

Fall 2017 Edition

South Dakota Real Estate**Commission**

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From The Director

It's hard to believe that summer is almost over. I'm excited for the fall season and it is almost here and so is renewal time.

Licensees who need to renew this year will soon be receiving their renewal notices to go online and renew. The renewal and fee must be received by no later than November 30, 2017. Renewals received after that date will have to pay a late fee. In addition, all active licensees who carry errors and omissions insurance from Rice Insurance Services Company will be receiving notices to renew. The SDREC office no longer processes checks for RISC. All checks made out to RISC received in our office will be returned.

Rice Insurance Services Company will once again providing group coverage of errors and omissions insurance to qualifying licensees. The premium for 2018 will be \$187.

Responsible brokers — be aware that the compliance officers will be reviewing your internal controls during your next audits. Remember, the trust account is your responsibility and you need to make sure that whoever reconciles your trust account is doing it correctly. Also, be prepared for license renewals — not just your license but those associated with you, as well. It's a good idea to have a meeting with your associates that are up for renewal to see where they are at in the renewal process. Perhaps with your encouragement, the procrastinators will complete their education prior to the renewal deadline.

If you would like certain topics address in the newsletter please email Beth at beth.marnell@state.sd.us.

Have a wonderful fall season!

Real Estate Commission Calendar

Sunday, October 1st– 2017 renewal opens

Monday, October 9– Real Estate Commission office closed in observance of Native American Day

Monday and Tuesday November 7th & 8th– Real Estate Commission meeting in Pierre

Thursday & Friday , November 23rd & 24th– Real Estate Commission office closed in observance of Thanksgiving

Thursday, November 30th– Deadline to submit renewal applications

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2017 Renewal Reminder

Licensees who are due to renew this year will receive a mailing in late September from South Dakota Real Estate Commission (SDREC) with instructions on how to renew their 2017 license. All licensees will receive information about renewing their Errors and Omissions group insurance policy in a separate mailing from RISC.

As of 2017 SDREC will no longer offer paper applications for renewals. Licensees who need to renew will need to go online to <http://dlr.sd.gov/realstate> and log into our Online Licensee Services to renew their personal and firm licenses.

Licensees must submit their application for renewal by November 30, 2017. Applications received after that date are subject to a late fee. Licensees who do not complete their application for renewal by December 31, 2017 will be placed on a nonrenewal status. Proof of E&O and completion of continuing education courses must be received by the SDREC office no later than December 31, 2017. Any licensee who has not completed these requirements will be placed on an inactive status until the information is received by SDREC staff.

To better assist licensees who may have questions regarding online renewals the SDREC staff have created a Renewal FAQ available under our FAQ page.

In addition, SDREC staff have created step-by-step tutorials to renew your personal and firm licenses online. You can access these tutorials under the Online Services page.

Agency in SD: A Quick Review

Recently, the South Dakota Real Estate Commission (SDREC) office has received multiple questions about agency. SDREC forms have an explanation of the types of agency relationships recognized in South Dakota. To review these are the agency definitions from the SDREC relationship disclosure form:

Single Agency is when a firm and all of its agents represent **only** you and advocate for **only** your interests during a transaction. If at any time during the transaction any agent of the same firm represents both you and the other party, limited agency applies.

Appointed Agency is when a responsible broker names a specific agent(s) of the firm to represent **only** you and advocate for **only** your interests during a transaction. Agents within the firm who have not been specifically appointed do not represent you and cannot advocate for your interests. If at any time during the transaction the responsible broker or a non-appointed agent within the firm represents the other party, limited agency applies to the responsible broker. If at any time during the transaction your appointed agent(s) represents both you and the other party, limited agency applies. **This is not limited to only in-house transactions.**

Limited Agency is when a firm represents both sides to a transaction and no agent within the firm solely represents you or solely advocates for your interests. Limited agency **may only occur** with prior written permission from both sides to a transaction. Within limited agency, the limited agent is required to represent the interests of you and the other party equally, and the agent cannot disclose your confidential information to the other party unless legally required to by law.

Transaction Brokerage is when a broker or agent 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.

UPDATE: CFPB Rule Allows Sharing of TRID Closing Disclosure (Used with permission from ARELLO)

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The Consumer Financial Protection Bureau (CFPB) recently finalized amendments to its “Know Before You Owe” mortgage disclosure rules, one of which should make it easier for real estate professionals to obtain access to the “new” Closing Disclosure (CD) form.

The CFPB TILA-RESPA Integrated Mortgage Disclosure rules (commonly referred to as “TRID”, but labeled “Know Before You Owe” by the CFPB) took effect in October 2015. The rules replaced the previous disclosure forms required in all “federally-related” residential mortgage transactions, including the once familiar HUD-1 settlement statement, with the CFPB’s mortgage Loan Estimate and Closing Disclosure forms.

When the lengthy and intricate new TRID rules took effect, much attention was focused on the resulting compliance issues and mortgage process disruptions that were experienced by mortgage lenders/originators, title companies and other transaction service providers. Less publicized was an unintended consequence of the rules that left many real estate licensees with difficulties in obtaining copies of completed Closing Disclosure forms from lenders. The problem arose from lender concerns regarding the privacy provisions of the Graham-Leach-Bliley Act (GLBA) and Regulation P, which restrict lender disclosure of customers’ “nonpublic personal information” (NPI) to third parties. This complication, as well as the nature and contents of the Closing Disclosure form, also prompted some state regulators to address the impact of TRID on real estate license law matters such as recordkeeping and transaction closing statement requirements. (For more information on the development of the TRID forms and rules and their impact on real estate licensing laws, please go to the Arello® [Online Resource Archive](#) and enter the search term “TRID”).

The National Association of REALTORS® (NAR) has previously pointed out to the CFPB that, prior to implementation of TRID, real estate agents routinely had access to and used the now-defunct HUD-1 settlement statement to answer client questions about matters such as concessions, escrows, commissions and prorated taxes. NAR has also urged the CFPB to clarify that, under Regulation P, “...it is just as acceptable now as it was before Know Before You Owe for a lender to share the [Closing Disclosure] with third parties”

For its part, the CFPB’s rulemaking proposal issued in July 2016 acknowledged that the Real Estate Settlement Procedures Act (RESPA) and its implementing regulations required settlement agents to issue the HUD-1 form to lenders, borrowers, sellers, and their agents. The CFPB also acknowledged that, in accordance with applicable exceptions to the privacy requirements of the GLBA, it “usual, accepted, and appropriate” for creditors and settlement agents to provide the new Closing Disclosure form to consumers, sellers, and their real estate brokers or other agents. Consequently, the CFPB’s recent final rules incorporate its previous informal guidance on the subject and modify the official TRID commentaries to clarify that a creditor may provide separate disclosure forms to a consumer and seller if state law prohibits sharing information in the disclosure form, as well as in any other situation where the creditor chooses to provide separate disclosures, and establishes the three methods that may be used to make such modifications.

Among numerous other amendments, the final rules also create tolerances for “total of payments” calculations, adjust an exemption mainly affecting housing finance agencies and nonprofits, and extend coverage of the disclosure requirements to cooperative units.

With some exceptions, the rules will take effect 60 days after their publication in the *Federal Register* and become mandatory for transactions in which a creditor or mortgage broker receives an application on or after October 1, 2018. Please click on these links to access the CFPB’s [final rules](#) and [executive summary](#).

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Disciplinary Action

The following actions by the Commission have become effective since the last report in the newsletter. A **Consent Agreement** is an admission of violation and voluntary acceptance of the terms determined by the Commission in lieu of a formal hearing.

Stephanie Severson, Broker Associate, Brookings. Consent Agreement. Violation of SDCL 36-21A-71 (21), (30), & (31), SDCL 36-21A-78, SDCL 36-21A-130, SDCL 36-21A-140, 36-21A-147, and SDAR 20:69:16:01. Administrative fine of \$500. Attend and successfully complete six hour agency course and six hour contracts course.

Ryan Krogman, Broker, Brookings. Consent Agreement. Violation of SDCL 36-21A-71 (21), (30), & (31), SDCL 36-21A-78, SDCL 36-21A-79 and SDAR 20:69:16:01. Administrative fine of \$500. Attend and successfully complete six hour agency course and six hour contracts course.

James Tharp, Broker, Huron. Consent Agreement. Violation of SDCL 36-21A-147, SDCL 36-21A-130, and SDCL 36-21A-140 (4). Administrative fine of \$500. Attend and successfully complete six hour agency course and six hour contracts course.

Halli Holden, Broker Associate, Pierre. Consent Agreement. Violation of SDCL 36-21A-71 (1), SDCL 36-21A-78, and SDCL 36-21A-132 (2). Administrative fine of \$1,000. Attend and successfully complete six hour agency course and six hour contracts course.

Meredith Lee, Broker, Pierre. Consent Agreement. Violation of SDCL 36-21A-71 (1), SDCL 36-21A-78, SDCL 36-21A-79, and SDCL 36-21A-132 (2). Administrative fine of \$500. Attend and successfully complete six hour agency course and six hour contracts course.

Allen Burgard, Broker, Aberdeen. Consent Agreement. Violation of SDCL 36-21A-71 (1) & (5), SDCL 36-21A-80, and SDCL 36-21A-82. Administrative fine of \$1,000. Attend and successfully complete three hour trust accounting course.

Innovative Property Management, LLC and Trisha Martinell, Property Management Firm and Property Manager, Sioux Falls. Consent Agreement. Violation of SDCL 36-21A-28, SDCL 36-21A-71 (1), (4), (5), (7), (9), (12), (15), (30), (31), & (32), SDCL 36-21A-80, SDCL 36-21A-82, SDCL 36-21A-83, 36-21A-130 and SDCL 36-21A-132. Administrative fine of \$2,500 per case for a total of \$5,000. Revocation of license as of October 23, 2017 for a period of five years and cannot apply for any commission license for five years. Send certified letters to clients informing them of the firm closure and instructing them where they may obtain all records. Submit proof of letters to commission office.

Bo Hauer, Broker, Rapid City. Consent Agreement. SDCL 36-21A-71 (1) & (5) and SDCL 36-21A-79. Administrative fine of \$500.

Lori Rearick, Broker Associate, Rapid City. Consent Agreement. Violation of SDCL 36-21A-71 (1) & (5). Administrative fine of \$250.

Russell Rearick, Broker Associate, Rapid City. Consent Agreement. Violation of SDCL 36-21A-71 (1) & (5). Administrative fine of \$250.

John Maurer, Broker, Sioux Falls. Consent Agreement. Violation of SDCL 36-21A-71 (1), SDCL 36-21A-80, and SDCL 36-21A-82 Administrative fine of \$100.

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New Licensees

Broker

Fragodt, Randall R Appleton
Frandsen, Ted R Des Moines
Horne-Orose, Karen L Piedmont
Litchford, Timothy E Western Springs

McDonald, Gregory S Sioux Falls
Snitker, Curtis J Rapid City
Vance, Shannon K Arvada

Broker Associate

Boldt, Joshua D Madison
Bontje, Darcie L Sioux Falls
Brink, Stephanie L Harrisburg
Brinker, Shannon S Rapid City
Brockhoff, Eric C Brookings
Christians, Christina M Spearfish
DeNeui, Dennis Sioux Falls
Faini, Nicholas G Sioux Falls
Garry, Justin J Sioux Falls
Garry, Luke J Sioux Falls
Gaulke, Lisa A Custer
Gienger, Denise D Spearfish
Graf, Dave D Aberdeen
Haarstad, Tony Iroquois
Harstad, Lee Spearfish

Hefeneider, Kathleen L Lead
Lone, Olivia A Bristol
Meyer, Deborah A Spearfish
Moutray-Schwab, Sandra K Sioux Falls
Neal, Randall Tea
Pich, Helen L Rapid City
Similien, Ronade M Sioux Falls
Stage, Austin L Aberdeen
Warkenthien, Molly Sioux Falls
Waterman, Garrett R Sioux Falls
Wehrkamp, Stephanie R Sioux Falls
Zomer, Jason H Hartford

Lic. Home Inspector

Bradshaw, Michael Sioux Falls

Reg. Home Inspector

Kuemper, Chris D Sioux Falls

Property Manager

Aldrich, Ericka Webster
Blair, Michelle M Harrisburg
Fossum, Roxie L Canton

Goodwin, Carson B Little Rock
Myers, Brianna J Rapid City
Olsen, Ellyse Sioux Falls

Res. Rental Agent

Adam, Andrew C Brandon
Bell-Moore, Nancy G Sioux Falls
Boetcher, Tristan J Pipestone
Craven, Donna G Sturgis
Grable, Tina M Spearfish
Green, Karli N Rapid City
Kills in Sight, Rita Mission

McDaniel, Kendall L Sioux Falls
McKee, Brittany R Watertown
Reagan, Sheron L Rapid City
Royer, Shannon M Sturgis
Taggart, Gabi Vermillion
Van Zyl, Morgan Sioux Falls

Salesperson

Bergdale, Bryan J West Des Moines
Ford, Sheryl L Sioux City

Mrnak, Andy M Bowman
Mueller, Regina G Rapid City

Timeshare Agent

Roth, Peter A Rapid City
Williams, Robert Keystone

Appraiser Update

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New Licensees – June 2017 through July 2017

Nikole M. Avers, State-Certified General – Troy, MI
Brent W. Maier, State-Certified General – Chicago, IL
Jesse J. Jonas, State-Certified General – Omaha, NE
Richard L. McGee, State-Certified General – Austin, TX

Upgrades – February 2017 through May 2017

Alex Protsch, State-Certified Residential – Howard, SD

Review of Cases 2016

For the period January 1, 2016 through December 31, 2016, the Department opened eighteen cases – eight investigations, nine upgrades and 1 new applicant.

Investigations – Five closed and three pending.

Upgrades – Seven issued and two agreed disposition.

New Applicant – One pending

Review of Cases January 1 2017 through August 14 2017

For the period January 1, 2017 through August 14, 2017, the Department opened four investigation cases and one upgrade case.

Investigations – Five closed and one pending.

Upgrades – One agreed disposition and three pending.

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Labor and Regulation, Appraiser Certification Program, 308 South Pierre Street, Pierre, South Dakota 57501 or e-mail: Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action includes but may not be limited to denial, suspension, censure, reprimand, or revocation of a certification by the department. (ARSD 20:14:11:03)

The following disciplinary action has been taken by the Department of Labor and Regulation, Appraiser Certification Program:

Kevin T. Klaassen, Sibley, Iowa – Complaint Case # 17-525.

The Department of Labor and Regulation entered into a Consent Agreement to have Kevin T. Klaassen voluntarily surrender his State-Certified General Appraiser Certificate effective June 12, 2017.

New AMC Registrations Issued – May 2017 through July 2017

Computershare Valuation Services, LLC – Highlands Ranch, Colorado
HVCC Appraisal Ordering, Inc. – Lake Forest, California

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Appraisers—2017 Renewal

NOTICE! All registrations, licenses and certificates expire on September 30, 2017 and must be renewed before this date to maintain your current status. Renewal application forms were mailed the first week in July. The applications were due in the Appraiser Certification Program office by August 17, 2017. The renewal application is available on the Appraiser Certification Program website at <http://dlr.sd.gov/appraisers>. If you do not renew by September 30, 2017, your credential will expire as of that date.

In order to renew your credential, you must submit the completed application, applicable renewal fees and verification of the required 28 hours of approved continuing education which includes the 2016-2017 Edition of the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course (USPAP Update). Appraisers are required to complete the 2016-2017 USPAP Update prior to June 30, 2016. If the USPAP Update was not completed by June 30, 2016, there will be a \$100 administrative penalty fee assessed.

Supervising Appraisers—2017 Renewal

NOTICE! The 2017 supervisory appraiser endorsement renewal applications were mailed the first week in July. All supervisory appraiser endorsements expire on September 30, 2017 and must be renewed before this date to maintain your current status. The applications were due in the Appraiser Certification Program office by August 17, 2017. The supervisory appraiser endorsement renewal application is available on the Appraiser Certification Program website at <http://dlr.sd.gov/appraisers>. If you do not renew by September 30, 2017, your supervisory appraiser endorsement will expire as of that date.

Continuing Education Requirements Duplication Not Allowed

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

Continuing Education Not Required

Continuing education is not required if an appraiser's certificate was issued on or after March 30, 2017. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.01(1)]

Partial Continuing Education Requirement

An appraiser is only required to complete fourteen (14) hours of continuing education if the appraiser's certificate was issued on or after October 1, 2016 and prior to March 30, 2017. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.02]

New Rules – Effective August 14, 2017

The Department of Labor and Regulation, Appraiser Certification Program has adopted the following changes to the administrative rules regarding appraisers (ARSD 20:14):

- Define credential to be the certificate, license or registration issued to an appraiser.
- Allow reciprocal appraisers that have held a state-certified general or state-certified residential appraiser credential in another state to be eligible to become supervisory appraisers without having to be certified in South Dakota for a period of three years.
- Clarify that a state-registered appraiser is required to complete an examination prescribed by the secretary.
Modify certain language for clear understanding, re-structure sentences for grammatical accuracy, and correct typographical errors.

A copy of the current administrative rules regarding appraisers may be found at the Appraiser Certification Program website: <http://dlr.sd.gov/appraisers> or by contacting Sherry Bren at 605.773.4608 or by email at sherry.bren@state.sd.us.

Attention! Certified Appraisers Eligible to be Endorsed Supervisory Appraisers

Information for the next offering of the Training Course for Supervisory Appraisers and State-Registered Appraisers is as follows:

Date: October 3, 2017
Time: 8:30 a.m. – 1:00 p.m.
Location: 2415 West 57th Street
Sioux Falls, South Dakota

Register: Professional Appraisers Association of South Dakota (PAASD)
Website: <http://www.paasd.com>
Or Call Bev Luke at 605.716.9011

In order to attend the Course, you must register with PAASD!

Questions: Sherry Bren, Executive Director
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Hazardous waters—The specter of mass litigation directed at appraisers gets more frightening

[by Peter T. Christensen, LIA Administrators & Insurance Services' general counsel. Article from Valuation Q1 2016 – re-printed with permission from the Appraisal Institute]

I first wrote about the mass litigation directed at appraisers in my fourth quarter 2014 “Rest Insured” column (<http://bit.ly/1SgG74x>). I noted then that the threat was just emerging. Now it’s become a full-blown hazard to the entire valuation profession, and every appraiser needs to understand what’s happening.

In 2014, three litigation “claim servicing” entities with common management filed about 120 professional liability cases against appraisers. In 2015, the number of new cases topped 300, almost all relating to loans held or serviced by one source – Impac Funding Corp. More than 600 individual appraisers and firms have been named as defendants in the lawsuits filed by Impac’s claim servicers. In just two years, they have sued more appraisers than has the Federal Deposit Insurance Corp. in the past 10 years.

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Hazardous waters (Cont.)

The lawsuits have so far only targeted residential appraisals, but appraisers and firms of every type: licensed and certified appraisers, former trainees, designated appraisers (including supervising appraisers and firm owners), retired appraisers and even the estates of deceased appraisers. If these suits prove successful in the long term, they will permanently change appraisers' livelihoods and the valuation profession.

As noted, almost all of the mass litigation relates to loans held or serviced by Impac Funding Corp., a subsidiary of Impac Mortgage Holdings, which oversees a range of mortgage services. Impac has entered into a business arrangement with an entity named Savant LG, and under their contract, Impac has assigned the right to file lawsuits against appraisers in relation to potentially thousands of foreclosed loans. The purpose of the assignment is for Savant or other "claim servicing" entities working with Savant (entities formed for investing in the litigation and having names like Mutual First, First Mutual Group and Llano Financing Group) to pursue professional liability cases against the appraisers who performed appraisals for foreclosed loans. Most of the loans were originated from 2005 to 2007, and many of the foreclosures took place four or more years ago.

Under a contract between Impac and Savant, Impac retains the right to direct certain aspects of the litigation and receives a percentage of the recovery. However, Impac, Savant, Mutual First, First Mutual and Llano Financing have so far been a failure. By the end of 2015, more than 135 cases had been dismissed without any recovery against defendant appraisers. There may have been a few cases in which they succeeded in obtaining a settlement, but I have reviewed hundreds of the cases and haven't seen any judgment against an appraiser, except in cases where the appraiser defaulted and failed to defend the case.

Impac and its subservicers should not be underestimated. They are refining their tactics, getting better organized, and changing their legal and factual theories. In one recent development, mortgage pool investment entities bearing Impac's own name have replaced Llano Financing as the named plaintiff in some cases. The new plaintiff entities have variations of the name "Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series II," which own the loans at issue in each case, according to the amended complaints.

Should Impac and the others responsible for this litigation succeed, we surely will see more mass litigation efforts and major changes for appraisers and their liability exposure. Appraisers could find it difficult to afford professional liability insurance, and policies could start to exclude coverage for appraisal work for specific lenders. When a similar phenomenon occurred several years ago in Australia, appraisers saw individual E&O rates rise to more than \$20,000 per year, in some cases, and policies often excluded coverage for claims by particular parties. In the United States, some appraisers have policies that exclude or limit coverage for claims by the FDIC; this exclusion was implemented by some insurance providers in response to the large number of lawsuits filed by the FDIC from 2008 to 2012. I suspect the industry will see one or more of the same insurers introduce policies that exclude or limit coverage for claims relating to Impac itself, or more generally relating to entities that engage in similar types of "subserviced" mass litigation.

The bottom line is that appraisers don't – and perhaps can't – pay premiums sufficient enough to cover the liability exposure associated with positions taken by Impac's "subservicers." Indeed, the collective sum of damages demanded by Impac's subservicers is, by my estimation, substantially more than the total annual premiums paid by all U.S. residential appraisers for professional liability coverage. Impac's mass litigation and the potential for similar future efforts are problems that the valuation profession will have to cope with or eradicate. It is up to appraisers to combat this trend through legislative action and by declining to work for lenders that engage in this kind of litigation, or charging them fees sufficient to cover the increased liability risk.

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