



January/February 2014

## From the Director

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- Changes to Appraiser Administrative Rules
- South Dakota Implements Changes to the Appraiser Criteria

**[South Dakota Real Estate Commission](#)**

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The 2014 Legislature is in full swing and bills will be moving through the House and Senate. The Real Estate Commission has one proposed bill. Currently, the South Dakota Real Estate Commission has the authority to discipline Real Estate Licensees (Broker's, Broker Associates, Auctioneers, etc.); however the Commission has no authority to discipline home inspectors if they commit a crime. This Bill will give the Commission the authority to discipline home inspectors who commit a felony or a misdemeanor involving moral turpitude.

As usual with renewal, there are several licensees who failed to complete their continuing education, didn't renew their errors and omissions insurance or didn't renew the license. It is very easy for the Commission staff to see if these licensees are actively practicing real estate. The Commission is taking a very serious approach to try to curtail the problem of licensees who engage in activities requiring a license but do not have an active license to do so. Therefore, I will be busy issuing Consent Agreements pursuant to the Commission's citation program.

Another issue to be reminded of is that of changing broker affiliation or moving an entire office. These changes must be filed in the Commission office within 10 days of transfer. Failure to do so will result in a Consent Agreement and payment of a \$100 penalty.

Please watch for more information on the Spring Caravan registration in the next newsletter.

## Citation Program

Effective January 8, 2014, the South Dakota Real Estate Commission has revised its citation program. The goal of this program is to diminish the number of violations, to decrease the time currently required to bring licensees into compliance when necessary, and to recover some of the costs involved when action is required.

The commission has identified a number of license law violations that will be included in the program of citations. Violations included in the citation program are as follows:

Failure to register a trust account with the commission / placing funds required to be held in trust in an unregistered account (SDCL 36-21A-82);

Failure to register a place of business or failure to report a change of location of a business within 10 days of the change (SDCL 36-21A-52);

Failure by the individual and the firm to report a change of association to the commission (SDCL 36-21A-56);

Failure to maintain errors and omissions insurance or to provide proper notification to the commission of errors and omissions insurance (SDCL 36-21A-119, ARSD 20:69:15:02, 20:69:15:06, 20:69:15:07);

Performing real estate brokerage activity beyond the month in which a license lapses for non-payment of renewal fees, and/or not filing/completing the required continuing education (SDCL 36-21A-61, 36-21A-62, 36-21A-64);

Failure to reconcile a trust account at least monthly (SDCL 36-21A-80);

Failure to include the name of the firm in an advertisement (SDCL 36-21A-72);

Performing the services of a real estate broker or broker as a corporation, association, partnership, L.L.C. or L.L.P. without a firm license for that entity (SDCL 36-21A-37);

A "commission only" corporation or limited liability company advertising or holding itself out as a brokerage firm (SDCL 36-21A-46.1(2));

Failure to maintain individual ledger sheets, deposit slips, check registers or bank statements of any trust account. (SDCL 36-21A-82);

Failure to surrender license when licensee receives notice of being placed on inactive status for not providing proof of errors and omissions insurance (ARSD 20:69:15:08.01);

Failure to immediately report a lost, misplaced, stolen or destroyed license to the Commission; (ARSD 20:69:03:20); and

Failure to bring into compliance audit exceptions that include but not limited to SDCL 36-21A-71(14) (failure by a broker to date and sign a closing statement) 36-21A-74 (trust account bank statements, agency agreements, offers to purchase, closing statements and other transaction records not on file ), 36-21A-80 (trust account not in balance / monies not deposited within next legal banking day after acceptance of contract), 36-21A-82 (all deposit slips for trust accounts not on file / ledger sheets not used on each owner), 36-21A-130 (agency agreements not completed correctly / real estate relationships disclosure not on file), 36-21A-147 (written office policy not on file), ARSD 20:69:06:05 (not complying with auction listing requirements), 20:69:06:06 (auction advertising that does not disclose the names and types of licenses held by all licensees involved in the auction), 20:69:06:08 (failing to maintain auction records pertinent to any transactions), 20:69:14:12 (ledger sheets not used for tenant deposits or not keeping a separate balance in owner ledger for tenant deposits / pre-numbered receipts not used for currency received, and failure to comply with lead-base paint disclosure requirements.

A violation of one of these requirements, excluding the failure to bring audit exceptions into compliance, will result in the filing of a complaint and an offer to enter into a Consent Agreement. Each Consent Agreement will include no less than a \$100.00 penalty and a specified time to comply with the requirement. A broker who fails to bring audit exceptions into compliance may result in the filing of a complaint and an offer to enter into a Consent Agreement to include a no less than a \$100.00 penalty and a specified time to comply with the requirement. Those licensees agreeing to a Consent Agreement will also have to acknowledge that the action will be published in the Commission's newsletter.

## **Responsible Brokers: Be Aware of Licensees' Status!**

The SDREC office is always busy this time of year removing licensees from active status for failure to have current E&O insurance, continuing/postlicensing education hours recorded and/or nonrenewal. **It is an individual's responsibility to know his/her license status at all times. It is the duty of the responsible broker to know the license status of all individuals associated with the brokerage firm.** Advertising as an active licensee when the license is no longer active is grounds for disciplinary action for both the licensee and the responsible broker who allows it.

## 2014 Spring Caravan – Save the Date

Mark your calendars for the Spring Education Caravan! The SDREC is pleased to announce Trista Curzydlo, J.D. as the featured speaker. Trista will talk about risk reduction in the areas of contracts, intellectual property law and federal regulation compliance.

Wednesday, April 23 – Deadwood  
Thursday, April 24 – Rapid City  
Friday, April 25 – Fort Pierre  
Monday, April 28 – Aberdeen  
Tuesday, April 29 – Watertown  
Wednesday, April 30 – Sioux Falls  
Thursday, May 1 – Sioux Falls

**Watch for the March/April edition of the Real Estate VIEW newsletter for a detailed course description, presenter bio and online registration information!** A registration form will be mailed to all brokerage offices in early March for those wishing to register by mail.

## Please “Like” Us!

Did you know that the SD Real Estate Commission is on Facebook? Like our page to receive notices on Commission meetings and other important dates and reminders.  
<https://www.facebook.com/#!/southdakotarealestatecommission>

## New Licenses

### Broker Associate

Archer, Kevin T – Jefferson	Boen, Erika E – Valley Springs
Bollweg, Patrick A – Sioux Falls	Brenner, Randy L – Sioux Falls
Christians, Jeffery R – Spearfish	Erickson, Scott A – Sioux Falls
Fick, Jonathan D – Sioux Falls	Fisher, Danielle M – Sioux Falls
Frick, Samantha C – Lennox	Guthmiller, Daniel J – Yankton
Hall, Billy J – Rapid City	Hendrickson, Jessica – Aberdeen
Hook, Amy M – Rapid City	Hyde, Lindsey – Sioux Falls
Jandl, Kristel L – Sioux Falls	Johnson, Joseph A – Sioux Falls
Johnson-Bruflat, Julie A – Sioux Falls	Kirchner, Melissa F – Lennox
Ludeman, Richard A – Rapid City	Nowlin, Jamie M – Rapid City
Sapienza, Joseph “Josh” – Sioux Falls	Steffl, Susette C – Sioux Falls
Wilharm, Jessi M - Vermillion	

### Broker

Hastings, Blake R – Wayzata, MN	Johnson, James J – Hemingford, NE
Kracke, Donald E – De Witt, NE	Spencer III, Ralph E – Logan, IA

### Salesperson

Connelly, Nathan T – Bronson, IA	Haugen, Dale B – Lisbon, ND
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### Residential Rental Agent

Kranz, Linda M – Watertown	Loge, Tannen K – Sioux Falls
Smith, Charles L – Sioux Falls	

### Property Manager

Heiberger, Pamela L - Hermosa

## **CFPB Explains New Mortgage Rules** *(used with permission from ARELLO)*

The U.S. Consumer Financial Protection Bureau (CFPB) has issued extensive resource materials that explain the latest round of federal mortgage regulations, most of which take effect in January 2014. The voluminous final rules implement new mortgage originating, lending and servicing standards that were mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB resources include the rules, their latest amendments, compliance guides, explanatory videos with transcripts, and plain-language summaries for consumers. The CFPB's newest mortgage regulations and resources address: Ability-to-Repay/Qualify Mortgages, HOEPA/Housing Counseling, ECOA Valuations, Loan Originator Compensation, Appraisals for TILA "Higher-Priced Mortgage Loans".

Due to the scope and breadth of the new regulations, interested persons should access the detailed information and resources that are available through the [CFPB's mortgage rule implementation web page](#).

The CFPB's latest final rules also include voluminous new regulations addressing "higher-priced mortgage" creditor escrow requirements and extensive new mortgage servicing standards.

## **Input Needed: SDREC to Survey Licensees on Education Caravan**

The Spring and Fall Education Caravans have been an SDREC mainstay for decades. They have served a couple of very important purposes: to provide licensees access to education, regardless of what part of the state in which they live and to allow the SDREC to present topic areas it feels are relevant at the time they are offered. Over the years, statewide attendance has fluctuated, but overall, the current numbers are generally less than what they used to be a decade ago.

As education programs from associations, private education providers and online companies have evolved and continue to provide excellent course offerings, the SDREC is evaluating what its role should be in the future in providing education courses to licensees.

In February, a survey will be emailed to all active licensees in South Dakota regarding the caravan courses and overall education in general. This survey is voluntary, but the more licensees who respond, the better picture it will provide SDREC staff in determining how best to serve the education needs of the real estate licensees it serves.

Please consider responding to this survey. Your feedback during this process is very important and appreciated!

## **Commission Calendar**

February 17 – SDREC Office Closed, President's Day

March 12-13 – Commission Meeting, Pierre

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# Appraiser Update

## New Licensees – November/December 2013

Christopher Roach, State-Certified General – Dallas, TX  
Ronny K. Mumford, State-Certified Residential – North Richland Hill, TX  
John M. Massanet, State-Certified General – Leavenworth, KS  
Steven J. Cook, State-Certified Residential – Sioux City, IA  
Lacey M. Hoefs, State-Certified Residential – Valentine, NE  
Jennifer B. Healy, State-Registered – Minneapolis, MN

## Upgrades Issued November/December 2013

Tara Noteboom, State-Certified Residential

## Review of Cases – January 1 - December 31, 2013

For the period January 1, 2013 through December 31, 2013, the Department has initiated fourteen complaint investigations and nine upgrade reviews.

Complaints – Eight closed and six pending.  
Upgrades – Four closed and five pending.

## 2014-2015 Uniform Standards of Professional Appraisal Practice

### Revisions to USPAP and USPAP Advisory Opinions

After the publication of the 2012-13 edition of USPAP, a series of two requests for comment papers and three exposure drafts were released to obtain feedback on possible modifications for the 2014-15 edition. On February 1, 2013, the Appraisal Standards Board (ASB) adopted modifications for the 2014-15 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). These modifications include:

1. Revisions to the DEFINITIONS of “Assignment Results” and “Scope of work” – Based on comments received, there was a need to clarify the definition of “Assignment Results.” In an appraisal assignment, assignment results currently include more than just the appraiser's opinion of value, as the appraiser is responsible not only for the opinion of value, but for the other opinions formed as part of an appraisal or appraisal review assignment. The change to the definition was made to clarify this point. The change to the definition of Scope of Work makes it consistent with the application of the SCOPE OF WORK RULE.
2. Revisions to the PREAMBLE – When Do USPAP Rules and Standards Apply? – A section was added to clearly state when the Rules and Standards apply.
3. Certification Requirement Related to Current or Prospective Interest and Prior Services – The ETHICS RULE was edited to clarify that in assignments in which there is no appraisal or appraisal review report, only the initial disclosure to the client is required – a certification is required only for appraisal and appraisal review assignments.
4. Revisions to the COMPETENCY RULE – The COMPETENCY RULE has always required that an appraiser be competent to perform the assignment, or acquire the necessary competency to perform the assignment, or withdraw from the assignment. However, the COMPETENCY RULE previously did not expressly require the appraiser to act competently in the given assignment. The change to the COMPETENCY RULE now clearly states that the appraiser must perform competently when completing assignment.



5. Report Options in STANDARDS 2, 8, and 10 – USPAP previously had three written report options for real property and personal property appraisal assignments: Self-Contained Appraisal Report, Summary Appraisal Report, and Restricted Use Appraisal Report. USPAP now has two written report options, Appraisal Report and Restricted Appraisal Report, for real property and personal property appraisal assignments; this is similar to STANDARD 10 Business Appraisal Reporting. In STANDARDS 2, 8, and 10, the “restricted use” report option name was changed to Restricted Appraisal Report.

An Appraisal Report must summarize the appraiser’s analysis and the rationale for the conclusions. A Restricted Appraisal Report might not include sufficient information for the client (no other intended users are allowed) to understand either the appraiser’s analyses or rationale for the appraiser’s conclusions.

Additional edits were made to the minimum report requirements. In Standards Rule 2-2(a)(i), clarifying changes were made regarding intended users. The order of the requirements in subsections (iii) and (iv) within Standards Rule 2-2(a) were rearranged. In Standards Rule 2-2(a)(vi), the date of report was defined. In Standards Rule 2-2(a)(vii) and 2-2(b)(vii) the statement, “The signing appraiser must also state the name(s) of those providing the significant real estate assistance” was edited. The new statement eliminates “the signing appraiser, and states “The name(s) of those providing the significant real property appraisal assistance must be stated in the certification.” In Standards Rule 2-2(a)(viii), “agreements of sale” was added. In Standards Rule 2-2(a)(ix) and 2-2(b)(ix), the statement was divided with the last part of the statement becoming Standards Rule 2-2(a)(x) and 2-2(b)(x). The remaining items under these Standards Rules were renumbered. Similar changes were made to Standards Rules 8-2 and 10-2.

Lastly, to be consistent with items identified in the development requirements of Standards Rule 1-2(e)(i), an edit was made to Standards Rule 2-2(a)(iii) to include the summarization of legal characteristics relevant to the assignment. This edit is not viewed by the ASB as a new requirement; rather, it clarifies legal characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal must be communicated.

6. Revisions to Standards Rule 3-5 – STANDARD 3 now requires a date of the appraisal review report which makes STANDARD 3 consistent with the other Standards which require the date of the report.

7. Retirement of STANDARDS 4 AND 5 – STANDARDS 4 and 5 addressed real property appraisal consulting development and reporting. STANDARDS 4 and 5 have been retired due to the confusion and misuse of these Standards. Revisions and additional Illustrations were made to Advisory Opinion 21 to demonstrate how an appraiser can complete assignments that include services other than appraisal or appraisal review. The use of the term “appraisal consulting” has been eliminated in USPAP.

8. Revisions to Advisory Opinion 11, Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2 and Advisory Opinion 12, Use of the Appraisal Report Options of Standards Rules 2-2 and 8-2 – Due to the changes in the reporting format options, Advisory Opinions 11 and 12 were edited to demonstrate the impact of these changes. In addition, the scope of these two Advisory Opinions was expanded to include Standards Rule 10-2.

9. Revisions to Advisory Opinion 13, Performing Evaluations of Real Property Collateral to Conform with USPAP – Due to changes in the Interagency Appraisal and Evaluation Guidelines effective December 2010, Advisory Opinion 13 has been revised.

Administrative edits were also made to USPAP and all guidance material, including the USPAP Advisory Opinions and USPAP Frequently Asked Questions, for conformity and consistency. The details of the changes to the 2014-15 edition of USPAP can be read on The Appraisal Foundation’s website, [www.appraisalfoundation.org](http://www.appraisalfoundation.org) in a document entitled 2013 Summary of Actions Related to Proposed USPAP Changes.

## Notice - South Dakota Revises Administrative Rules

Effective January 7, 2014 the Appraiser Certification Program adopted changes to the administrative rules regarding appraisers (ARSD 20-14). The changes are as follows:

- Appraisers must give written notice of any change of email address, if available.
- State-Registered and Supervisors must complete the Training Course for Supervisory/State-Registered Appraisers before supervision begins.
- Clarification that nonclient appraisal experience involving case studies, practicum courses, and nonclient appraisal experience is acceptable but may not exceed 50 percent of the total experience requirement.
- Adoption of the 2014-2015 Uniform Standards of Professional Appraisal Practice.
- Continuing education is not required if a first-time applicant's appraiser certificate was issued in the previous 185 days before September 30 of the current odd-numbered year.
- If a first-time applicant's appraiser certificate was issued on or after October 1 of the previous even-numbered year and prior to 185 days before September 30 of the current odd-numbered year the appraiser is only required to complete fourteen hours of continuing education.

## Reminder - South Dakota Implements Changes to the Appraiser Criteria

Effective July 1, 2014 the administrative rules regarding appraisers (ARSD 20-14) require the following:

- An applicant for State-Certified Residential and State-Certified General Appraiser must hold a bachelor's degree, or higher, from an accredited college or university.
- An applicant for State-Licensed Appraiser shall have completed 30 semester hours of college-level education, from an accredited college, junior college, community college, or university. An applicant holding an Associate degree, or higher from an accredited institution satisfies the 30-hour college-level education requirement.

The deadline for submission of an application under the current criteria for a State-Licensed, State-Certified Residential and State-Certified General Appraiser certificate must be submitted and postmarked on or before June 30, 2014. Program staff recommends that you do not wait until the last minute to submit your application.

Please contact the Appraiser Certification Program office at 605.773.4608 to answer any questions that you may have regarding the current or future Appraiser Criteria.