewal of license on active status -- Certificate of licensure required.
20:69:03:23	Supervising broker to be licensed in South Dakota.
20:69:03:24	South Dakota resident licensed as salesperson by examination in another state -- Requirements for obtaining a broker associate license in South Dakota.
20:69:03:25	Nonresident salesperson licensed in South Dakota -- Time to qualify for broker associate upon establishing residency in state.
20:69:03:26	Fees -- Certification of licensure, additional license, duplicate license, and transfer of license.
20:69:03:27	Late renewal fee.

20:69:03:01. Application for license by examination. An applicant for license by examination shall file an application with the commission on a form provided by the commission within 60 days after the date of notice of having passed the examination. The application shall be accompanied by the fee prescribed by § 20:69:03:10.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:01, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-35.

20:69:03:02. Proof of education to accompany application. An applicant for a license by examination shall submit proof that the applicant successfully completed the required education within the two years before the date of application.

Source: 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 30 SDR 40, effective September 30, 2003.
General Authority: SDCL 36-21A-31.
Law Implemented: SDCL 36-21A-31.

20:69:03:02.01. Proof of passing score to accompany application. An applicant for license by examination shall submit proof that the applicant successfully completed the licensing examination.

Source: 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-41.

20:69:03:03. Photograph to accompany application. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:02, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:03:04. Authority to take examination. A person may not take the real estate examination unless the person has completed the prescribed prerequisite education and registered to take the examination.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:06, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 30 SDR 40, effective September 30, 2003.
General Authority: SDCL 36-21A-30.1, 36-21A-89(2).
Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:04.01. Registering for examination. A person registering to take the real estate examination must complete the prerequisite education before submitting the registration.

Source: 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-30.1, 36-21A-34, 36-21A-89(1).
Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:05. Failure to appear for examination. A person registered to take an examination must appear in person to take the examination as scheduled. If the person fails to do so, the person forfeits the examination fee and must register again to take the examination.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:07, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:06. Administration of examination. The licensing examination shall be conducted under the supervision of the executive director of the commission. The examiner shall require identification supplied to the registered person by the commission for admission to the examination room. Before beginning the examination, the person must state in writing that the person has not solicited or received any information concerning the contents of the examination about to be written and during or subsequent to the examination will not disclose its contents.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:08, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-36.

20:69:03:06.01. Testing service. The commission may negotiate an agreement with a testing service for examination development, administration, scoring, reporting, and analysis.

Source: 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-36.

20:69:03:07. Passing score on licensing examination. The passing score on the licensing examinations is 75.

Source: 7 SDR 31, effective October 6, 1980; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:08.01, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:08. Cheating on examination. The examination of any person who is caught cheating during an examination is void.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:09, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:09. Reinstatement of licensees discharged from armed forces. Application for reinstatement of a license by a former licensee discharged from the armed forces shall be made on forms provided by the commission.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; repealed, 12 SDR 102, effective December 22, 1985; readopted, 18 SDR 101, effective December 17, 1991; transferred from § 20:56:03:14, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-67, 36-21A-89.
Law Implemented: SDCL 36-21A-67.

20:69:03:10. Application fee -- Brokers and salespersons. The application fee for brokers, including restricted brokers, and salespersons is $225.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:20, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-49.
Law Implemented: SDCL 36-21A-49.

20:69:03:11. Reapplication fee -- Brokers and salesmen. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:21, 20 SDR 18, effective August 16, 1993; repealed, 24 SDR 172, effective June 16, 1998.

20:69:03:12. Application fee – Firm license. The application fee for a license is $100.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:22, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-38.
Law Implemented: SDCL 36-21A-38.

20:69:03:12.01. Registration fee – Broker or associate licensee business corporation or limited liability company. The registration fee for a broker or an associate licensee business corporation or limited liability company is $100.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-46.1.
Law Implemented: SDCL 36-21A-46.1.

20:69:03:13. Biennial renewal fee -- Broker. The biennial renewal fee for a broker's license, including restricted licenses, is $125.

Source: SL 1975, ch 16, § 1; 4 SDR 35, effective December 22, 1977; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:23, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-61.
Law Implemented: SDCL 36-21A-61.

20:69:03:14. Biennial renewal fee -- Salesperson. The biennial renewal fee for a salesperson's license is $125.

Source: SL 1975, ch 16, § 1; 4 SDR 35, effective December 22, 1977; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:24, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-61.
Law Implemented: SDCL 36-21A-61.

20:69:03:15. Biennial renewal fee -- Firm. The biennial renewal fee for a firm license is $125.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:25, 20 SDR 18, effective August 16, 1993; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-61.
Law Implemented: SDCL 36-21A-61.

20:69:03:16. Office management. A broker may assign management responsibilities to a broker associate. However, a salesperson may not assume any management responsibilities.

Source: 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(1).
Law Implemented: SDCL 36-21A-71.

20:69:03:17. Commission split -- Out-of-state. A licensed broker may divide or share a real estate commission with a licensed broker in another state if the latter does not carry on any of the negotiations in this state either by physically entering the state or by communicating with the broker electronically or through other media.

Source: 3 SDR 34, effective November 3, 1976; transferred from § 20:56:14:01, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:05:11.01, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(3).
Law Implemented: SDCL 36-21A-54.

20:69:03:18. Transferred to §§ 20:69:16:01 and 20:69:16:02.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:05:12.02, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-85.
Law Implemented: SDCL 36-21A-85.

20:69:03:19. Advance compensation. If an agency agreement provides for compensation for services for other than a sale or lease of an interest in real property, the licensee may collect compensation for those services before closing the sale or lease of the interest in the real property. If a client or customer agrees in writing to allow a broker to receive compensation for any agreed upon service before closing the sale or lease of an interest in real property, the compensation must be placed in the broker's trust account until performance of services has been consummated or terminated by written agreement from both parties.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:05:21.01, 20 SDR 18, effective August 16, 1993; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-84.
Law Implemented: SDCL 36-21A-84.

20:69:03:20. Replacement of license -- License displayed. Repealed.

Source: 1 SDR 33, effective January 1, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:12:20, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

20:69:03:21. Reciprocal agreements. The commission may enter into written agreement with other states for the purpose of licensing by reciprocity.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-54.
Law Implemented: SDCL 36-21A-54.

20:69:03:22. Nonresident licensee as applicant -- Certificate of licensure required. A nonresident licensee who is an applicant for licensure in this state shall submit a certificate of licensure from the licensing agency of every state in which the applicant holds or has held a license. The certificate of licensure shall be completed within 30 days before the date of application, stating that the applicant's license is on active status and in good standing and that no complaint is pending.

Source: 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-54, 36-21A-89(3).
Law Implemented: SDCL 36-21A-54, 36-21A-89.

20:69:03:22.01. Nonresident licensee -- Renewal of license on active status -- Certificate of licensure required. A nonresident broker, broker associate or salesperson licensed in this state who renews the license on active status shall submit a certificate of licensure from the licensing agency of the state where the nonresident licensee maintains residency. The certificate of licensure shall be completed within 30 days before the date of filing the renewal application, stating the nonresident's license is on active status and in good standing and that no complaint is pending. The certificate of licensure must accompany the renewal form.

Source: 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-54, 36-21A-89(3).
Law Implemented: SDCL 36-21A-54, 36-21A-89.

20:69:03:23. Supervising broker to be licensed in South Dakota. A licensed nonresident salesperson or broker associate shall be associated with a licensed South Dakota broker or a nonresident broker licensed by the commission.

Source: 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(3).
Law Implemented: SDCL 36-21A-54.

20:69:03:24. South Dakota resident licensed as salesperson by examination in another state -- Requirements for obtaining a broker associate license in South Dakota. A South Dakota resident who receives a license as a salesperson by examination in another licensing jurisdiction must complete the education and examination requirements for a broker associate license pursuant to § 20:69:04:03 and SDCL 36-21A-43 before that person may receive a broker associate license in this state.

Source: 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.1, 36-21A-89(2).
Law Implemented: SDCL 36-21A-30.1, 36-21A-89(2).

20:69:03:25. Nonresident salesperson licensed in South Dakota -- Time to qualify for broker associate license upon establishing residency in state. A nonresident salesperson licensed in this state, who establishes residency in South Dakota, shall complete the requirements for a broker associate license pursuant to SDCL 36-21A-34.2 and § 20:69:04:03 by the end of the current license term or place the license on inactive status. The commission may grant a reasonable exception to this rule.

Source: 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(3), 36-21A-30.1.
Law Implemented: SDCL 36-21A-30.1, 36-21A-89(3).

20:69:03:26. Fees -- Certification of licensure, additional license, duplicate license, and transfer of license. Fees include the following:

(1) For each certification of licensure, $15;
(2) For each additional license, a biennial fee of $30;
(3) For each license included in a statement of registration to change an office or place of business, $15; and
(4) For each license included in a statement of registration to change association with a responsible broker, $15.

Source: 34 SDR 323, effective July 3, 2008.
General Authority: SDCL 36-21A-60.
Law Implemented: SDCL 36-21A-60.

20:69:03:27. Late renewal fee. Any licensee who files a late registration application and fee for renewal pursuant to SDCL 36-21A-66 shall pay a late fee based on the date the renewal application is filed, as follows:

(1) December, $20;
(2) January, $40;
(3) February, $60;
(4) March, $80;
(5) April, $100;
(6) May, $120; and
(7) June, $140.

Source: 34 SDR 323, effective July 3, 2008.
General Authority: SDCL 36-21A-66.
Law Implemented: SDCL 36-21A-66.

CHAPTER 20:69:04
PRELICENSING EDUCATION

Section

20:69:04:01	Application for approval of classroom instruction.
20:69:04:01.01	Certificate of approval.
20:69:04:01.02	Criteria for approval of classroom instruction.
20:69:04:02	Contents of broker associate prelicensing course.
20:69:04:03	Contents of broker associate upgrade course.
20:69:04:04	Contents of responsible broker course.
20:69:04:05	Order of courses to be passed.
20:69:04:06	Conditions for credit for alternative courses.
20:69:04:07	Application for credit for alternative courses.
20:69:04:08	Qualifications for classroom instructor.
20:69:04:08.01	Instructors.
20:69:04:08.02	Application for approval of instructor -- Guest speakers exempt.
20:69:04:08.03	Utilization of guest speakers -- Résumé to accompany course application.
20:69:04:08.04	Certificate of instructor approval -- Approval certificates not issued to guest speakers.
20:69:04:09	Educational facilities.
20:69:04:09.01	Instructional techniques.
20:69:04:10	Approval of classroom instruction, distance education, or independent study course.
20:69:04:10.01	Auditing.
20:69:04:11	Withdrawal of approval for course or instructor.
20:69:04:11.01	Denial of approval for course or instructor.
20:69:04:12	Withdrawal of approval for inactivity.
20:69:04:13	Credit for previously unapproved courses.
20:69:04:14	Classroom hour.
20:69:04:15	Length of course.
20:69:04:16	Examination.
20:69:04:17	Reexamination.
20:69:04:18	Schedule.
20:69:04:19	Prelicensing education certificate of attendance.
20:69:04:20	Course provider reporting requirements.
20:69:04:21	Preregistration allowed -- Notice of cancellation required.
20:69:04:22	Application for approval of distance education or independent study course.
20:69:04:23	Additional requirements for distance education course offerings.
20:69:04:24	Distance education defined.
20:69:04:25	Independent study defined.
20:69:04:26	Standards for distance education.
20:69:04:27	Criteria for distance education or independent study course approval.
20:69:04:28	Student certification required
20:69:04:29	Material change.

20:69:04:01. Application for approval of classroom instruction. A course provider desiring to give approved classroom instruction to prospective real estate licensees shall apply on a form provided by the commission. The application must be filed with the commission at least 30 days before the course begins.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:01, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-31, 36-21A-34.

20:69:04:01.01. Certificate of approval. The commission shall grant a certificate of approval for each course of study approved by the commission. The certificate is valid for three years.

Source: 24 SDR 172, effective June 16, 1998.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-34, 36-21A-89(4).

20:69:04:01.02. Criteria for approval of classroom instruction. The application form for approval of classroom instruction shall include the following information and enclosures:

(1) Name, address, and telephone number of the course provider;
(2) The title of the course;
(3) A complete description or copies of all materials to be distributed to the participants;
(4) The date and exact location of each presentation of the course;
(5) The duration and time of the course;
(6) A comprehensive, detailed outline of the subject matter together with course objectives, the time sequence of each segment, the faculty for each segment, and the teaching technique used in each segment;
(7) The method of evaluation of the program;
(8) The procedure for measuring attendance; and
(9) A description of the faculty, including name, professional educational background, and practical or teaching experience. A complete résumé may be furnished.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

20:69:04:02. Contents of broker associate prelicensing course. The broker associate prelicensing course shall provide for a minimum of 116 instructional hours in subject areas approved by the commission, including the following subject areas:

(1) South Dakota real estate license law and rules;
(2) Characteristics and nature of real property;
(3) Agency;
(4) Listing property;
(5) Selling property;
(6) Contracts and contingencies;
(7) Property management;
(8) Finance;
(9) Settlement/transfer of ownership/closings;
(10) Federal laws, including the Fair Housing ACT, Real Estate Settlement Procedures Act, Sherman Antitrust Act, Americans with Disabilities Act, and Real Estate Settlement Procedures Act, and environmental regulations; and
(11) Professional responsibilities and ethics.

The course shall include practicum exercises and examinations in each area of study.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:19, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:02.01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.1, 36-21A-31.
Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:03. Contents of broker associate upgrade course. The broker associate upgrade course for a licensed salesperson upgrading to the broker associate level shall provide for a minimum of 40 instructional hours in subject areas approved by the commission, including the following subject areas:

(1) South Dakota real estate license law and rules;
(2) Simulation examination preparation;
(3) Contracts, trust accounting, and closings;
(4) Brokerage relationships;
(5) Federal laws, including the Fair Housing Act, Real Estate Settlement Procedures Act, Sherman Antitrust Act, and Americans with Disabilities Act;
(6) Professional responsibilities and ethics; and
(7) A review of the principles and practices of real estate.

Practicum exercises and experiences beyond the basic fundamentals of real estate principles and practices must be included in each area of study.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:20, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.02, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 29 SDR 66, effective November 14, 2002; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

20:69:04:04. Contents of responsible broker course. The responsible broker course is a course in brokerage and human resource management. The course must be a minimum of 15 hours long and contain a final examination.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:21, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.03, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-31.
Law Implemented: SDCL 36-21A-31.

20:69:04:05. Order of courses to be passed. The broker associate prelicensing course or broker upgrade course must be completed and passed before enrolling in the responsible broker course.

Source: 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; transferred from § 20:56:04:18, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.04, 20 SDR 18, effective August 16, 1993; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-31.
Law Implemented: SDCL 36-21A-31.

20:69:04:06. Conditions for credit for alternative courses. A person may apply to the commission for credit for the broker associate prelicensing course, the broker upgrade course, or responsible broker course based on satisfactory completion of a similar real estate course at one of the following institutions:

(1) A regionally accredited college or university;
(2) A regionally accredited vocational school; or
(3) Courses in a prelicensing education school or institute in a state that has statutorily mandated prelicensing education.

Satisfactory completion of a real estate course, for the purpose of this section, means attaining a passing grade in the course as determined by the instructor.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:22, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:04:02.05, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

20:69:04:07. Application for credit for alternative courses. An application for credit under § 20:69:04:06 must be accompanied by an authenticated transcript from the college, university, vocational school, or prelicensing education school and a description of the course or courses completed.
Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:23, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:04:02.06, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-31, 36-21A-34.
Law Implemented: SDCL 36-21A-31, 36-21A-34.

20:69:04:08. Qualifications for classroom instructor. An applicant seeking commission approval to teach prelicensing education must furnish evidence satisfactory to the commission that the applicant has at least one of the following qualifications:

(1) A bachelor's degree in the field in which the person is to teach;
(2) A valid teaching certificate or credential from South Dakota or another state authorizing the holder to teach in the field of instruction being offered;
(3) Five years of full-time experience in a professional trade or technical occupation in the applicable field; or
(4) Any combination of at least five years of full-time applicable field experience and college level education.

In addition to meeting at least one of the qualifications in subdivisions (1) to (4), inclusive, an instructor seeking approval to provide instruction of the broker associate prelicensing course, broker associate upgrade course, or responsible broker course shall complete the responsible broker course prior to approval.

Source: SL 1975, ch 16, § 1; 7 SDR 31, effective October 6, 1980; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:03, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:08.01. Instructors. No instructor may teach prelicensing courses unless approved, by name, by the commission. However, a guest speaker may teach a designated section of a prelicensing course pursuant to § 20:69:04:08.03.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.02. Application for approval of instructor -- Guest speakers exempt. An applicant for instructor approval shall apply on a form provided by the commission. A guest speaker is exempt from making application if requesting approval pursuant to § 20:69:04:08.03.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.03. Utilization of guest speakers -- Résumé to accompany course application. A course provider may utilize guest speakers with expertise in a particular area in any approved course if an approved instructor is present at the time of the presentation. A course provider may utilize a guest speaker without an approved instructor present with the prior written approval of the commission.

An application for approval of a course utilizing guest speakers must include a résumé of each speaker.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.04. Certificate of instructor approval -- Approval certificates not issued to guest speakers. The commission shall grant a certificate of approval for each instructor approved by the commission. Certificates of approval will not be issued to guest speakers who make application pursuant to § 20:69:04:08.03.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:09. Educational facilities. An approved course of instruction must have the classrooms and other facilities and personnel necessary to implement the program as determined by the real estate commission.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:04, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4)
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:09.01. Instructional techniques. Classroom courses must be presented to students through interactive instructional techniques. Interactive instruction includes providing a student the opportunity for immediate exchange with an instructor in a classroom setting and immediate assessment and remediation through computer assisted or other audio or audiovisual interactive instruction. An

instructor may not provide instruction primarily by having students read text material, listen to audio tapes, watch video tapes or films, or study questions similar to those on the state licensing examinations.

Source: 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:10. Approval of classroom instruction, distance education, or independent study course. Prior to the contemplated date of opening, the commission shall notify the applicant in writing of its decision to grant or deny approval. No applicant may accept students without the commission's approval.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:05, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:10.01. Auditing. The commission may audit courses.

Source: 24 SDR 172, effective June 16, 1998; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:11. Withdrawal of approval for course or instructor. If the commission at any time determines that a person or course approved pursuant to chapter 20:69:04 is not continuing to meet the requirements of SDCL chapter 36-21A and this chapter, it shall immediately notify the course provider in writing detailing the deficiencies requiring correction. The school's approval by the commission shall continue 90 days from the date of the commission's written notice to the course provider, and if, at the expiration of that period, the course provider has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the course or instructor.

If the commission disciplines an instructor who holds a real estate license for acts committed as a licensee, the commission may also withdraw that licensee's approval as an instructor.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:08, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

Cross-Reference: Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

20:69:04:11.01. Denial of approval for course or instructor. The commission may deny approval of a real estate course or instructor if it determines that either is not in compliance with SDCL chapter 36-21A and this article. Any person aggrieved by denial of approval by the commission may file a written request for a hearing pursuant to § 20:69:02:07.
Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

Cross-Reference: Procedure for a contested case, SDCL chapter 1-26.

20:69:04:12. Withdrawal of approval for inactivity. The commission may withdraw its approval for any course that has not been offered for at least one year.

Source: 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:08.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:13. Credit for previously unapproved courses. A person completing any course which has not received prior commission approval shall submit a complete list of the courses taken, the number of hours of study for each course, and the qualifications of the instructors and shall answer any additional questions which the commission may have. After review of the information, the commission may approve the course and give the applicant credit for meeting all or a portion of the educational requirements imposed by SDCL chapter 36-21A.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:10, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:14. Classroom hour. A classroom hour is a period of at least 50 minutes of actual classroom instruction out of each 60-minute segment. Additional study assignments are not counted as hours of classroom instruction.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:13, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:15. Length of course. No more than eight hours of instruction may be offered in one day.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:14, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:16. Examination. A final examination must be given in each course. A copy of the final examination and the answers must be filed with the commission.

Source: 2 SDR 7, effective July 30, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:15, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:17. Reexamination. A candidate for a license who fails the final examination of a prelicensing course may retake the examination without retaking the education.

Source: 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:15.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(2).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:18. Schedule. A schedule of all courses offered, including the date, time, and place where they will be offered, must be furnished to the commission before the courses begin.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:16, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:19. Prelicensing education certificate of attendance. A course provider shall provide an individual certificate of attendance to each licensee upon completion of the prelicensing course under the following conditions. The certificate shall contain the licensee's name, the course title, the date, the location of the course, the number of approved credit hours, and the signature of the course provider or instructor. No certificate of attendance may be issued to a licensee who is absent for more than ten percent of the classroom hours.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

20:69:04:20. Course provider reporting requirements. The course provider shall submit a list of participants to the commission within ten days after completion of a course. The course provider shall provide a course evaluation form to each licensee for completion and submit the completed course evaluations to the commission within ten days after completion of a course.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

20:69:04:21. Preregistration allowed -- Notice of cancellation required. A course provider offering approved prelicensing education courses may require preregistration with a registration cutoff date. The requirement must be advertised prior to each course. A course provider must notify registrants if the course is cancelled. The notification must be made at least 48 hours before the time of the beginning of the course.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

20:69:04:22. Application for approval of distance education or independent study course. A course provider desiring to give approved independent study or distance education courses to prospective real estate licensees shall apply on a form provided by the commission. The application must be filed with the commission at least 30 days before the course is offered.

The application form shall include the following information and enclosures:

(1) Name, address, and telephone number of the course provider;
(2) Course title;
(3) The specific subject matter requirement met by the course;
(4) The names of any instructor who will be available to answer student questions, the means of contact, and the hours of availability;
(5) The overall structure, functioning, and administration of the proposed course;
(6) A complete list of all lessons, modules, and learning objectives for each;
(7) An explanation of the remediation process which is in effect to accomplish mastery of material when specific deficiencies are identified; and
(8) A description of the procedures used to ensure exam security.

Source: 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-89(4).

20:69:04:23. Additional requirements for distance education course offerings. In addition to the requirements of § 20:69:04:21, an application for approval of a distance education course must include the following:

(1) A complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims; and
(2) An explanation of how the course measures, documents, and records that the student has engaged in the required interactive exercises, achieved the required level of mastery, and spent the required amount of time completing the course and how the course provides protection against loss of student data due to hardware or software failure or against inadvertent loss by the student.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:24. Distance education defined. As used in this chapter, a distance education course is one in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:25. Independent study defined. As used in this chapter, an independent study is a course in which no interaction with an instructor is planned or implied as part of the learning process.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:26. Standards for distance education. A distance education course must provide mastery of the material. The course must:

(1) Divide the material into major learning units, each of which is further divided into modules of instruction;
(2) Specify learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;
(3) Specify an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;
(4) Provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, including appropriate remediation if required; and
(5) Require that the student demonstrate adequate comprehension of all material covered by the learning objectives for the module or unit before completing that module or unit.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:27. Criteria for distance education or independent study course approval. The commission may approve any prelicensing course that is provided by a public or private school, organization, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

(1) The course provider must specify the learning objectives for each lesson and clearly demonstrate that the objectives cover the required subject matter. Objectives must be specific to ensure that all relative content is covered adequately to ensure mastery of the objectives;
(2) The course provider must demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of hours of classroom-based instruction, and that students must proceed through and demonstrate comprehension of all the material;
(3) If the course is a distance education course, it must include consistent and regular interactive events as appropriate to the medium. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course's learning objectives. The course approval submission must identify the types of interactive events included in the course and specify how the interactive events contribute to the achievement of the stated learning objectives;
(4) The course must require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course must provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process. In independent study courses, this remediation may be accomplished by quizzes or other exercises with detailed rationales in the answer key provided to students;
(5) The course provider must measure, at regular intervals, the student's progress toward and completion of the mastery requirement of each lesson or module covering all the required subject matter. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;
(6) The applicant must demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, E-mail, and fax.

Communication by written postal correspondence alone is insufficient to satisfy the requirements of this subdivision.

(7) The course provider shall provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the school and the student must certify in writing that the student has successfully completed the course; and

(8) The course provider must require that the student pass a comprehensive exam of 100 multiple-choice questions with a minimum passing score of 80 percent.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).
Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:28. Student certification required. Any school offering an approved distance education or independent study course must obtain from each student a statement attesting that all assignments and examinations completed are the work of the enrolled student.

Source: 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

20:69:04:29. Material change. A course provider of an approved real estate course shall immediately notify the commission of any material change contained in the application for approval or in the attached exhibits. A course provider may seek approval of a course subsequent to a course offering by submitting all information requested.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(4).
Law Implemented: SDCL 36-21A-89(4).

CHAPTER 20:69:05
DISCIPLINARY PROCEEDINGS

Section

20:69:05:01	Complaints authorized -- Procedure following filing -- Electronic filing.
20:69:05:01.01	Commission staff to investigate complaints.
20:69:05:02	Dismissal of complaint.
20:69:05:03	Informal disposition.
20:69:05:04	Assurance of voluntary compliance or consent order.
20:69:05:05	Formal proceedings.
20:69:05:06	Repealed.
20:69:05:07	Repealed.
20:69:05:08	Answer.
20:69:05:09	Disqualification.
20:69:05:10	Per diem and mileage.
20:69:05:11	Final action by commission.

Cross-Reference: Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

20:69:05:01. Complaints authorized -- Procedure following filing -- Electronic filing. Any person, including commission members and staff, may file with the executive director of the commission a written complaint claiming that a licensee or a subdivider has engaged or is engaging in conduct constituting grounds for disciplinary action. The complaint shall be verified on oath, stating the name and address of the licensee or subdivider complained against and fully detailing the conduct against which the complaint is made. Upon its receipt, the executive director or compliance officer of the commission may request more information from the person filing the complaint. If sufficient information is received to allege grounds for disciplinary action the executive director shall serve a copy of the complaint by mail on the licensee or subdivider complained against and on any other affected parties. The licensee or subdivider complained against has 20 days to answer the complaint after its service. The licensee or subdivider shall serve an answer to the complaint on the executive director.

The executive director may reject the complaint if it is not in proper form or if it fails to allege grounds for disciplinary action. The person serving an answer under this section shall serve an original on the executive director. However, the executive director may accept a complaint or answer in an electronic format if it is readily accessible by the commission and in a format that can be downloaded, printed, or otherwise maintained as a record for future reference. Any person filing a complaint or an answer electronically shall submit one copy of the original.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 3 SDR 34, effective November 3, 1976; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:01, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(5).

Law Implemented: SDCL 1-26-29, 36-21A-68, 36-21A-86, 36-21A-93.

20:69:05:01.01. Commission staff to investigate complaints. The commission staff is responsible for reviewing and investigating disciplinary cases before the commission. At any point after the receipt of a complaint the executive director may appoint a commission member to direct staff in reviewing and investigating complaints.

Source: 44 SDR 71, effective October 24, 2017.

General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-18, 36-21A-19, 36-21A-68, 36-21A-89.

20:69:05:02. Dismissal of complaint. After receipt of the answer to the complaint specified in § 20:69:05:01 or after the time has expired for the licensee or subdivider complained against to answer, the executive director shall submit the complaint and any answer to the commission staff. The commission staff shall examine the complaint and answer to determine whether disciplinary action should be taken.

If the commission staff determines that the complaint does not charge conduct constituting grounds for disciplinary action, it shall inform the commission of the intent to dismiss the complaint and notify in writing the complainant and the subdivider or licensee complained against and any other affected parties, stating the reasons for dismissal.

If the commission disagrees with commission staff's intent to dismiss the complaint, the commission shall assign one of its members to assist in the resolution of the complaint.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:02, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-29, 36-21A-19, 36-21A-86, 36-21A-89.

20:69:05:03. Informal disposition. If the commission staff believes the complaint to constitute grounds for disciplinary action, it may, in its discretion, negotiate an assurance of voluntary compliance or a consent agreement in an effort to resolve the matter satisfactorily without the necessity of a formal hearing.

Any informal disposition negotiated by commission staff is subject to commission approval.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:03, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-29, 36-21A-86, 36-21A-89.

20:69:05:04. Assurance of voluntary compliance. In the enforcement of this chapter, the commission may accept an assurance of voluntary compliance or a consent order regarding any act or practice alleged to violate this article or SDCL chapter 36-21A from a person who has engaged in, is engaging in, or is about to engage in such an act or practice.

The assurance or consent order must be in writing and is subject to the approval of the commission. The assurance or consent order may include a stipulation for the voluntary payment by the alleged violator of the costs of the investigation and any amount necessary to restore to a person money or property which may have been acquired by the alleged violator by means of such an act or practice.

The assurance of voluntary compliance is not considered an admission to a violation for any purpose. The consent of a licensee to a consent order constitutes an admission of a violation for any purpose. Proof of failure to comply with the assurance of voluntary compliance or consent order is prima facie evidence of a violation of this chapter.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:03.01, 20 SDR 18, effective August 16, 1993; 37 SDR 112, effective December 8, 2010.

General Authority: SDCL 36-21A-89(5).
Law Implemented: SDCL 1-26-24, 1-26-29, 36-21A-68, 36-21A-86.

20:69:05:05. Formal proceedings. If the commission staff decides to conduct a formal hearing after a complaint has been filed, the commission staff shall mail a formal complaint issued in the commission's name and a notice of hearing to the licensee or subdivider complained against, the person making the complaint, and any other affected parties.

A formal complaint shall contain all the information required by SDCL 1-26-17

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:04, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:06. Contents of commission complaint. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:05, 20 SDR 18, effective August 16, 1993.

20:69:05:07. Date of hearing. Repealed.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:07, 20 SDR 18, effective August 16, 1993.

20:69:05:08. Answer. The subdivider or licensee must file an answer admitting, denying, qualifying, or explaining any or all of the facts contained in the formal complaint. The answer must be filed within 20 days after the receipt of the formal complaint. The person serving an answer under this section shall serve an original on the executive director.

Source: SL 1975, ch 16, § 1; 3 SDR 34, effective November 3, 1976; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:08, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-17, 1-26-29, 36-21A-86.

20:69:05:09. Disqualification. If the complaint referred to in § 20:69:05:01 was filed by a commission member, that commission member is disqualified from sitting at the hearing as a commission member and from participating in the decision made by the commission. The commission member may appear as a witness and give advice as to procedure.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:09, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-26, 1-26-29, 36-21A-86.

20:69:05:10. Per diem and mileage. The commission may authorize per diem and mileage for complainants and affected parties at informal consultations and for complainants and witnesses at formal hearings. The per diem may not exceed the amount specified in SDCL Chapter 19-5-1 and the mileage may not exceed that authorized by §§ 5:01:02:01 and 5:01:02:02.

Source: 2 SDR 7, effective July 30, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:12, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-19.1, 1-26-29, 36-21A-86.

20:69:05:11. Final action by commission. After hearing the evidence and arriving at a decision that unprofessional conduct has been proved, the commission may levy a fine, revoke the license, suspend the license, issue a letter of reprimand to be placed in the file of the person complained against, or take a combination of these actions. If unprofessional conduct has not been proved, the commission shall dismiss the complaint or the parts of the complaint not proved. A letter of reprimand shall state the actions against which a complaint was filed with the names, dates, places, and list of witnesses involved in the complaint. This section does not prevent the commission from compromising a formal hearing and the commission may also allow an assurance of voluntary compliance as prescribed by § 20:69:05:04.

Source: 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:13, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 1-26-25, 1-26-29, 36-21A-68, 36-21A-86.

Cross-Reference: Petition for review, § 20:69:02:08.

CHAPTER 20:69:06
REAL ESTATE AUCTIONEER LICENSES

Section

20:69:06:01	Transferred.
20:69:06:01.01	Definitions.
20:69:06:02	Auctioneers -- License required.
20:69:06:03	Repealed.
20:69:06:04	Duties of auctioneer.
20:69:06:05	Listings to be in writing.
20:69:06:06	Auction advertisements.
20:69:06:07	Auction sale procedure.
20:69:06:07.01	Auction with reserve sale procedure.
20:69:06:07.02	Absolute auction sale procedure.
20:69:06:07.03	Secured party or lien holder not prohibited from bidding at an absolute auction -- Conditions.
20:69:06:07.04	Internet auction sale procedure.
20:69:06:08	Auctioneer to maintain records.
20:69:06:09	Certain acts prohibited.
20:69:06:10	Rules applicable to real estate brokers, broker associates, and salespersons.

20:69:06:01. Transferred to § 20:69:06:07.

20:69:06:01.01. Definitions. Terms used in this chapter mean:

(1) "Absentee bid," a procedure that allows a bidder to participate in the bidding without being physically present;

(2) "Absolute auction," an auction in which the property is sold to the highest qualified bidder with no limiting conditions or amount. An absolute auction is also known as an auction without reserve;

(3) "Auction with reserve," an auction in which the seller or seller's representative retains the right to establish a minimum price, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer. An auction with reserve is also known as a reserve auction or as an auction subject to confirmation;

(4) "Bid," a prospective buyer's indication or offer of a price the prospective buyer is willing to pay to purchase property at auction;

(5) "Buyer's premium," an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer;

(6) "Internet auction," an auction in which a prospective buyer bids using electronic media. The term also includes an auction in which the auctioneer conducts the auction using electronic media;

(7) "Minimum bid auction," an auction in which the auctioneer accepts bids at or above a disclosed price. A minimum bid auction is separate and distinct from an absolute auction or an auction with reserve;

(8) "Rafter bid," or "puffing of a bid," a fictitious bid used to increase the final sales price;

(9) "Reserve," the minimum price that a seller is willing to accept for a property to be sold at auction;

(10) "Shill," a person who pretends to have no association with the auctioneer or seller and gives the impression of being an enthusiastic bidder by puffing of a bid.

Source: 37 SDR 112, effective December 8, 2010.

General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-89.

20:69:06:02. Auctioneers -- License required. A restricted broker's license, referred to in this chapter as an auctioneer's license, is required for any person not licensed as a real estate broker who is acting as a real estate auctioneer. A real estate salesperson or broker associate acting under the auspices and supervision of a licensed real estate broker may sell real estate at auction without an auctioneer's license. A real estate broker may obtain an auctioneer's license without examination.

Source: 1 SDR 33, effective January 1, 1975; 3 SDR 34, effective November 3, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-47, 36-21A-89(7).
Law Implemented: SDCL 36-21A-47, 36-21A-12.

20:69:06:03. Qualifications of applicants. Repealed.

Source: 1 SDR 33, effective January 1, 1975; 2 SDR 7, effective July 30, 1975, and omitted as a temporary rule; readopted and transferred from § 20:56:12:08, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 29 SDR 48, effective October 10, 2002; 35 SDR 305, effective July 1, 2009.

20:69:06:04. Duties of auctioneer. An auctioneer may list, advertise, show, and sell real property or business opportunities at auction only. An auctioneer may also close a real estate auction sale.

Source: 1 SDR 33, effective January 1, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:21, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-47.

20:69:06:05. Listings to be in writing. Any contract listing a property for sale with an auctioneer must be in writing. Each written listing agreement shall show the legal description of the property; the compensation to be received by the auctioneer; the requirement that the date of the auction will be determined by written mutual agreement between seller and auctioneer; the type of auction procedure; any encumbrances and reserves; and the signatures of all parties. At the time of securing the listing, the auctioneer who obtains it shall give the person or persons signing the listing a true copy of it. An auction listing does not need to include a listing price. An auction listing terminates at the culmination of the bidding if the auctioneer will not be representing the seller through the closing of the transaction or if the seller doesn't receive an acceptable bid. If the auctioneer prepares the purchase agreement, the auction listing extends to and includes the date of closing under the purchase agreement unless the buyer and seller terminate the purchase agreement prior to closing of the transaction.

Source: 4 SDR 71, effective April 30, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:22, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 30 SDR 40, effective September 30, 2003; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7), 36-21A-130.
Law Implemented: SDCL 36-21A-47, 36-21A-71, 36-21A-130.

20:69:06:06. Auction advertisements. An auctioneer who advertises shall comply with the following requirements:

(1) Auction advertisements must disclose the names and types of licenses held by all licensees involved in the transaction;

(2) If an auction advertisement includes real estate and personal property and the personal property is to be sold by an auctioneer not licensed under this chapter or SDCL chapter 36-21A, then the auction advertisement may not be displayed in such a manner to give the impression that the real estate is being sold by the unlicensed auctioneer;

(3) No auction may be advertised as absolute nor may any advertising contain the term, absolute auction, or the term, absolute, or any term with similar meaning, nor may any licensee offer to sell any property at absolute auction unless:

(a) Except for current tax obligations or easements, there are no unrecorded liens or encumbrances on the property in favor of any other person, firm, or corporation;

(b) Each holder of a lien or encumbrance, by execution of the auction contract or other written agreement provided to the auctioneer, agrees to the absolute auction without regard to the amount of the highest bid or to the identity of the highest bidder; or

(c) A person, firm, trust, or estate, by execution of the auction listing contract or other written agreement provided to the auctioneer guarantees the complete discharge and satisfaction of all liens and encumbrances, as applicable, immediately after the absolute auction or at the closing without regard to the amount of the highest bid or to the identity of the highest bidder;

(4) When advertising an absolute auction, there must be the bona fide intention at the time of the advertising and at the time of the auction sale to transfer ownership of the property. The intent must exist without reliance on any agreement that any particular bid level must be reached;

(5) If the auction is a minimum bid auction, the minimum price must be stated in any advertising and promotional material and announced at the auction;

(6) Advertising for a sale at which some parcels will be auctioned with reserve and some items will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public. In written advertisements for such a sale, the font size, style, and case of the type used in publicizing the part of the sale is to be held without reserve may not differ from the font size, style, and case used to publicize the part of the sale to be held with reserve;

(7) An auctioneer shall disclose the existence of any buyer's premium to be charged to a buyer at an auction sale. Such disclosure shall be made in all published advertising and disclosed prior to the start of an auction.

Source: 20 SDR 18, effective August 16, 1993; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-71(29), 36-21A-72, 36-21A-89.

20:69:06:07. Auction sale procedure. A real estate auction may not begin until the announced and advertised time and date, and may only occur at the announced and advertised place of the sale. All efforts of selling shall cease at the end of the sale or at the time of the announcement of no sale. If property being sold by auction is put up in tracts, each tract is the subject of a separate sale. Any sale is with reserve unless the real estate being sold is explicitly put up without reserve. A bidder may retract a bid until the auctioneer's announcement of completion of the auction, but a bidder's retraction does not revive any previous bid.

Each sale at auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

Source: 5 SDR 12, effective August 14, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:00.01, 20 SDR 18, effective August 16, 1993; transferred from § 20:69:06:01, 37 SDR 112, effective December 8, 2010; transferred from § 20:69:06:01, 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:07.01. Auction with reserve sale procedure. In an auction with reserve, the auctioneer may withdraw the real estate being offered for sale at any time until announcing completion of the sale. If the seller or an authorized representative of the seller will be allowed to bid at an auction, the auctioneer must give notice for such bidding prior to receiving any bids.
A minimum acceptable price may be disclosed with seller's written permission.

Source: 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:07.02. Absolute auction sale procedure. In an absolute auction, the seller or anyone acting upon behalf of the seller may not bid at the absolute auction or otherwise participate in the bidding process. The real estate being offered for sale at an absolute auction may not be withdrawn after an auctioneer calls for bids unless no bid is made within a reasonable time.

Source: 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:07.03. Secured party or lien holder not prohibited from bidding at an absolute auction -- Conditions. Compliance with § 20:69:06:07.02 does not prohibit a secured party or other lien holder who is not the seller from bidding at an absolute auction sale, as long as such bidding does not constitute the direct or indirect establishment, or an agreement to the establishment, of a reserve price on the property by the seller or by the auctioneer or by anyone aiding, assisting, or acting upon behalf of, the seller or the auctioneer.

Source: 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-72, 36-21A-89.

20:69:06:07.04. Internet auction sale procedure. In an Internet auction sale, the auctioneer must validate a buyer's capability to participate in the sale by obtaining the buyer's name, address, e-mail address, phone number, and ability to legally enter into a contract. In addition, the auctioneer shall obtain an agreement to the terms of the auction procedure from any buyer wishing to participate in the sale.

Source: 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-72, 36-21A-89.

20:69:06:08. Auctioneer to maintain records. An auctioneer must maintain copies of all agreements, listing contracts, handbills, advertisements, and other pertinent records, including closing statements if the auctioneer represented the seller through the closing of the transaction and any auction

recordings whether audio, video, or audiovisual if the auction was recorded, for a period of four years. The records are subject to audit by the commission.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:23, 20 SDR 18, effective August 16, 1993; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-47, 36-21A-83.

20:69:06:09. Certain acts prohibited. Prohibited acts include the following:

(1) Knowingly receiving or using a rafter bid, puffing of a bid, or any type of bid rigging such as utilizing the services of a shill; or
(2) Knowingly misleading or creating a false impression among the seller, buyer, or bidders in the advertising, conduct, and closing of an auction.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:24, 20 SDR 18, effective August 16, 1993; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-47, 36-21A-68, 36-21A-71, 36-21A-72.

20:69:06:10. Rules applicable to real estate brokers, broker associates, and salespersons. A real estate broker, broker associate, or salesperson acting as an auctioneer must follow the provisions of this chapter. Unless inconsistent with this chapter, a person licensed as an auctioneer must follow the provisions of chapter 20:69:03 and SDCL chapter 36-21A.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:25, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995; 37 SDR 112, effective December 8, 2010.
General Authority: SDCL 36-21A-89(7).
Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-30, 36-21A-47, 36-21A-68, 36-21A-71.

CHAPTER 20:69:07
CONDOMINIUMS

Section

20:69:07:01	Notice of intent to sell domestic condominium.
20:69:07:02	Rejection of filing.
20:69:07:03	Properly filed defined.
20:69:07:04	Inspection fee.
20:69:07:05	Rejection for insufficient funds check.
20:69:07:06	Deposit and expenditure of fees.
20:69:07:07	Public offering statement to accompany questionnaire.
20:69:07:08	Conversion condominiums.
20:69:07:09	Other information.
20:69:07:10	Waiver.

20:69:07:01. Notice of intent to sell domestic condominium. When a domestic condominium project is offered for sale in this state, the developer shall notify the commission in writing of the intention to sell the offering. The notice of intent must be on a form approved by the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:08, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-10.

20:69:07:02. Rejection of filing. The commission may reject a filing that does not have the notice of intent to sell, does not have a questionnaire properly completed by the developer, or does not include the fee required in SDCL 43-15A-11 and § 20:69:07:04.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:11, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-11.

20:69:07:03. Properly filed defined. A notice of intent to sell is not properly filed until the commission has notified the developers in writing that all necessary requirements have been met.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:12, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-13.

20:69:07:04. Inspection fee. An estimated inspection fee in the amount of $100 for each $300,000 value of the project must be included with the notice of intent.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:13, August 16, 1993; 23 SDR 110, effective January 9, 1997.

General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-14.

20:69:07:05. Rejection for insufficient funds check. The commission shall reject any notice of intent to sell if it is accompanied by an insufficient funds check for either the registration fee or inspection fee or both.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:14, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-11, 43-15A-14.

20:69:07:06. Deposit and expenditure of fees. The commission shall deposit the fees that it collects in the enforcement of SDCL 43-15A in the general fund of the commission and shall expend them to defray the costs of registration and inspection. The commission representative inspecting the project is entitled to a fee not to exceed $75 per day and mileage in the amount of 35 cents per mile or actual reimbursement for first class transportation expenses. If the amount expended by the commission representative is greater than the estimated amount paid by the developer pursuant to § 20:69:07:04, the commission shall bill the developers for the excess amount. The excess amount must be paid immediately or the commission shall reject the notice of intention to sell.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:15, August 16, 1993.
General Authority: SDCL 43-15A-15.
Law Implemented: SDCL 43-15A-14, 43-15A-15.

20:69:07:07. Public offering statement to accompany questionnaire. A public offering statement (POS) shall accompany and be part of the questionnaire and must be in a form prescribed by the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:17, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-2 to 43-15A-7, 43-15A-11, 43-15A-18 to 43-15A-25.

20:69:07:08. Conversion condominiums. The POS for conversion condominiums must conform in all aspects to the requirements of § 20:69:07:07 except that additional information as required by the commission must be incorporated.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:18, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-2 to 43-15A-7, 43-15A-11, 43-15A-18 to 43-15A-25.

20:69:07:09. Other information. In order to facilitate its powers of inspection, the commission may require the submission of additional information. The failure to submit such additional information is grounds for the commission to reject the application.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:20, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-11, 43-15A-13, 43-15A-16 to 43-15A-18, 43-15A-26.

20:69:07:10. Waiver. The commission may waive any of the requirements of this chapter for good cause shown and may accept, at its discretion, registration forms used in another state.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:21, August 16, 1993.
General Authority: SDCL 43-15A-30.
Law Implemented: SDCL 43-15A-11.

CHAPTER 20:69:08
MORTGAGE BROKERS

Section

20:69:08:01 Definitions.
20:69:08:02 to 20:69:08:07 Repealed.
20:69:08:08 No advance fee.
20:69:08:09 Written contract required.
20:69:08:10 Full disclosure required.
20:69:08:11 Contents of mortgage loan disclosure statement.
20:69:08:12 Restrictions on chargeable costs and expenses.
20:69:08:13 Repealed.

20:69:08:01. Definitions. The term, lender, means a bank or trust company, savings bank, savings and loan association, insurance company, federal land bank, licensed mortgage broker or mortgage lender, or state or federal agency or its employees or any wholly owned subsidiary of any of the entities listed in this section.

Source: 4 SDR 71, effective April 30, 1978; 5 SDR 21, effective September 21, 1978; 7 SDR 13, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:01, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-1, 36-21A-47, 36-21A-89(8).

20:69:08:02 to 20:69:08:07 Repealed.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:03, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; repealed, 26 SDR 41 effective September 29, 1999.

20:69:08:08. No advance fee. A real estate broker acting as a mortgage broker may not accept compensation in advance from a potential borrower for the procurement of a loan.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:36, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-30, 36-21A-47, 36-21A-84.

20:69:08:09. Written contract required. Before a real estate broker performs any services for a potential borrower, the broker and the borrower must enter into a written contract specifying the duties and conditions under which the broker is to perform services. The contract must fully disclose estimated compensations and expenses and must have a definite expiration date.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:37, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:10. Full disclosure required. In all dealings between a borrower and a real estate broker, the broker shall fully and fairly inform the prospective borrower of all liabilities, costs, and other financial obligations that can or will be incurred by the borrower if the borrower uses the services of the broker.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:38, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:11. Contents of mortgage loan disclosure statement. When a real estate broker arranges a loan for a borrower, the following mortgage loan disclosure statement shall be prepared by the broker and the borrower:

(1) Summary of loan terms:
  (a) Principal amount of loan;
  (b) Estimated deductions from principal amount:
    (i) Costs and expenses;
    (ii) Brokerage commission;
    (iii) Liens and other amounts to be paid on authorization of borrower;
  (c) Estimated cash payable to borrower;

(2) General information concerning loans:
  (a) The amount of principal and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions shall be printed in bold type on the contract: **CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED AGAIN TO PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME;**
  (b) Other information necessary, including the land description, types of instruments to be executed, and type of lien that will be against the property if the instruments are executed;
  (c) Any prepayment penalty and full disclosure of its terms;
  (d) Whether credit life or credit disability will be required of the borrower as a condition of making the loan;

(3) Deductions from loan proceeds:
  (a) Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney fees, recording fees, credit investigation fees, and other costs and expenses;
  (b) An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, liens against property securing the loan, or other fees.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:39, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:12. Restrictions on chargeable costs and expenses. In addition to the initial written contract, the real estate broker shall give to the potential borrower an estimate of the amount of chargeable costs and expenses that will be collected by the broker in case no loan is found for the borrower. An estimated total cost to the borrower under these conditions shall be stated to the borrower and may not exceed the amount customarily charged for the same or comparable service in the community where the service was rendered. All of these costs and expenses, if actually expended and chargeable to the borrower, must have been actually and reasonably expended for the potential borrower's benefit.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:40, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(8).
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:13. Real estate law applicable. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 5 SDR 21, effective September 21, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:41, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

CHAPTER 20:69:09
REAL ESTATE APPRAISERS

(Repealed. 23 SDR 110, effective January 9, 1997)

CHAPTER 20:69:10
STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

Section

20:69:10:01 Definitions.
20:69:10:02 Departure provision.
20:69:10:03 Standards for developing an appraisal.

20:69:10:01. Definitions. The following terms apply to this chapter:

(1) "Analysis," the act or process of providing information, recommendations, or conclusions on diversified problems in real estate other than estimating value, for another and for compensation;
(2) "Appraisal," the act or process of estimating value of real estate for another and for compensation;
(3) "Cash flow analysis," an analysis of the anticipated movement of cash in or out of real estate;
(4) "Feasibility analysis," an analysis of the cost-benefit relationship of an economic endeavor;
(5) "Investment analysis," an analysis that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment;
(6) "Market analysis," an analysis of real estate market conditions for a specific type of property;
(7) "Report," any communication, written or oral, of an appraisal, review, or analysis; and
(8) "Review," the act or process of critically studying a report prepared by another, for another, and for compensation.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:01, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-89.

20:69:10:02. Departure provisions. An appraiser may enter into an agreement to perform an assignment that calls for something less than, or different from, the work that would otherwise be required by the specific guidelines if, before entering into such an agreement the appraiser has determined that the assignment to be performed is not so limited in scope that the resulting appraisal, review, or analysis would tend to mislead or confuse the client, the users of the report, or the public and the appraiser has advised the client that the assignment calls for something less than, or different from, the work required by the specific guidelines and therefore the report will include a qualification that reflects the limited or differing scope of the appraisal, review, or analysis.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:02, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-89.

20:69:10:03. Standards for developing an appraisal. In developing an appraisal, a broker or broker associate under a broker's supervision must be aware of, understand, and correctly employ the recognized methods and techniques as required by § 20:14:06:01.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:03, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002; 30 SDR 40, effective September 30, 2003; 32 SDR 53, effective October 11, 2005; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-90.

Law Implemented: SDCL 36-21A-90.

CHAPTER 20:69:11
POSTLICENSING AND CONTINUING EDUCATION

Section

20:69:11:01 Continuing education defined.
20:69:11:01.01 Distance education defined.
20:69:11:01.02 Independent study defined.
20:69:11:01.03 Interactive defined.
20:69:11:01.04 Standards for distance education.
20:69:11:01.05 Required continuing education subject areas.
20:69:11:01.06 Elective continuing education subject areas.
20:69:11:02 Continuing education requirements.
20:69:11:02.01 Postlicensing education defined.
20:69:11:02.02 Postlicensing education course requirements -- Time to complete.
20:69:11:03 Classroom hour.
20:69:11:03.01 Length of course.
20:69:11:04 Requirements -- Exceptions.
20:69:11:05 Exceptions and extensions.
20:69:11:06 Nonqualifying courses.
20:69:11:07 Criteria for postlicensing or continuing education course approval.
20:69:11:07.01 Criteria for distance education or independent study course approval.
20:69:11:08 Application for approval of classroom instruction -- Fee required.
20:69:11:08.01 Application for approval of distance education or independent study courses – Fee required.
20:69:11:08.02 Additional requirements for distance education courses.
20:69:11:08.03 Student certification required.
20:69:11:08.04 Classroom, distance education, and independent study course application fees – Postlicensing course as continuing education course subject to application fee.
20:69:11:09 Approval of out-of-state courses.
20:69:11:10 ARELLO certified courses approved for postlicensing or continuing education.
20:69:11:11 Certificate of approval.
20:69:11:11.01 Course accreditation renewal.
20:69:11:11.02 Course accreditation reinstatement.
20:69:11:12 Material change.
20:69:11:13 Denial of approval for a course or instructor.
20:69:11:13.01 Withdrawal of approval for a course or instructor.
20:69:11:14 Same or duplicate courses.
20:69:11:15 and 20:69:11:16 Repealed.
20:69:11:17 Facilities.
20:69:11:17.01 Schedule.
20:69:11:18 Auditing.
20:69:11:19 Postlicensing or continuing education certificate of attendance.
20:69:11:19.01 Course provider reporting requirements -- Course evaluation.
20:69:11:20 Preregistration allowed -- Notice of cancellation required.
20:69:11:21 Limit on independent study courses.
20:69:11:22 Instructors.
20:69:11:23 Application for approval of instructors -- Guest speakers exempt.
20:69:11:24 Utilization of guest speakers -- Résumé to accompany course application.
20:69:11:25 Certificate of instructor approval -- Approval certificates not issued to guest speakers.

20:69:11:01. Continuing education defined. As used in this chapter, continuing education means accredited educational experience derived from a licensee's participation in approved lectures, seminars, or courses on real estate law, or in other related areas in real estate that have been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:01.01. Distance education defined. As used in this chapter, a distance education course is one in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

20:69:11:01.02. Independent study defined. As used in this chapter, an independent study is a course in which no interaction with an instructor is planned or implied as part of the learning process.

Source: 25 SDR 90, effective December 28, 1998.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

20:69:11:01.03. Interactive defined. As used in this chapter, interactive means the course structure and technologies promote active student involvement with the course content, including the ability to access or bypass optional content, submit questions or answer test items and receive direct feedback, and communicate with other students and the instructor on an immediate or reasonably delayed basis. Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

Source: 25 SDR 90, effective December 28, 1998.
General Authority: SDCL 36-21A-63.
Law Implemented: SDCL 36-21A-63.

20:69:11:01.04. Standards for distance education. A distance education course must provide mastery of the material. The course must:

(1) Divide the material into major learning units, each of which is further divided into modules of instruction;
(2) Specify learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;
(3) Specify an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;

(4) Provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, including appropriate remediation where required; and
(5) Require that the student demonstrate adequate comprehension of all material covered by the learning objectives for the module or unit before completing that module or unit.

Source: 25 SDR 90, effective December 28, 1998.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:01.05. Required continuing education subject areas. Required continuing education subject areas may only be in the following subject areas:
(1) Real estate ethics;
(2) Legislative issues that influence real estate practice including both pending and recent legislation;
(3) The administration of licensing provisions of real estate law and the administrative rules;
(4) Real estate brokerage, including agency, contracts, trust accounting, fiduciary duties, and risk management;
(5) Fair housing;
(6) Environmental issues;
(7) Antitrust; and
(8) The Americans with Disabilities Act.

Source: 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:01.06. Elective continuing education subject areas. Elective continuing education subject areas may only be in the following subject areas:
(1) Real estate finance;
(2) Real estate market measurement and evaluation, including site, evaluations, market data, and feasibility studies;
(3) Real estate mathematics;
(4) Real property management;
(5) Real property exchange;
(6) Land development, use, planning, and zoning;
(7) Real estate securities and syndication;
(8) Real estate portfolio management;
(9) Accounting and taxation as applied to real property;
(10) Real estate business planning;
(11) Real estate appraisal;
(12) Real estate marketing procedures;
(13) Technology as applied to the practice of real estate;
(14) Home inspection; and
(15) Real estate negotiation.

Source: 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:02. Continuing education requirements. A licensee shall complete 24 hours of continuing education in the subject areas prescribed in §§ 20:69:11:01.05 and 20:69:11:01.06. At least 12 of the 24 hours must be in the required subject areas as described in § 20:69:11:01.05.

Source: 18 SDR 101, effective December 17, 1991; transferred from § 20:56:19:02.01, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, adopted September 29, 1999, effective January 1, 2000; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:02.01. Postlicensing education defined. As used in this chapter, postlicensing education means the curriculum of continuing education that a broker associate is required to complete within the first two active license cycles after initial licensure. The subject areas are prescribed by the commission and build on the basic real estate principles and practices acquired during the prelicensing education courses.

Source: 35 SDR 305, effective July 1, 2009; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-30.2.
Law Implemented: SDCL 36-21A-30.2.

20:69:11:02.02. Postlicensing education course requirements -- Time to complete. All sixty hours of postlicensing education must include study in the required continuing education subject areas as described in § 20:69:11:01.05. Any hours a licensee has completed in the subject areas of negotiation, business planning, technology, or marketing before July 1, 2015, count towards the licensee's postlicensing education requirement.

Upon completion of the postlicensing education requirements, broker associates must comply with the continuing education requirements pursuant to SDCL 36-21A-62 and § 20:69:11:02 for all subsequent renewal cycles.

Source: 35 SDR 305, effective July 1, 2009; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-30.2.
Law Implemented: SDCL 36-21A-30.2.

20:69:11:03. Classroom hour. A classroom hour is a period of at least 50 minutes of actual classroom instruction out of each 60-minute segment. Additional study assignments are not counted as hours of classroom instruction.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:03, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:03.01. Length of course. No more than eight hours of instruction may be offered in one day.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

20:69:11:04. Requirements -- Exceptions. A licensee who has been licensed by the commission for one year or more preceding the date by which continuing or postlicensing education requirements must be completed must meet the continuing or postlicensing education requirements. An inactive licensee is not required to meet the requirements. An inactive licensee who wishes to activate the individual's license must complete 24 hours of continuing education within the licensee's current licensing period or within two years preceding the licensee's current licensing period. A licensee whose license is placed on inactive status during either of the first two license cycles after initial licensure must complete the postlicensing education required during that cycle to activate the license. Courses taken to activate a license may not be used to renew a license. A nonresident licensee licensed in this state is not required to meet this requirement. However, a nonresident licensee whose license in this state is on inactive status shall submit, prior to activating that license, a certificate of licensure from the licensing agency of the state where the nonresident licensee maintains residency, stating the nonresident's license is on active status and in good standing and that no complaint is pending.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:04, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009; 37 SDR 112, effective December 8, 2010; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-89(3).
Law Implemented: SDCL 36-21A-65.

20:69:11:05. Exceptions and extensions. The commission may exempt a nonresident licensee from the continuing education requirements if the licensee meets the requirements of SDCL 36-21A-54 and § 20:69:03:22.01.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:05, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89, 36-21A-54.
Law Implemented: SDCL 36-21A-54.

20:69:11:06. Nonqualifying courses. The following courses do not qualify for postlicensing or continuing education purposes:

(1) Courses in mechanical office and business skills, such as typing, keyboarding, speed-reading, memory improvement, language, and report writing;
(2) Sales promotion or other meetings held in conjunction with a licensee's general business;
(3) A course certified by the use of a challenge examination. All students must complete the required number of classroom hours to receive certification;
(4) Meetings which are a normal part of the in-house staff or employee training;
(5) Orientation courses for licensees, such as those offered through local real estate boards;
(6) Development courses for instructors; and
(7) Personal development or motivational courses.
(8) Courses designed to promote the sale of a product or service.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:19:06, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-30.2, 36-21A-63.

Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:07. Criteria for postlicensing or continuing education course approval. The commission may approve any course, seminar, conference, or equivalent that is provided by the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

(1) Courses must have a total instruction time of not less than three hours;
(2) A course provider must certify to the best of its knowledge the attendance of each student at the course. The course provider shall submit its criteria for measuring attendance in the application for course approval on a form provided by the commission;
(3) The course provider shall maintain for a minimum of three years records of students successfully completing a course;
(4) Credit must be earned on the basis of attendance or, in the case of independent study or distance education courses, completion of the course;
(5) Each course of study may have a coordinator or administrator supervising the program. The coordinator must be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations; and
(6) All instructors in a real estate course of study must file with the commission credentials showing the necessary specialized preparation, training, and experience to ensure competent instruction. The commission shall approve each instructor individually. Approval must be obtained from the commission before the instructor's lecture in an approved course of study. Instructors, lecturers, seminar leaders, and others who present a postlicensing or continuing education course must meet at least one of the following qualifications:
    (a) A bachelor's, graduate, or postgraduate degree in the field in which the person is to teach;
    (b) A valid teaching credential or certificate from South Dakota or another state authorizing the holder to teach in the field of instruction being offered;
    (c) Five years' full-time experience in a professional, trade, or technical occupation in the applicable field;
    (d) Any combination of at least five years of full-time applicable field experience and college level education; or
    (e) Expertise in specialized courses as approved by the commission.

In addition to meeting at least one of the qualifications in (a) to (e), inclusive, an instructor seeking approval to teach real estate agency law specific to South Dakota must complete an approved training course.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:07, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-63.
Law Implemented: SDCL 36-21A-30.2, 36-21A-63, 36-21A-64.

20:69:11:07.01. Criteria for distance education or independent study course approval. The commission may approve any course that is provided by the commission, a public or private school, organization, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

(1) The course provider must specify the learning objectives for each lesson and clearly demonstrate that the course covers the required subject matter. Objectives must be specific to ensure that all relative content is covered adequately to ensure mastery of the objectives;
(2) The course provider must demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of hours of classroom-based instruction, and that students must proceed through and demonstrate comprehension of all the material;
(3) If the course is a distance education course, it must include consistent and regular interactive events as appropriate to the medium. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course's learning objectives. The course approval submission must identify the types of interactive events included in the course and specify how the interactive events contribute to the achievement of the stated learning objectives;
(4) The course must require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course must provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process. In independent study courses, this remediation may be accomplished by quizzes or other exercises with detailed rationales in the answer key provided to students.
(5) The course provider must measure, at regular intervals, the student's progress toward and completion of the mastery requirement of each lesson or module covering all the required subject matter. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;
(6) The applicant must demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, E-mail, and fax. Communication by written postal correspondence alone is insufficient to satisfy the requirements of this subdivision.
(7) The course provider shall provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the school and the student must certify in writing that the student has successfully completed the course; and
(8) The course provider must require that the student pass an appropriate exam to successfully complete and receive credit. An examination will be considered appropriate if it contains at least five multiple-choice questions for each hour of credit and requires a minimum passing score of 80 percent.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:08. Application for approval of classroom instruction -- Fee required. An application for approval of classroom instruction shall be on a form provided by the commission. The application must be filed with the commission at least 20 days before a course is offered and must be accompanied by an application fee pursuant to § 20:69:11:08.04. The application form shall include the following information and enclosures:
(1) Name, address, and telephone number of the course provider;
(2) The title of the course;
(3) A complete description or copies of all materials to be distributed to the participants;
(4) The date and exact location of each presentation of the course;
(5) The duration and time of course;

(6) A comprehensive, detailed outline of the subject matter together with course objectives, the time sequence of each segment, faculty for each segment, and teaching technique used in each segment;
(7) The method of evaluation of the program;
(8) The procedure for measuring attendance; and
(9) A description of the faculty, including name, professional educational background, and practical or teaching experience. A complete résumé shall be furnished.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:08, 20 SDR 18, effective August 16, 1993; 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63.
Law Implemented: SDCL 36-21A-63.

20:69:11:08.01. Application for approval of distance education or independent study courses -- Fee required. An application for approval of a distance education or independent study course shall be on a form provided by the commission and must be accompanied by an application fee pursuant to § 20:69:11:08.04. The application form shall include the following information and enclosures:
(1) Name, address, and telephone number of the course provider;
(2) Course title;
(3) The specific subject matter requirement met by the course;
(4) The names of any instructor who will be available to answer student questions, the means of contact, and the hours of availability;
(5) The overall structure, functioning, and administration of the proposed course;
(6) A complete list of all lessons, modules, and learning objectives for each;
(7) An explanation of the remediation process which is in effect to accomplish mastery of material when specific deficiencies are identified; and
(8) A description of the procedures used to ensure exam security.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63.
Law Implemented: SDCL 36-21A-63.

20:69:11:08.02. Additional requirements for distance education courses. In addition to the requirements of § 20:69:11:08.01, an application for approval of a distance education course must include the following:
(1) A complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims; and
(2) An explanation of how the course measures, documents, and records that the student has engaged in the required interactive exercises, achieved the required level of mastery, and spent the required amount of time completing the course and how the course provides protection against loss of student data due to hardware of software failure or against inadvertent loss by the student.

Source: 25 SDR 90, effective December 28, 1998.
General Authority: SDCL 36-21A-63.
Law Implemented: SDCL 36-21A-63.

20:69:11:08.03. Student certification required. Any school offering an approved distance education or independent study course must obtain from each student a statement attesting that all assignments and examinations completed are the work of the enrolled student.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 41 SDR 219, effective July 1, 2015.
General Authority: SDCL 36-21A-63.
Law Implemented: SDCL 36-21A-63.

20:69:11:08.04. Classroom, distance education, and independent study course application fees -- Postlicensing course as continuing education course subject to application fee. Course application fees include the following:

	Continuing Education	Renewal
Classroom	$75.00	$50.00
Distance Education	$150.00	$50.00
Independent Study	$75.00	$50.00
ARELLO Certified	$50.00	$50.00
Seminar	$15.00/hour	n/a

A postlicensing course offered as a continuing education course is subject to a continuing education course application fee as described in this section.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-63.
Law Implemented: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).

20:69:11:09. Approval of out-of-state courses. If a South Dakota licensee enrolls in a continuing education course approved by another state's real estate regulatory agency, that course may be used to meet postlicensing or continuing education requirements in South Dakota.

Proof of the other state's approval and course completion are required before the credits are accepted by the commission.

Courses must meet content and length requirements consistent with § 20:69:11:01, 20:69:11:03.01, and 20:69:11:07.

Application for approval of the out-of-state course must be made to the commission on a form provided by the commission within 60 days after the date that the course was completed.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:08.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-63.
Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:10. ARELLO certified courses approved for postlicensing or continuing education. The commission may approve courses certified by the Association of Real Estate License Law Officials if appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of § 20:69:11:01 is provided. Approval under this section shall cease if the ARELLO certification is discontinued.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:08.02, 20 SDR 18, effective August 16, 1993; repealed, 21 SDR 125, effective January 23, 1995; readopted, 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-89(9).
Law Implemented: SDCL 36-21A-30.2, 36-21A-62.

20:69:11:11. Certificate of approval. The commission shall grant a certificate of approval for each course approved by the commission. The certificate remains valid for three years. A certificate of approval for a seminar course shall be valid for the duration of the seminar.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:09, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63.

20:69:11:11.01. Course accreditation renewal. The course provider of a postlicensing or continuing education course must apply for renewal of the course prior to the date of expiration of the certificate of approval.

Source: 29 SDR 48, effective October 10, 2002; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:11.02. Course accreditation reinstatement. A course approval that has expired may be reinstated if a renewal application is filed within six months of the date of expiration. A course provider must file a new application for approval of a course that has been expired for more than six months.

Source: 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-63.

20:69:11:12. Material change. A course provider of each approved real estate course shall immediately notify the commission of any material changes contained in the application for approval or in the attached exhibits. A course provider may seek approval of a course subsequent to a course offering by submitting all information requested.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:12, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:13. Denial of approval for a course or instructor. The commission may deny approval of a real estate course or instructor if it is determined that either is not in compliance with SDCL chapter 36-21A and this article. A person aggrieved by denial of approval by the commission may file a written request for a hearing pursuant to § 20:69:02:07.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:13, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63.

20:69:11:13.01. Withdrawal of approval for a course or instructor. If the commission at any time determines that a course or an instructor approved pursuant to chapter 20:69:11 is not continuing to meet the requirements of SDCL chapter 36-21A and this chapter, it shall immediately notify the course provider in writing detailing the deficiencies requiring correction. The approval by the commission shall continue 90 days from the date of the commission's written notice to the course provider, and if, at the expiration of that period, the course provider has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the course or instructor.

If the commission disciplines an instructor who holds a real estate license for acts committed as a licensee, the commission may also withdraw that instructor's approval as an instructor.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63.

20:69:11:14. Same or duplicate courses. Credit for a course may be given only once to an individual during a reporting period.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:14, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

20:69:11:15. School fees. Repealed.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:16, 20 SDR 18, effective August 16, 1993; repealed, 23 SDR 110, effective January 9, 1997.

20:69:11:16. Notice. Repealed.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:17, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001; repealed, 35 SDR 305, effective July 1, 2009.

20:69:11:17. Facilities. Each course provider must have the classrooms, facilities, equipment, and personnel necessary to implement the course.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:18, 20 SDR 18, effective August 16, 1993; repealed, 23 SDR 110, effective January 9, 1997; readopted, 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63.

20:69:11:17.01. Schedule. The course provider shall provide a schedule of all courses, including the date, time, and place where they will be offered to the commission before the courses begin.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63, 36-21A-89(9).

20:69:11:18. Auditing. The commission or its representatives may audit courses.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:19, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-63

20:69:11:19. Postlicensing or continuing education certificate of attendance. A course provider shall provide an individual certificate of attendance to each licensee upon completion of the approved course or seminar. The certificate must contain the licensee's name, the course title, the date, the location of the course, the number of approved credit hours, and the signature of the course sponsor or instructor. The licensee must retain the attendance certificate until the next license renewal period has been completed. No certificate of attendance may be issued to a licensee who is absent for more than ten percent of the classroom hours.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:20, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-89(9).
Law Implemented: SDCL 36-21A-30.2, 36-21A-62, 36-21A-63, 36-21A-64.

20:69:11:19.01. Course provider reporting requirements -- Course evaluation. The course provider must submit a list of participants to the commission within ten days after completion of a course. The course provider must provide a course evaluation form to each licensee for completion. The course provider must submit the completed course evaluations to the commission within ten days after completion of a course.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:20. Preregistration allowed -- Notice of cancellation required. A course provider offering approved continuing education courses may require preregistration with a cutoff date for permission to attend. The requirement must be advertised prior to each course. The course provider must notify registrants if the course is cancelled. The notification must be made at least 48 hours before the time of the beginning of the course.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:21, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:21. Limit on independent study courses. No more than six hours of independent study courses may be used in any one period to fulfill continuing education requirements.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:22, 20 SDR 18, effective August 16, 1993; 25 SDR 90, effective December 28, 1998; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62, 36-21A-63, 36-21A-65.

20:69:11:22. Instructors. No instructor may teach postlicensing or continuing education courses unless approved, by name, by the commission. This section does not apply to guest speakers as provided for in § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-30.2, 36-21A-62.

20:69:11:23. Application for approval of instructors -- Guest speakers exempt. An applicant for instructor approval shall apply on a form provided by the commission. A guest speaker is exempt from making application if requesting approval pursuant to § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

20:69:11:24. Utilization of guest speakers -- Résumé to accompany course application. A course provider may utilize guest speakers with expertise in a particular area in any approved course if an approved instructor is present at the time of the presentation. A course provider may utilize a guest speaker without an approved instructor being present with the prior written approval of the commission.

An application for approval of a course utilizing guest speakers must include a résumé of each speaker.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

20:69:11:25. Certificate of instructor approval -- Approval certificates not issued to guest speakers. The commission shall grant a certificate of approval for each instructor approved by the commission. Certificates of approval will not be issued to guest speakers who make application pursuant to § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-63, 36-21A-89(9).
Law Implemented: SDCL 36-21A-62.

CHAPTER 20:69:12
TIME-SHARE ESTATES

Section

20:69:12:01	Definitions.
20:69:12:02	Registration of time-share estates.
20:69:12:03	Registration fee.
20:69:12:04	Inspection fee.
20:69:12:05	Disclosure statement.
20:69:12:06	Encouragement to read the disclosure statement.
20:69:12:07	Additional disclosure statement requirements.
20:69:12:08	Nonconforming disclosure statements.
20:69:12:09	Offer, transfer, or disposal under a void statement.
20:69:12:10	Additional filings required.
20:69:12:11	Filing of option unacceptable.
20:69:12:12	Acquisition solicitation requirements for agents.
20:69:12:13	Sales solicitation requirements for agents.
20:69:12:14	Limitation on plan managers.
20:69:12:15	Renewal of time-share filings.
20:69:12:16	Responsible managing employee -- Designation, duties, and change.
20:69:12:17	Copy of disclosure statement to be given to prospective purchasers.
20:69:12:18	Issuance of registration number.
20:69:12:19	Plan manager or RME designated for time-share unit or time-share plan located in the state.
20:69:12:20	Material change in disclosure statement.
20:69:12:21	Mutual right to cancel contract.
20:69:12:22	Retention of copy of contract.
20:69:12:23	Preexisting time-share unit.
20:69:12:24	Persons responsible for filing of preexisting time-share plan.
20:69:12:25	Plan manager for preexisting time-share plan.
20:69:12:26	Mixed-use project containing existing time-share unit or plan.
20:69:12:27	Law and rules to be available.
20:69:12:28	Agent and special escrow account.
20:69:12:29	Plan manager and special account.
20:69:12:30	Developer and special escrow account.
20:69:12:31	Developer's escrow agreement when funds deposited.
20:69:12:32	Developer's escrow agreement when financial plan submitted.
20:69:12:33	Exclusions from funds placed in escrow.
20:69:12:34	Integrated special escrow account.
20:69:12:35	Account open for inspection.
20:69:12:36	Unprofessional conduct.
20:69:12:37	Cause for suspension or revocation.

20:69:12:01. Definitions. As used in this chapter:

(1) "Agent" or "time-share agent," means a time-share agent licensed by the commission under SDCL 36-21A-47;

(2) "Commission," means the South Dakota Real Estate Commission;

(3) "Developer," means a person in the business of creating a time-share project or in the business of selling its own time-share in a project;

(4) "Facility," means a structure, service, or property, whether improved or unimproved, made available to a purchaser of a time-share plan or time-share unit for non-commercial use;
(5) "Invitee," means an individual who is contacted and invited or encouraged to attend a time-share sales presentation;
(6) "Material change," means a change that makes any information provided in the disclosure statement misleading or that affects the rights and obligations associated with a time-share plan or time-share unit;
(7) "Multiple location time-share plan," means a time-share plan that includes time-share units located both in this state and in another state or country;
(8) "Outside public contact" or "OPC," means an individual who contacts invitees but neither engages in the sale of time-share interests nor performs any other activity on behalf of a registrant;
(9) "Registrant," means a person who is required to file with the commission;
(10) "Responsible managing employee" or "RME," means the individual employed by a registrant who is responsible for the management of the registrant's time-share unit or time-share plan;
(11) "State," means the state of South Dakota;
(12) "Supplementary disclosure statement," means an amended disclosure statement filed when there has been a material change;
(13) "Time-share operation," means a business which, for compensation, solicits or encourages others to attend a time-share sales presentation or to contract with an agent or developer; creates a time-share plan; sells time-share units; sells or offers to sell an interest in a time-share plan for a developer; or undertakes the duties, responsibilities, and obligations of managing a time-share plan;
(14) "Time-share unit," means the time interval for right to use or occupy.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:01, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-1, 43-15B-3, 43-15B-6.

Cross-Reference: Limited time-sharing licenses, ch 20:69:13.

20:69:12:02. Registration of time-share estates. All applications for registration of time-share estates must be on forms approved by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:20:02, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-4.

20:69:12:03. Registration fee. Applications for registration must be accompanied by a fee of $25 for each time-share unit. The total fee may not exceed $1,000. The fee is payable in advance and must be made to the commission.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:03, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 43-15B-4, 43-15B-6.
Law Implemented: SDCL 43-15B-4.

20:69:12:04. Inspection fee. The inspection fee required by SDCL 43-15B-5 including actual and necessary expenses shall accompany the application.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:04, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-5, 43-15B-6.

20:69:12:05. Disclosure statement. An application for registration must include a disclosure statement.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:05, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:06. Encouragement to read the disclosure statement. The following must be printed on the bottom half of the face page of the disclosure statement, in centered boldface capital letters:

THIS HANDBOOK IS PREPARED AND ISSUED BY THE DEVELOPER OF (RESORT NAME). THE DEVELOPER STRONGLY ENCOURAGES YOU TO REVIEW THIS HANDBOOK WHEN CONSIDERING THE PURCHASE OF A MEMBERSHIP.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:06, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:07. Additional disclosure statement requirements. In addition to the requirements prescribed in § 20:69:12:06, disclosure statements distributed to the public must meet the following requirements:

(1) Provide a brief description of the method by which the time-share plan or units is to be offered;
(2) Provide a description of the amount and types of units offered by the developer for the time-share plan; and
(3) A summary of the developer's escrow agreement.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:07, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:08. Nonconforming disclosure statements. A disclosure statement not in conformance with the requirements of §§ 20:69:12:06 and 20:69:12:07 is void.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:08, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:09. Offer, transfer, or disposal under a void statement. An offer, transfer, or disposal of a time-share unit or plan made under a void disclosure statement is voidable at the option of the purchaser.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:09, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:10. Additional filings required. In addition to the application, fees, and disclosure statement, a developer shall file the following with the commission to register a time-share project:

(1) A financial statement not more than 90 days old prepared according to generally accepted accounting principles and certified by the developer or by a certified public accountant. If an audited financial report is filed, it must be the most current report and may not be more than 15 months old. A false or fraudulent financial statement submitted by the developer may be grounds for cancellation, suspension, or revocation of registration;
(2) A policy of title insurance, a preliminary title report, abstract of title, or certificate of title not more than 90 days old at the time of filing of a time-share plan;
(3) A certified copy of the articles of incorporation and bylaws, if a corporation, or a partnership registration if a partnership or joint venture at the time of filing a time-share plan;
(4) A copy of a special escrow agreement as required in § 20:69:12:30;
(5) The name and address of person in the state to receive service of process. Any change of name or address must be promptly reported to the commission.

The format for filing shall be prescribed by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:10, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

Cross-Reference: Accounting principles, § 20:37:11:08.

20:69:12:11. Filing of option unacceptable. A developer who has only an option to purchase a property for a time-share plan may not file with the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:11, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:12. Acquisition solicitation requirements for agents. An agent, including the developer if it is also the agent, may not solicit or encourage others to attend a time-share sales presentation or to contact an agent or developer if the time-share unit is located in the state, whether the solicitation is conducted in the state or out-of-state, unless the agent files and the commission accepts the following:

(1) The time-share plan or plans for which it is providing prospective purchasers;
(2) Its principal office address and telephone number; and
(3) If a corporation, the name, address, and telephone number of its responsible managing employee.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:12, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:13. Sales solicitation requirements for agents. An agent, including the developer if it is also the agent, may not sell or offer to sell an interest in a time-share plan for a developer if the time-share unit is located in the state whether the sale or offer for sale is made in the state or out-of-state, unless the agent files and the commission accepts the following:

(1) The time-share plan or plans it intends to sell;
(2) Its principal office address and telephone number;
(3) If a corporation, the name, address, and telephone number of its responsible managing employee; and
(4) A copy of the special escrow agreement as required by § 20:69:12:28.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:13, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:14. Limitation on plan managers. A plan manager, including the developer if it is also the plan manager, may not undertake the duties, responsibilities, and obligations of managing a time-share plan if the time-share unit is located in the state unless the plan manager files and the commission accepts the following:

(1) The time-share plan or plans that it intends to manage;
(2) Its principal office address and telephone number;
(3) If a corporation, the name, address, and telephone number of its responsible managing employee;
(4) A sworn statement from the developer listing the plan manager's duties, responsibilities, and obligations;
(5) A sworn statement from the plan manager stating its duties, responsibilities, and obligations, as set out in § 20:69:12:19; and
(6) The address where all accounting records, including receipts, expenditures, and payment vouchers, are maintained.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:14, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:15. Renewal of time-share filings. A filing required by this chapter shall be renewed by December 31 of each year on a form prescribed by the commission. Failure to renew by the specified date will result in forfeiture of the right to engage in the sale of a time-share plan. A forfeited registration may be restored within 90 days upon payment of a registration fee of $25 for each time-share unit and meeting all of the renewal requirements. The registration fee shall accompany the renewal application. The fee for renewal may not exceed $250. No sale or offer for sale of a time-share plan may be made until registration has been restored. A current financial statement is required for renewal in the same form as required in § 20:69:12:10.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:15, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-4, 43-15B-6.

20:69:12:16. Responsible managing employee -- Designation, duties, and change. The commission may not accept the filing of a corporate time-share agent or corporate plan manager unless the corporation has designated a responsible managing employee and prescribed the RME's duties, responsibilities, and obligations.

The corporate RME is responsible for the direct management of the corporation's time-share operations. The commission does not consider the corporate RME to have the direct management of the corporation's time-share operation unless the RME meets the following requirements:

(1) Is a bona fide employee of the corporation and has direct control, supervision, and management of the corporation's time-share operations;
(2) Has full knowledge and control of the corporation's accounting practices;
(3) Has full knowledge and control over the moneys belonging to and in the custody of the corporation in connection with the time-share operation; and
(4) Has full access to all books, records, and documents materially related to the corporation's part in the time-share operation whether they are kept in the state or out-of-state.

The name, address, and telephone number of the RME must be filed with the commission. If there is a change in RME, the name of the new RME must be reported to the commission in writing within ten days after the change. A plan manager may manage one or more time-share plans. A plan manager may have one or more RMEs. If a developer or plan manager of two or more time-share plans, at least one of which includes time-share units located in this state, maintains its principal office or has primary management and accounting functions out-of-state, the duties of the RME specified in this section may be divided between two or more RMEs provided that at least one RME is located in the state.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:16, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6.

20:69:12:17. Copy of disclosure statement to be given to prospective purchasers. A registrant or other person attempting to sell a time-share estate or plan shall provide to prospective purchasers a copy of the disclosure statement which is a true, accurate, and complete reproduction of the statement filed and accepted by the commission. The registrant or other person attempting to sell a time-share plan or estate shall give the prospective purchaser an opportunity to read the statement.

Prospective purchasers receiving a copy of the disclosure statement shall sign a statement acknowledging receipt of the disclosure statement on a receipt form prescribed by the commission. The receipt must be kept at the principal office of the developer for a period of two years from the date of the receipt and is subject to inspection upon notice by the commission or the commission's representative. If the principal office is not located in this state, the developer is subject to the out-of-state inspection requirements of § 20:69:12:19.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:17, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:18. Issuance of registration number. The commission shall issue a registration number to a time-share plan in consecutive order of receipt of filing provided that the filing complies with the requirements of this chapter. The commission shall print the registration number and the date of acceptance on the upper right-hand corner of the face page of the disclosure statement.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:18, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:19. Plan manager or RME designated for time-share unit or time-share plan located in the state. All time-share plans must have a plan manager or an RME designated.

There must be a plan manager or an RME in the state if a time-share unit or time-share plan is located in the state whether or not a time-share unit or time-share plan is offered for sale in the state or out-of-state.

There must be a plan manager or an RME in the state for a multiple location time-share plan if the plan includes a time-share unit or time-share plan located in the state.

A plan manager's duties, responsibilities, and obligations include the following:

(1) Management and maintenance of the time-share units;
(2) Assessments and the collection of maintenance fees;
(3) Payment of real property taxes due on the time-share units under the plan manager's authority;
(4) Supervision of the occupancy scheduling so that time-share unit owners or users will be provided the use of time-share units;
(5) Provision to time-share owners and users of a copy of the house rules of the building;
(6) Supervision of the enforcement of the house rules; and
(7) The keeping of a detailed and accurate record, in chronological order, of receipts and expenditures.

All accounting records of the plan manager are subject to inspection by the commission or the commission's representative. Accounting records must be kept at the principal office of the plan manager, which may be located in this state or in another state.

If the accounting records are not kept in this state, they shall be made available for inspection in this state upon notice. If the records are not made available, they shall be inspected at the place where they are kept and all costs, including the travel expense, per diem, and salary of the inspector, must be borne by the plan manager. The commission may require the plan manager to remit the amount of the estimated cost in advance of the inspection. Failure on the part of the plan manager to comply with the commission's request to remit the amount of the estimated cost may be grounds for cancellation, suspension, or revocation of registration of the project.

If the principal office of the developer is not in the state, a failure to make available upon the commission's request bookkeeping records, computer records, or any other records of the developer on the time-share plan may be grounds for cancellation, suspension, or revocation of the plan manager's registration.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:20, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-4, 43-15B-5, 43-15B-6.

20:69:12:20. Material change in disclosure statement. A developer shall notify the commission in writing of any material changes in the disclosure statement.

A developer shall file a supplemental disclosure statement which specifies, in detail, the material changes that have occurred.

The supplemental disclosure statement must be filed with the commission within 20 days after the material changes become known to the developer.

Upon acceptance of the supplemental disclosure statement by the commission, a true, accurate, and complete copy of the supplemental disclosure statement must be given to each purchaser adversely affected by the material change and to each prospective purchaser. A receipt from each purchaser and prospective purchaser must be taken and filed as required in § 20:69:12:17. The developer is not in violation of this chapter if the purchaser fails to return the receipt and the developer can verify that a statement was sent to the purchaser.

The commission may independently determine that a material change has occurred and require the developer to prepare a supplemental disclosure statement disclosing the material change in a form approved by the commission.

If the purchaser has received title by instrument of record in the sale of an interest in an ownership plan, the developer is not required to give the purchaser a supplemental disclosure statement.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:21, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:21. Mutual right to cancel contract. A developer or purchaser may cancel a contract by giving the other party written notice within seven calendar days after execution of the contract or after the purchaser's receipt of a disclosure statement, whichever occurs later.

The purchaser is entitled to a refund of all sums paid within 30 days after notice of cancellation if all materials received on the date of sale are returned to a specified address of the seller or within 60 days if all sales materials are not returned.

A developer or agent shall furnish each purchaser at the time the contract for purchase of a membership is signed the following cancellation notice prepared exactly as follows:

NOTICE TO BUYER: YOU OR THE DEVELOPER MAY CANCEL THIS TRANSACTION WITHIN SEVEN (7) CALENDAR DAYS AFTER THE EXECUTION OF THE CONTRACT OR AFTER YOUR RECEIPT OF THE DISCLOSURE STATEMENT, WHICHEVER OCCURS LATER. YOU ARE ENTITLED TO A REFUND OF ALL SUMS YOU PAID WITHIN 30 DAYS AFTER NOTICE OF CANCELLATION WHEN ALL MATERIALS RECEIVED ON THE DATE OF SALE ARE RETURNED TO THE ADDRESS STATED BELOW OR WITHIN 60 DAYS IF ALL SALES MATERIALS ARE NOT RETURNED. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED WRITTEN CANCELLATION NOTICE TO:

(Insert name and address of developer)

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:20:22, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:22. Retention of copy of contract. A copy of a contract from each sale of a time-share plan must be retained by the developer for a period of at least one year after the parties to the time-share plan have completely performed all of their obligations.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:23, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:23. Preexisting time-share unit. Preexisting time-share units and time-share plans for preexisting time-share units must comply with the requirements of this chapter and the provisions of SDCL 43-15B by January 1, 1985.

Time-share units not existing by July 1, 1983, are subject to this chapter when it takes effect.

A developer, agent, or plan manager shall submit evidence, such as an agreement, contract, or document, at the time of filing of a preexisting time-share plan to show that a time-share unit or plan was created prior to July 1, 1983.

Preexisting time-share plans must be filed on a form prescribed by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:24, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:24. Persons responsible for filing of preexisting time-share plan. In addition to the requirements of this chapter, a developer, agent, or plan manager presently associated with a preexisting time-share plan shall file at the time of filing of a preexisting time-share plan a certified statement giving the location of the preexisting time-share unit and time-share plan, the number of time-share units, the nature of the ownership of the units, the ownership or use period, the date, and an explanation of how the time-share plan was created, the number of purchasers who purchased time-share plans, and the name and address of the plan manager.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:25, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:25. Plan manager for preexisting time-share plan. A preexisting time-share plan must have a plan manager. Any provision relating to a plan manager in this chapter is applicable to a plan manager of a preexisting time-share plan.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:26, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:26. Mixed-use project containing existing time-share unit or plan. Additional time-share units may not be created in a mixed-use project containing an existing time-share unit or time-share plan and a residential unit unless the project is located in a hotel or in a place designated for hotel use, resort use, or transient vacation rentals and all of the requirements of this chapter relating to time-share use are met.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:27, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:27. Law and rules to be available. A developer or agent must comply with the following:

(1) Have a copy of SDCL 43-15B and a copy of this chapter available for inspection by any prospective purchaser;
(2) Advise each prospective purchaser that copies are available at the time any interest in a time-share plan is offered for sale in this state or out-of-state; and
(3) Provide copies upon request.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:28, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:28. Agent and special escrow account. An agent shall establish and maintain a special escrow account in a federally insured depository in this state for the deposit of any moneys received from the purchaser. A special escrow account with a federally insured depository doing business in another state may be established upon approval by the commission; but if all sales are conducted in this state, a special escrow account must be established and maintained in this state.

The escrow agreement shall provide that no moneys received from a purchaser may be disbursed until after the expiration of the seven-day period in which a purchaser may rescind the contract. The agreement shall include a statement on the method of disbursement of funds in escrow.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:20:29, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:29. Plan manager and special account. A plan manager shall establish and maintain a special account in a bank or trust company in this state for the deposit of any moneys received. A special account with a bank or trust company doing business in another state may be established upon approval by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:30, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:30. Developer and special escrow account. A developer shall establish and maintain a special escrow account with a bank, licensed escrow company, or a trust company in this state. A special escrow account with a bank, licensed escrow company, or trust company doing business in another state may be established upon approval by the commission.

The developer shall place in the special escrow account all funds, except those excluded by § 20:69:12:33, paid by the purchasers of time-share ownership or use plans or submit to the commission for approval a financial plan for the protection of the purchasers.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:31, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:31. Developer's escrow agreement when funds deposited. If a developer elects to place in the special escrow account all funds, except those excluded by § 20:69:12:33, the escrow agreement must provide for the following:

(1) The purchaser's right to refund at any time the time-share units or facilities are no longer available as provided in the contract in an amount which represents the purchaser's pro rata share of the moneys in the escrow account;

(2) If a deed, title, or assignment of lease of the time-share plan free and clear of any liens is transferred to the benefit of the purchaser, withdrawal by the developer of all of the funds which have been placed in escrow on behalf of the purchaser;

(3) If a deed, title, or assignment of lease of the time-share plan free and clear of any liens is not transferred to the benefit of the purchaser, withdrawal by the developer of a proportion of the moneys placed in escrow which is in the ratio of the time made available to the purchaser in relation to the total amount of time which the purchaser has a right to use under the contract.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:32, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

Example:

Examples for subdivision (3):

(1) If the total time available to a time-share plan purchaser under the purchaser's plan is 100 days and in a given year the purchaser uses 10 of those days, the time-share plan seller that year may withdraw one-tenth of the moneys placed in escrow for the purchaser.

(2) If the time-share purchaser is entitled to 10 days a year and it is a 40-year plan, the time share seller may withdraw each year one-fortieth of the moneys placed in escrow for the purchaser.

20:69:12:32. Developer's escrow agreement when financial plan submitted. If a developer elects to submit a financial plan for protection of the purchasers to the commission for approval, the developer shall furnish the commission a certified statement of a summary of all underlying financial obligations of the time-share plan, including agreements of sale, leases, mortgages, liens, and a projected payment plan which provides for payment in full of all underlying financial obligations before the final receipts from the purchasers of their payments; a description of the source of means by which such payments will be made; and a description of arrangements with banks, licensed escrow companies, trust companies or lending institutions relating to the receipt of purchaser's moneys and disbursements on account of the payment plan.

The developer shall submit an escrow agreement which provides for the following:

(1) The purchaser's right to refund at any time the time-share units or facilities are no longer available as provided in the contract in an amount which represents the purchaser's pro rata share of the moneys in the escrow account;

(2) Deposit of all funds, except those excluded by § 20:69:12:33 paid by the purchasers of the time-share ownership or use plan in the special escrow account;

(3) Payment in full of all underlying financial obligations of the time-share plan before the final receipts from the purchasers of their payments;

(4) Modification of the payment plan with the approval of the commission upon change of circumstances. However, any payment plan must provide for payment in full of all underlying obligations before the final receipts from the purchasers of their payments, and no additional encumbrances may be placed on any property subject to the time-share plan without the approval of the commission;

(5) Collection of funds and making of disbursements by the bank, escrow company, or trust company according to the payment plan submitted to the commission by the developer;
(6) After payment of the underlying financial obligations, any interests in the time-share property must be conveyed to the purchaser in an ownership plan and in a use plan. The developer shall convey to a disinterested third party, such as a nonprofit corporation or club or trust company, an interest in the property necessary to ensure the use of the property for the period of time conveyed by the developer in the time-share plan; and
(7) Approval by the commission of an amendment to the escrow agreement.

A developer must have the holders of the underlying financial obligations submit to the commission annually statements of balances owing on the underlying financial obligations.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:33, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:33. Exclusions from funds placed in escrow. Purchaser's funds to be placed in an escrow account need not include operational expenses, such as office expenses and sales commissions, maid services, telephone charges, special assessments, club dues, and maintenance fees.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:34, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:34. Integrated special escrow account. If a developer also performs the function of plan manager and sales agent, it may establish and maintain a single special escrow account in a bank, licensed escrow company, or trust company for the deposit of any moneys received from purchasers.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:35, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:35. Account open for inspection. A developer, agent, or plan manager shall provide information on the developer's, agent's, or plan manager's respective account to the commission upon written request. The account is subject to inspection upon notice by the commission or commission's representative. If the accounting records are not kept in this state, provisions on inspections and production of records in § 20:69:12:19 of these rules are applicable.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:36, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:36. Unprofessional conduct. A developer or agent of time-share plans or units may not do any of the following:
(1) Use a promotional device without fully disclosing that the device is being used for the purpose of soliciting sales of time-share plans or units;
(2) Misrepresent or deceptively represent a material fact concerning the time-share plans or time-share units, including the following:

(a) The amount or period of time the units and facilities will be available to a purchaser;
(b) The location or locations of the offered units and facilities;
(c) The size, nature, or characteristics of the offered units and facilities;
(d) The rights of a purchaser, if any, to exchange the purchaser's rights to units in one location for rights to units in another location; and
(e) The contents of the contract or the purchaser's rights, privileges, or benefits under the contract;

(3) Fail to honor or comply with all provisions of the contract with the purchaser; and
(4) Include, in any contract, provisions purporting to waive a right or benefit provided for purchases pursuant to law.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:20:38, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 36-21A-71, 43-15B-3, 43-15B-6.

20:69:12:37. Cause for suspension or revocation. The commission may suspend or revoke a registration by a developer, agent, or plan manager for violation by the registrant or its employees of any of the provisions of this chapter, chapter 20:69:13, or SDCL 43-15B after a hearing conducted pursuant to SDCL 1-26.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:39, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6.

CHAPTER 20:69:13
TIME-SHARE AGENTS

Section

20:69:13:01	Definition of time-share agent.
20:69:13:02	Time-share agents -- License required.
20:69:13:03	OPC exempt from licensing.
20:69:13:04	Persons and organizations exempt from licensing or examination.
20:69:13:05	Application.
20:69:13:06	Application fee.
20:69:13:07	Repealed.
20:69:13:08	Grounds for denial of license.
20:69:13:09	Examination.
20:69:13:10	Authorization to take examination.
20:69:13:11	Repealed.
20:69:13:12	Administration of examination.
20:69:13:13	Cheating on examination.
20:69:13:14	Results of examination.
20:69:13:14.01	Rights to passing score.
20:69:13:15	Biennial renewal fee.
20:69:13:16	Cancellation of license upon failure to pay fee.
20:69:13:17	Repealed.
20:69:13:18	Trust account requirements.
20:69:13:19	Office requirements.
20:69:13:20	Auditing.
20:69:13:21	Real estate law applicable.
20:69:13:22	Supervising agent.

20:69:13:01. Definition of time-share agent. A time-share agent is a person who works for another person for compensation and performs at least one of the following functions:

(1) Directly or indirectly lists, sells, exchanges, buys, rents, manages, offers, or attempts to negotiate a sale, option, exchange, purchase, lease, or rental of an interest or use in a time-share estate;

(2) Advertises as engaging in or holds out to be engaged in any of the activities listed in subdivision (1) of this section; or

(3) Directly or indirectly negotiates, offers, or attempts to negotiate a loan or financing for the purchase of a time-share estate.

Source: 10 SDR 121, adopted May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:00, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-6, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:02. Time-share agents -- License required. Persons who act as time-share agents within this state must be licensed according to this chapter and must comply with the provisions of this chapter.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:01, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:03. OPC exempt from licensing. An outside public contact is exempt from licensing under this chapter.

Source: 10 SDR 121, adopted May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:01.01, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-6, 36-21A-47, 43-15B-6, 43-15B-7.

Cross-Reference: Definitions, § 20:69:12:01(8).

20:69:13:04. Persons and organizations exempt from licensing or examination. Real estate brokers are exempt from licensing under this chapter. A real estate broker or salesperson may obtain a time-share license without examination.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:02, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:05. Application. An applicant for a time-share agent's license shall file an application on a form provided by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:03, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(2), 43-15B-6.
Law Implemented: SDCL 36-21A-30, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:06. Application fee. The application fee for a time-share agent's license is $225.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:21:05, August 16, 1993; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-49, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 36-21A-49, 43-15B-6, 43-15B-7.

20:69:13:07. Photograph to accompany application. Repealed.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:06, August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:13:08. Grounds for denial of license. The commission may deny an application for a license or a renewal of a license on any of the following grounds:

(1) The applicant has previously been convicted of a felony or of a misdemeanor involving moral turpitude;
(2) The applicant has failed the examination prescribed by the commission;
(3) The applicant has written insufficient funds checks for application or renewal fees;

(4) The applicant has been disciplined for unprofessional conduct by any regulatory agency anywhere within the United States in relation to the applicant's activities as a real estate salesperson or broker or as a time-share agent or broker or similar licensee;
(5) Misstatements, intentional omissions, misrepresentations, or untruths in any application, registration statement, or renewal application.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:07, August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(2), 43-15B-6.
Law Implemented: SDCL 36-21A-30, 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:09. Examination. Any person not otherwise exempted by this chapter, who meets the qualifications of this chapter must pass an examination for a time-share agent's license to be given by the commission at a time, place, and in a manner established by the commission. The commission shall determine the contents of the examination and the rating and standards for passing. A passing grade of 75 is required.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:08, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(2), 36-21A-47, 43-15B-6.
Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:10. Authorization to take examination. A person may not take the time-share agent's examination unless authorized by the commission in writing to take the examination.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:09, August 16, 1993; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(2), 43-15B-6.
Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:11. Failure to appear for examination. Repealed.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:10, August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:13:12. Administration of examination. The licensing examination must be conducted under the supervision of the executive director of the commission or a designee of the executive director. Identification supplied to the applicant by the commission is required for admission to the examination room. Before beginning the examination, the applicant must certify in writing that the applicant has not solicited or received any information about the contents of the examination about to be written and that during or subsequent to the examination the applicant will not disclose its contents to any person.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:11, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:13. Cheating on examination. The examination of an applicant for a time-share agent's license who is caught cheating during the examination must be declared void.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:12, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:14. Results of examination. The applicant must be notified in writing of the examination results.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:13, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:14.01. Rights to passing score. Upon notification that a person has passed the time-share examination, a person has 60 days to apply for a time-share agent's license, or the passing score is forfeited.

Source: 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-89(2), 43-15B-6.
Law Implemented: SDCL 36-21A-89(2), 43-15B-6.

20:69:13:15. Biennial renewal fee. The biennial renewal fee for a time-share agent's license is $125.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:16, August 16, 1993; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.
General Authority: SDCL 36-21A-61, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 36-21A-61, 43-15B-6, 43-15B-7.

20:69:13:16. Cancellation of license upon failure to pay fee. Failure to remit the renewal fee or registration statement or both by the registration deadline automatically cancels the license of a time-share agent. In addition, if an insufficient funds check is presented to the commission for payment of the renewal fee, the commission may cancel the license of the time-share agent.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:17, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 36-21A-61, 43-15B-6, 43-15B-7.

20:69:13:17. Replacement of license and change of address. Repealed.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:21:19, August 16, 1993; 34 SDR 323, effective July 3, 2008.

20:69:13:18. Trust account requirements. All the requirements relating to trust accounts imposed by SDCL Chapter 36-21A or Article 20:69 upon real estate agents apply to time-share agents.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:20, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

Cross-References:
Handling of money received by broker for principal, SDCL 36-21A-80.
Deposit slip and ledger sheet for special trust account, SDCL 36-21A-82.
Documents kept by broker remitting immediately to principal, SDCL 36-21A-83.
Completed transaction required for compensation of broker, SDCL 36-21A-84.
Acts constituting unprofessional conduct, SDCL 36-21A-71(5).

20:69:13:19. Office requirements. A time-share agent must have an office physically located in the state of South Dakota before transacting any sales of real estate located in the state of South Dakota.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:21, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 36-21A-51, 43-15B-6, 43-15B-7.

20:69:13:20. Auditing. The time-share agent must maintain all records of all sales transactions made within this state at the office required by § 20:69:13:19, and these records are subject to audit by the commission or its agents.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:22, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:21. Real estate law applicable. Unless inconsistent with this chapter and chapter 20:69:12, the real estate law contained in SDCL Chapter 36-21A and Article 20:69 applies to time-share agents.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:24, August 16, 1993.
General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:22. Supervising agent. A developer must designate a real estate broker or time-share agent licensed in South Dakota as the supervising agent who has general superintending control over all time-share agents employed in South Dakota by that person. The supervising agent is also responsible for the actions of all outside public contacts who are employed by the principal or by the supervising agent.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:25, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.
Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

Cross-Reference: Definitions, § 20:69:12:01(3).

CHAPTER 20:69:14
PROPERTY MANAGERS

Section

20:69:14:01	Property manager license.
20:69:14:02	Persons to whom license law applicable.
20:69:14:02.01	Qualifications of applicants.
20:69:14:03	Exemptions from examination.
20:69:14:04	Trust account requirements.
20:69:14:05	Auditing.
20:69:14:06	Contracts to be in writing.
20:69:14:07	Full disclosure required.
20:69:14:08	Real estate law applicable.
20:69:14:09	Powers of commission in disciplinary matters.
20:69:14:10	Broker subject to chapter.
20:69:14:11	Financial obligations and records.
20:69:14:12	Property management accounting.
20:69:14:13	Required continuing education during initial biennial licensing cycle.

20:69:14:01. Property manager license. The property manager license is a restricted broker's license pursuant to SDCL 36-21A-47.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:02, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-47.
Law Implemented: SDCL 36-21A-47.

20:69:14:02. Persons to whom license law applicable. A person may not act as a property manager in this state unless the person holds a property manager license pursuant to this chapter or otherwise complies with the provisions of this chapter. Individuals must be licensed as individual property managers. Partnerships, associations, or corporations must be licensed as firms.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:03, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-47.
Law Implemented: SDCL 36-21A-27, 36-21A-28, 36-21A-37, 36-21A-38, 36-21A-47.

Cross-Reference:
Persons and entities exempted from this chapter, SDCL 36-21A-29.

20:69:14:02.01. Qualifications of applicants. An applicant for a property manager's license, in addition to the other requirements in SDCL chapter 36-21A, shall furnish evidence of completion of 40 hours of education within the two years before the date of application in a course on the fundamentals of property management.

Source: 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001.
General Authority: SDCL 36-21A-47, 36-21A-89.
Law Implemented: SDCL 36-21A-47.

20:69:14:03. Exemptions from examination. A real estate broker may obtain a property manager license without an examination. A broker associate may manage property independently of a responsible broker if the broker associate has fulfilled the education and experience requirements of SDCL 36-21A-31.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:04, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 26 SDR 41, effective September 29, 1999.
General Authority: SDCL 36-21A-47.
Law Implemented: SDCL 36-21A-6, 36-21A-47.

Cross-References: Broker defined, SDCL 36-21A-6.

20:69:14:04. Trust account requirements. All of the requirements relating to trust accounts imposed by SDCL Chapter 36-21A or this article on real estate brokers apply to property managers.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:29, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47, 36-21A-80, 36-21A-82.

Cross-References:
Handling of money received by broker for principal, SDCL 36-21A-80.
Deposit slip and ledger sheet for special trust account, SDCL 36-21A-82.
Acts constituting unprofessional conduct, SDCL 36-21A-71(5).
Financial obligations and records, § 20:69:14:11.

20:69:14:05. Auditing. The property manager must maintain all records of all South Dakota transactions at the property manager's office. These records are subject to audit by the commission or its agents.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:30, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:14:06. Contracts to be in writing. Before a property manager performs any services, the property manager and client must enter into a written management agreement specifying the duties and conditions under which the property manager is to perform services. A management agreement may include a provision for automatic renewal at expiration if it contains a provision for written cancellation on terms agreeable to all parties to the agreement.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:31, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:14:07. Full disclosure required. In all dealings between a client and property manager, the property manager must inform the client of all liabilities, costs, and other financial obligations that may be incurred by the client if the client uses the services of the property manager.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:32, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47.

20:69:14:08. Real estate law applicable. Unless inconsistent with this chapter, the real estate law contained in SDCL Chapter 36-21A and this article applies to property managers.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:33, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47.

20:69:14:09. Powers of commission in disciplinary matters. The commission shall discipline a property manager in the same manner as it disciplines a licensed real estate broker or salesperson.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:34, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.
General Authority: SDCL 36-21A-89(5).
Law Implemented: SDCL 36-21A-47, 36-21A-68.

Cross-References:
Acts constituting unprofessional conduct, SDCL 36-21A-71.
Procedure on revocation -- Appeal, SDCL 36-21A-86.
Disciplinary proceedings, chapter 20:69:05.

20:69:14:10. Broker subject to chapter. A real estate broker who acts as a property manager is subject to the provisions of this chapter.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:35, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47, 36-21A-71.

20:69:14:11. Financial obligations and records. A property manager must deposit all security deposits, damage deposits, advance fees, and rental proceeds received in a federally insured financial institution and must make a full accounting to the client. Rental proceeds must be disbursed pursuant to the contract between the property manager and owner. Records related to the receipt, deposit, maintenance, and withdrawal of the funds must be maintained for four years following the termination of a management contract.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:36, 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47, 36-21A-80, 36-21A-82.

Cross-References:
Amount of deposit, SDCL 43-32-6.1.
Return of deposit, SDCL 43-32-24.
Handling of money, SDCL 36-21A-88.

20:69:14:12. Property management accounting. A property manager shall prepare and maintain a receipts and disbursements journal or a check register for each trust account. Tenant security deposits must be maintained as a separate balance in the owner's ledger or in a tenant ledger account. Receipts and disbursements must be posted at least once each month, and all trust accounts must be reconciled at least once each month. Prenumbered receipt documents must be completed for any currency received by the property manager which belongs to a principal.

Source: 18 SDR 101, effective December 17, 1991; transferred from § 20:56:22:37, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995; 23 SDR 110, effective January 9, 1997.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47, 36-21A-71.

20:69:14:13. Required continuing education during initial biennial licensing cycle. Any property manager licensed after January 1, 2019 shall provide to the commission proof of participation in not less than 30 hours of approved continuing education in the initial licensing cycle. Continuing education hours shall be in subject areas under § 20:69:11:01.05. Property managers who have completed the initial licensing cycle continuing education shall be subject to continuing education requirements as defined in 20:69:11:02.

Source: 45SDR 45, effective October 9, 2018.
General Authority: SDCL 36-21A-89.
Law Implemented: SDCL 36-21A-47, 36-21A-62.

CHAPTER 20:69:14.01
RESIDENTIAL RENTAL AGENT

Section

20:69:14.01:01	Residential rental agent license.
20:69:14.01:02	Persons to whom license law applicable.
20:69:14.01:03	Application for license.
20:69:14.01:04	Application fee.
20:69:14.01:05	Qualifications for license.
20:69:14.01:06	Supervision of residential rental agent.
20:69:14.01:07	Signing of leases by residential rental agent, if authorized.
20:69:14.01:08	Biennial renewal.
20:69:14.01:09	Powers of commission in disciplinary matters.
20:69:14.01:10	Biennial proof by residential rental agent of continuing education.

20:69:14.01:01. Residential rental agent license. The residential rental agent license is a restricted broker's license pursuant to SDCL 36-21A-47.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1, 36-21A-47.
Law Implemented: SDCL 36-21A-12.1, 36-21A-47.

20:69:14.01:02. Persons to whom license law applicable. A person may not act as a residential rental agent in this state unless the person holds a residential rental agent license pursuant to this chapter or is a real estate broker, salesperson, or property manager.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1.
Law Implemented: SDCL 36-21A-12.1, 36-21A-28, 36-21A-47.

Cross-Reference: Persons and entities exempted from this chapter, SDCL 36-21A-29.

20:69:14.01:03. Application for license. An applicant for a residential rental agent license must file an application on a form provided by the commission.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1.
Law Implemented: SDCL 36-21A-12.1, 36-21A-47.

20:69:14.01:04. Application fee. The application fee for a residential rental agent license is $60.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-49.
Law Implemented: SDCL 36-21A-12.1.

20:69:14.01:05. Qualifications for license. A person may obtain a residential rental agent license without education or examination upon approval of the application by the commission and payment of the fee.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1, 36-21A-47.
Law Implemented: SDCL 36-21A-12.1.

Cross-References: Reputation, age, competence, and citizenship required for license -- Prior rejection or revocation of license, SDCL 36-21A-30; Denial of application, SDCL 36-21A-33.

20:69:14.01:06. Supervision of residential rental agent. A person who holds a residential rental agent license must be under the direct supervision of a property manager or a real estate broker licensed by the commission.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1.
Law Implemented: SDCL 36-21A-12.1.

20:69:14.01:07. Signing of leases by residential rental agent, if authorized. A residential rental agent may sign leases if authorized by the broker or property manager with whom the residential rental agent is associated. The lease shall also be endorsed by the responsible broker or property manager of the residential rental agent.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1, 36-21A-47.
Law Implemented: SDCL 36-21A-12.1.

20:69:14.01:08. Biennial renewal. The biennial renewal fee for a residential rental agent license is $50.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1, 36-21A-61.
Law Implemented: SDCL 36-21A-61.

20:69:14.01:09. Powers of commission in disciplinary matters. The commission shall discipline a residential rental agent in the same manner as it disciplines a licensed real estate broker or salesperson.

Source: 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-12.1.
Law Implemented: SDCL 36-21A-47.

20:69:14.01:10. Biennial proof by residential rental agent of continuing education. A residential rental agent shall provide to the commission proof of participation in not less than 12 hours of approved continuing education in the preceding two-year period. The 12 hours of continuing education shall include study in the areas of property management, fair housing, lease of real property, real estate contracts, or real estate license law. Continuing education hours shall include both required subject areas § 20:69:11:01.05 and elective subject areas under § 20:69:11:01.06.

Source: 27 SDR 7, effective August 3, 2000; 45 SDR 45, effective October 9, 2018.
General Authority: SDCL 36-21A-12.1.
Law Implemented: SDCL 36-21A-12.1.

CHAPTER 20:69:15
ERRORS AND OMISSIONS INSURANCE

Section

20:69:15:01	Definition of terms.
20:69:15:02	Insurance required.
20:69:15:03	Minimum standards.
20:69:15:04	Exceptions to coverage.
20:69:15:05	Group policy approval requirements.
20:69:15:06	Optional coverage.
20:69:15:06.01	Standards for optional coverage.
20:69:15:07	Time for filing of certification of optional coverage.
20:69:15:08	Nonpayment of premium.
20:69:15:08.01	Surrender of license for failure to provide proof of insurance.
20:69:15:09	Notification required for cancellation.
20:69:15:10	Proof of insurance required to activate license.
20:69:15:11	Authenticity of coverage.

20:69:15:01. Definition of terms. For the purposes of this chapter, a "qualified insurance carrier" is an insurance carrier which maintains an A.M. Best financial size category of class VI or higher and is and will remain, for the policy term, authorized by the South Dakota Division of Insurance to do business in this state as an errors and omissions insurance carrier of the type contemplated by this chapter.

Source: 20 SDR 18, effective August 16, 1993; 27 SDR 7, effective August 3, 2000.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-120.

20:69:15:02. Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of insurance coverage through the group plan or through certification of optional coverage.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-120.

20:69:15:03. Minimum standards. The group policy obtained by the commission shall cover all activities contemplated by SDCL Chapter 36-21A and shall provide, at a minimum, the following terms and conditions:

(1) Not less than $100,000 single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;
(2) An annual aggregate limit of not less than $500,000 per licensee;
(3) A deductible amount of not greater than one percent of the total single-limit liability coverage amount for each occurrence and a like deductible amount for defense and investigation;
(4) Coverage for the vicarious liability for current or previously employed or contracted individuals;
(5) An extended reporting provision of 90 days and an option to purchase an additional three years extended reporting provision for a premium not to exceed 200 percent of the premium charged for the last year of the terminating coverage;
(6) Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, domiciled in South Dakota, holds a license; and

(7) Stacking of benefits.

The minimum coverage applies to each individual licensee.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-121.

20:69:15:04. Exceptions to coverage. Except as provided in this section, coverage may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

(1) Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
(2) Out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;
(3) From any criminal, dishonest, fraudulent, or willful act or omission. This exclusion does not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;
(4) From unlawful discrimination committed by or for the insured person;
(5) From fines or penalties imposed by law;
(6) From failure to maintain any type or amount of insurance for managed property;
(7) From bodily injury, personal injury, advertising injury, or property damage;
(8) From management or sale of property in which the insured or spouse has more than a 10 percent financial or ownership interest. This exclusion does not apply for one year from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;
(9) From related business activities for which a license is not required under this chapter;
(10) From any violation of the Securities Act of 1933 as amended through July 1, 1993, or the Securities Exchange Act of 1934 as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes;
(11) From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;
(12) From hazardous materials, nuclear materials, or pollutants;
(13) From prior wrongful acts; or
(14) Standard exclusions.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-121.

20:69:15:05. Group policy approval requirements. Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the South Dakota Division of Insurance.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-120.

20:69:15:06. Optional coverage. An active licensee who chooses the option of obtaining errors and omissions insurance independently from a provider other than the group carrier under contract with the commission must show evidence of coverage by providing certification of coverage on a form

prescribed by the commission. The form must show proof that the licensee has coverage in compliance with the minimum standards established by § 20:69:15:06.01. The form must be signed by an authorized representative of the insurance company, and shall contain a cancellation notification clause as required by § 20:69:15:09.

Source: 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-120, 36-21A-122.

20:69:15:06.01. Standards for optional coverage. A provider issuing insurance coverage pursuant to SDCL 36-21A-122 must be an admitted carrier in South Dakota or in the state in which the licensee being certified resides. All activities contemplated under SDCL chapter 36-21A must be covered.

The insurance must provide, at a minimum, not less than $100,000 single limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of $500,000 for each licensee, not including the cost of investigation and defense. A responsible broker may comply with this requirement by certifying coverages of a minimum of $500,000/$1,000,000, if all licensees associated with the broker are covered.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance and who is also licensed in South Dakota meets the requirements for errors and omissions insurance in South Dakota upon providing proof that the person meets the requirements of the person's state of residence.

Source: 21 SDR 125, effective January 23, 1995.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-121.

20:69:15:07. Time for filing of certification of optional coverage. Certification of optional coverage must be filed with the commission by 5:00 p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

Source: 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-122.

20:69:15:08. Nonpayment of premium. If a certifying insurance company which submitted certification of optional coverage notifies the commission that a licensee has not paid a premium, the commission shall place that licensee's license on inactive status as of the date of termination of coverage.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-122.

20:69:15:08.01. Surrender of license for failure to provide proof of insurance. When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license and the licensee's identification card to the commission.

Source: 21 SDR 125. effective January 23, 1995.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-69.

20:69:15:09. Notification required for cancellation. If insurance under equivalent coverage is to be lapsed or nonrenewed, the providing company must notify the Real Estate Commission of its intent to lapse or nonrenew a minimum of 30 days before the expiration date of the term.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-122.

20:69:15:10. Proof of insurance required to reactivate license. A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-119.

20:69:15:11. Authenticity of coverage. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission which is false, fraudulent, or misleading.

Source: 20 SDR 18, effective August 16, 1993.
General Authority: SDCL 36-21A-119.
Law Implemented: SDCL 36-21A-119.

CHAPTER 20:69:16
DISCLOSURE

Section

20:69:16:01	Disclosure--Generally.
20:69:16:02	Repealed.
20:69:16:03	Appointed agent procedure.
20:69:16:04	Appointed agent disclosure.
20:69:16:05	Appointed agent responsibilities.
20:69:16:06	Designated broker.
20:69:16:07	Licensee's duty to responsible broker or designated broker.
20:69:16:08	Responsible broker or designated broker may appoint broker or broker associate to exclusively represent client.
20:69:16:09	Responsible broker or designated broker appointing team to exclusively represent client—Licensee within team representing both parties to same transaction.
20:69:16:10	Limited agency when appointed agent's client becomes interested in listing procured by responsible broker or designated broker.
Appendix A	Disclosure form, repealed, 32 SDR 53, effective October 11, 2005.

20:69:16:01. Disclosure -- Generally. Disclosures must be made on a form substantially the same as the real estate relationships disclosure form prescribed by the commission. The form shall contain the requirements imposed by SDCL 36-21A-147, the types of agency and brokerage relationships the broker offers, acknowledgment that the consumer has received the real estate consumer guide for the sale and purchase of residential real property, and acknowledgment of any consumer not being represented in the real estate transaction. However, a residential property manager acting as an agent for an owner may include an agency relationship disclosure in an application to lease or other document. The disclosure must be in italics or bold print and must include one of the following statements: "I, (name), a real estate licensee, am representing the owner in this transaction. All agents of (name of company) represent the owner in this and any other transaction."

A real estate licensee acting as an auctioneer may comply with the disclosure requirements by including a statement on any printed advertisement and making an announcement at the beginning of the auction. The disclosure must state that the licensees are representing the seller or sellers.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:04:12.02, 20 SDR 18, effective August 16, 1993; transferred from § 20:69:03:18, 21 SDR 125, effective January 23, 1995; 23 SDR 110, effective January 9, 1997; 25 SDR 90, effective December 28, 1998; 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-147.

Law Implemented: SDCL 36-21A-147.

20:69:16:02. Open houses. Repealed.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:04:12.02, 20 SDR 18, effective August 16, 1993; transferred from § 20:69:03:18, 21 SDR 125, effective January 23, 1995; repealed, 25 SDR 90, effective December 28, 1998.

20:69:16:03. Appointed agent procedure. Prior to entering into a listing or agency agreement, a real estate licensee shall notify a client in writing of the real estate brokerage's appointed agent policy and

those affiliated licensees within the real estate brokerage that will act as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage.

A brokerage may not, without the written consent of the client, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agency or limited agency agreement that was in effect prior to the broker implementing the appointed agent relationship.

If the client of an appointed agent demonstrates interest in a property on which the responsible broker has an existing exclusive single agent or limited agent brokerage agreement, the broker may not permit the use of the appointed agent without first obtaining the written consent of that seller or landlord to the appointed agent relationship. If the written consent of the client to allow the appointed agent relationship is not given or cannot be obtained, the broker shall refer the client of the appointed agent to another broker for representation for the purpose of considering such property.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1, 36-21A-147.
Law Implemented: SDCL 36-21A-141.1, 36-21A-147.

20:69:16:04. Appointed agent disclosure. The appointed agent disclosure shall include, at a minimum, the following provisions:

(1) The name of any appointed agent;
(2) A statement that the appointed agent will represent the client as the client's agent and will owe the client duties as set forth in SDCL 36-21A-132 and 36-21A-133;
(3) A statement that the brokerage may represent both the seller and the buyer in connection with the sale or purchase of real estate;
(4) A statement that another affiliated licensee may be appointed during the term of the agency agreement if the appointed agent is not able to fulfill the terms of the agency agreement or if the responsible broker and the client agree. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client; and
(5) A provision for the client to consent or not consent in writing to the agreement.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1, 36-21A-147.
Law Implemented: SDCL 36-21A-141.1, 36-21A-147.

20:69:16:05. Appointed agent responsibilities. An appointed agent may disclose to the brokerage's responsible broker or designated broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction, or to comply with the broker's supervisory duties. Confidential information shall be treated as such by the responsible broker or designated broker and may not be disclosed unless otherwise required by statute or rule or requested or permitted in writing by the client who originally disclosed the confidential information.

If a responsible broker appoints an agent and the appointed agent also acts in a supervisory capacity under the responsible broker, such as a branch manager or sales manager, the appointed agent may be treated in the same manner as the responsible broker for purposes of determining limited agency only if the responsible broker authorizes and provides for such supervisory positions in the written policy.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

20:69:16:06. Designated broker. A responsible broker may authorize and appoint a designated broker in a capacity to supervise and assist a licensee appointed to exclusively represent a seller or

landlord in a transaction. A responsible broker may authorize and appoint a designated broker in a capacity to supervise and assist a licensee appointed to exclusively represent a buyer or tenant in a transaction. A designated broker authorized and appointed to supervise and assist a licensee appointed to represent a seller or landlord, or buyer or tenant, exclusively, has the same duties, obligations, and responsibilities as the responsible broker. The use of an authorized appointed agent does not relieve the responsible broker of duties, obligations, or responsibilities required by any statute or rule.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

20:69:16:07. Licensee's duty to responsible broker or designated broker. A licensee shall keep the brokerage's responsible broker or designated broker fully informed of any activity conducted on behalf of the brokerage and shall notify the responsible broker or designated broker of any other activity that might impact the responsibility of the responsible broker or designated broker.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

20:69:16:08. Responsible broker or designated broker may appoint broker or broker associate to exclusively represent client. A responsible broker or designated broker may appoint a broker or broker associate having an ownership interest in the same firm as the responsible broker to act as an appointed agent to exclusively represent a seller or landlord or a buyer or tenant.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

20:69:16:09. Responsible broker or designated broker appointing team to exclusively represent client -- Licensee within team representing both parties to same transaction. If a responsible broker or designated broker appoints a licensee who performs real estate transactions within a team of licensees associated with the same responsible broker, the responsible broker or designated broker must appoint every licensee within the team to exclusively represent the same client. If any licensee within the team represents both parties to the same transaction, a limited agency relationship exists.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

20:69:16:10. Limited agency when appointed agent's client becomes interested in listing procured by responsible broker or designated broker. If a buyer or tenant represented by an agent of the responsible broker becomes interested in a property listing that was procured by the responsible broker or designated broker, the relationship between the appointed agent and the buyer or tenant is deemed that of disclosed limited agency.

Source: 32 SDR 53, effective October 11, 2005.
General Authority: SDCL 36-21A-141.1.
Law Implemented: SDCL 36-21A-141.1.

CHAPTER 20:69:17
AGREEMENTS

Section

20:69:17:01 Agreements for brokerage services.
Appendix A Agreements, repealed, 32 SDR 53, effective October 11, 2005.

20:69:17:01. Agreements for brokerage services. Agreements to perform real estate brokerage services must be on forms substantially the same as the forms prescribed by the commission. The forms must comply with the requirements imposed by SDCL 36-21A-130 and this section.

A real estate purchase agreement prepared by a licensee must contain the names of the buyer and seller; an acknowledgment that earnest money was received; the purchase price; any disclosure acknowledgments; any contingencies regarding financing, sale of purchaser's property, and inspections; and provisions for a survey, prorations, warranties, mechantable title, closing, possession, handling of earnest money, mediation, length of time for seller's acceptance, and seller's decision to accept, not accept, or counter buyer's offer.

A real estate auction purchase agreement prepared by a licensee must contain the names of the buyer and seller; the purchase price; any disclosure acknowledgments; and provisions for handling earnest money, prorations, merchantable title, closing, and possession.

A real estate commercial or agricultural purchase agreement prepared by a licensee must contain the names of the buyer and seller; an acknowledgment that earnest money was received; the purchase price; any disclosure acknowledgments; any contingencies regarding financing and inspections; and provisions for prorations, mechantable title, closing, possession, handling of earnest money, length of time for seller's acceptance, and seller's decision to accept, not accept, or counter buyer's offer.

Source: 25 SDR 90, effective December 28, 1998; 26 SDR 41, effective September 29, 1999; 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-130.

Law Implemented: SDCL 36-21A-130.

CHAPTER 20:69:18
REAL ESTATE TEAMS

Section

20:69:18:01 Team list required.

20:69:18:01. Team list required. A team leader shall provide a current list of all licensed team members, and any changes to the list of licensed team members, to the responsible broker within 72 hours of making the change. A current record of all team leaders and licensed team members shall be maintained by the responsible broker in a manner that can be made readily available to the commission staff upon request.

Source: 46 SDR 66, effective November 29, 2019.
General Authority: SDCL 36-21A-89(11).
Law Implemented: SDCL 36-21A-89(11).

The Disclosures/Agreements prescribed by the South Dakota Real Estate Commission may be downloaded from the Commission's website –

dlr.sd.gov/realestate