

South Dakota Real Estate**Commission**

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**In this issue from the South
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After what seemed to be a long winter, I think spring may finally be here!

The 93rd Legislative Session has come to a close. The Commission just had a couple of clean-up bills this year.

Renewal this past year was a little trying at times and we anticipated that it would be. We were on the phone a lot walking people through the online process. Yes, we did have a few angry people but we did get through it. We appreciate your patients.

However, there were still was a good number licensees who failed to complete their continuing education, didn't renew their errors and omission's insurance or provide proof or just didn't renew their license on time.

As a reminder, responsible brokers and property managers make sure you are reconciling your trust accounts monthly. It's very easy for the Commission compliance officers to determine that monthly reconciliations have not been performed, especially if the reconciliations have not included individual ledger totals.

We now plan to work on having fillable forms that you will be able to pay by credit card for a change of association and a certificate of licensure. This will make the process go much faster.

Have a great spring!!

Real Estate Commission Calendar

Wednesday, May 9th- Real Estate Commission meeting in Pierre

Monday, May 28th- Real Estate Commission office closed in observance of Memorial Day

Legislative Update

This year the Real Estate Commission brought legislation to update some language in their codified laws. House Bill 1031 amended 36-21A-19 to repeal outdated code reference and made the statute consistent with the powers and duties granted to other boards and commissions under the jurisdiction of the Department of Labor and Regulation. House Bill 1032 amended 36-21A-29(8) to include credit unions to the list of exempted entities with other similar entities. These updates will go into effect July 1, 2018.

Federal Court Reinstates RESPA Anti-Kickback Ruling, Industry Sees Win for MSAs (used with permission from ARELLO)

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The U.S. Court of Appeals for the District of Columbia Circuit recently reinstated a previous decision that rejected the Consumer Financial Protection Bureau's (CFPB) broad interpretation of the anti-kickback provisions of the Real Estate Settlement Procedures Act (RESPA). Some industry observers see the ruling as a victory for marketing services agreements between real estate settlement services providers, including real estate agents. The case involves PHH Corporation, a mortgage lender that required some borrowers to pay for mortgage insurance to cover default losses. PHH referred borrowers to mortgage insurers who, through "captive reinsurance" arrangements, agreed to purchase reinsurance covering a part of the insurer's risk from a wholly owned PHH subsidiary, Atrium Insurance Corporation. In return for the referral, the mortgage insurers allegedly paid Atrium a percentage of the referred borrowers' mortgage insurance premiums, which the CFPB characterized as "purportedly in exchange" for the reinsurance coverage by Atrium. In 2014 the CFPB commenced administrative proceedings charging that the arrangements violated the referral kickback and fee splitting prohibitions of RESPA §§8(a) and (b) [12 U.S.C. sec. 2607, *et. seq.*]. A federal administrative law judge (ALJ) found that PHH committed the charged violations and recommended that it be ordered to disgorge more than \$6 million. The CFPB adopted most of the ALJ's findings, but rejected a previous Department of Housing and Urban Development (HUD) interpretation of the "bona fide" payment "safe harbor" provision of RESPA section 8(c). The long-standing HUD policy treated captive reinsurance arrangements as permissible as long as reasonable market value is paid for services actually performed. Instead, the CFPB interpreted the safe harbor provision to mean that a payment is "bona fide" only if it is "solely for the service actually being provided on its own merits" and not "tied in any way to a referral of business"; and thus rejected the application of the safe harbor provision to PHH's captive insurance arrangements. The CFPB also concluded that RESPA's three year statute of limitations is inapplicable to its administrative proceedings, which enabled it to reach back in time to previous violations and increase the ALJ's recommended monetary sanction to over \$109 million. On appeal, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit vacated the CFPB decision, ruling that RESPA permits captive reinsurance arrangements as long as mortgage insurers pay no more than reasonable market value for the reinsurance. The panel also found that, even if the CFPB's contrary RESPA interpretation was correct, it violated "bedrock principles of due process" because it retroactively rejected the HUD policy that was in effect at the time of the alleged violations and instead applied its new interpretation to PHH's arrangements. The panel also reversed the CFPB's interpretation of RESPA's statute of limitations, and thus invalidated the dramatically increased monetary sanctions. And, in a part of the decision that has to some extent overshadowed the RESPA issues in the case, the three-judge panel struck down as unconstitutional the Dodd-Frank Act provision that allows removal of the CFPB director only for cause; thus subjecting the director to removal at will by the President. The Court of Appeals granted PHH's petition for an *en banc* rehearing (before the full appellate court), which operated to vacate the decision of the three-judge panel. In January, the full court reversed the panel's decision with respect to the constitutionality of the statutory for-cause removal provision. The full court did not decide the RESPA issues in the case, but rather reinstated the panel's decision with respect to those issues. Consequently, the case will be remanded to the CFPB for further proceedings consistent with those rulings. Since it took over RESPA enforcement from HUD in 2011, the CFPB's interpretation of the RESPA provisions at issue in the PHH case and its other enforcement actions have also called the legality of real estate marketing services agreements (MSAs) into question. Real estate MSAs vary, of course, but an example might involve an arrangement under which a real estate brokerage agrees to market the services of a title company or mortgage lender through website ads, co-advertising campaigns, co-branded platforms, etc. In a recent statement, National Association of REALTORS® (NAR) President Elizabeth Mendenhall said, "[NAR] is pleased with the court's reinstatement of the previous decision affirming the legality of marketing service agreements and that they are compliant with RESPA. We're hopeful this much-needed clarity will address any and all uncertainty moving forward for REALTORS® who have entered into MSAs with settlement and other service providers." The Mortgage Bankers Association (MBA) also applauded the court's "recognition that the CFPB violated the law when it tried to change longstanding RESPA rules through the enforcement process rather than by issuing a new rule or guidance." The MBA also says that, the decision notwithstanding, the CFPB "still owes the industry clear and constructive guidance on its view of the permissibility under RESPA of arrangements like marketing services agreements."

[*PHH Corp. v. Consumer Fin. Prot. Bureau*, 2018 U.S. App. LEXIS 2336 (D.C. Cir. Jan. 31, 2018)]

New Licensees

Broker

Barber, Marc	Sacramento	Pickett, Michael L	Spearfish
Bartol, Rena L	Spearfish	Slater, Katie J	Okoboji
Frederick, Elizabeth M	Rapid City	Snider, Allen C	Bemidji
Fujan, Michael L	Gretna	Standing High, Mato	Rapid City
Jaynes, Brent A	Overland Park	Tomberlin-Johnson, Robin	Dallas
Marlow, Keith E	Redstone	Yoachim, Jonathon K	Louisville

Broker Associate

Adam, Andrew C	Brandon	Juhl, Adam	Sioux Falls
Anderson, Meghan M	Sioux Falls	Karnes, Norma E	North Sioux City
Barber, Natalie	Brandon	Karp, Thomas L	Spearfish
Bardeson, Jessicca	Pierre	Kiefer, Robert	Valley Springs
Bebo, Cooper J	Miller	Knobloch, Preston	Sioux Falls
Berg, Rena	Brookings	Kockelman, Natalie M	Sioux Falls
Bertsch, Brandon	Warner	Larsen, Jeffrey P	Littleton
Blumenauer, Jacqueline J	Sioux Falls	Larsen, Marielle	Littleton
Bruggeman, Greta	Sioux Falls	Larson, Amy	Hartford
Buckles, Jonathan	Spearfish	Larson, Robin	Lead
Buss, Heather	Sioux Falls	Liberko, Christine E	Sioux Falls
Carlsen, Chris J	Sioux Falls	Markworth, Terssa I	Spearfish
Carney, Shad	Sioux Falls	McGregor, Kelsey D	Brandon
Charo, Omar	Sioux Falls	Mehlhaff, Holly	Black Hawk
Comstock, Robin	Lennox	Miller, Brian R	Madison
Copeland, Daniel	Huron	Moe, Chelsea	Sioux Falls
Dieter, Nicholas	Brookings	Moydell, Zachary L	Sioux Falls
Doney, Lonnie	Rapid City	Mueller, Regina G	Rapid City
Dooley, Katrina L	Yankton	Mueller, Regina G	Rapid City
Dorhout, Jackson D	Sioux Falls	Napton, Joni	Frederick
Eddie, Stephanie L	Spearfish	Nelson, Daniel A	Sioux Falls
Elrod, Heather L	Brandon	Ortmann, Elizabeth	North Sioux City
Fettig-Perhus, Dawn N	Rapid City	Patterson, Teresa	Sioux Falls
Fitzsimmons, Heath B	Sioux Falls	Pendergast, Angela F	Sioux Falls
Fox, Michelle R	Salem	Reuer, Lewis R	Bowdle
Gabaldon, Lisa L	Brandon	Roberts, Thomas H	Pierre
Goetsch, Kathy J	Mitchell	Rohrbach, John	Aberdeen
Gross, Tyler L	Watertown	Ruff, Travis	Spearfish
Gustafson, Michael J	Sioux Falls	Rymerson, Jeffrey N	Sioux Falls
Hoekstra, Erin M	North Sioux City	Schafer, Kimberly A	Sioux Falls
Holtquist, Terri	Milbank	Sharpe, Eric	Rapid City
Johnson, Jacob	Spearfish	Shelton, Molly	Huron

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New Licensees

Broker Associate (Cont.)

Shockey, Troy M	Belle Fourche	Taylor, Julie A	Tea
Skinner, Steven	Sioux Falls	Weber, Terry J	Piedmont
Stone, Stacey	Spearfish	Zerbst, Beka L	Sturgis
Taken, MacKayla R	Rapid City		

Auctioneer

Keck, Clayton M	Saint Lawrence
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Property Manager

Christopherson, Kylie	Hermosa	Hove, Becky	Custer
Derksen, Nathan	Spearfish	Randby, Melissa J	Sioux Falls
Detweiler, Twila	Spearfish	Rodiek, Dustin	Florence
Dosch, Michael E	Sioux Falls	Tobin, Justin B	Winner
Ewing, Kori J	Rapid City	Warfel, David E	Yankton
Hakala, Bruce	Rapid City		

Reg. Home Inspector

Atwood, Sea	Aberdeen	O'Meara, Michael	Rapid City
Clark, Rodney W	Hermosa	Sanders, Darby J	Canistota
Dupont, Jared	Rapid City	Sanders, Wendy A	Canistota
Jorgensen, Casey S	Lennox	Tutt, Scot G	Sioux Falls
Lipetzky, Dean	Sioux Falls		

Res. Rental Agent

Alex, Jenna M	Elk Point	Pauli, Kimberly	Sioux Falls
Casares, Shannon R	Sioux Falls	Peitz, Denise C	Fordyce
Domagala, Jennifer	Tea	Strohfus, Angela	Brookings
Hogan, Jonathan	Sioux Falls	Traversie, Shayna R	Timber Lake
Hohn, Thea M	Lead	Waters, Charity H	Sioux Falls
Huether, Heidi J	Rapid City	Winters, Justin D	Harrisburg
Kelly, Meghan J	Sioux Falls	Lamoureux Jr., James M	Sioux City
Konken, Maria	Gayville	Mattison Jr, James B	Sioux Falls
Lawson, Tammy J	Sioux Falls	Morgan, Michael D	Sioux City
Miller, McKenzie	Sioux Falls	Spletstaszer, Timothy J	Davenport
Mitzel, Angela S	Brookings	Ummach, Jamie R	Sergeant Bluff
Moser, Justin	Harrisburg	Whitmire, Bridget	Fordyce

Timeshare Agent

Wiens, Bruce E	Rapid City
Wright, Ernest D	Lead
Wright, Mitchell D	Lead

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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.

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);

Jeff Harding, Broker Associate, Sioux Falls
Bill Hauck, Broker Associate, Sioux Falls
Cameron Herlyn, Broker Associate, Sioux Falls
Troy Outka, Broker Associate, Sioux Falls
Adam Whitelock, Broker Associate, Sioux Falls
Rachael Weissenburg, Broker, Sioux Falls
Larry Lekness, Broker Associate, Britton
Ryan Simmons, Broker Associate, Sioux Falls
Jennifer Stone, Broker Associate, Sioux Falls
Stephanie Wehrkamp, Broker Associate, Sioux Falls
Jason Zomer, Broker Associate, Sioux Falls
Justin Messelhisier, Broker Associate, Sioux Falls
Daniel Bielfeldt, Property Manager, Brookings
Derek Ostby, Auctioneer, New Effington
Greg Woolridge, Broker Associate, Rapid City
Brad Meehan, Broker Associate, Aberdeen
Bonnie London, Broker Associate, Pierre
Tony Divan, Broker, Rapid City
Lori Knutson, Residential Rental Agent, Spearfish
Jennifer Tucker, Property Manager, Spearfish
Daryl Nelson, Broker Associate, Britton
Dave Graf, Broker Associate, Aberdeen
Jeremiah Mcknight, Broker Associate, Rapid City
Scott Dougherty, Broker Associate, Sioux Falls
Les Pietruszkiewicz, Broker Associate, Sioux Falls
Brian Brooke, Broker Associate, Spearfish
Terry Johnson, Broker Associate, Sioux Falls
Alex Sinning, Broker Associate, Sioux Falls
John Mallinger, Broker Associate, Sioux Falls
Jennifer Landguth, Broker Associate, Sioux Falls
JJ Gohl, Broker Associate, Sioux Falls
Rhonda Ribstein-Newman, Broker Associate, Sioux Falls
Deena Becker, Broker Associate, Sioux Falls
Nick Rosser, Broker Associate, Sioux Falls
Danielle Merrow, Broker, Sioux Falls
Cris Ortmeier, Broker Associate, Watertown
Ashley Lindquist, Broker Associate, Sioux Falls
Brent Kokenge, Broker Associate, Sioux Falls
Grant Tschetter, Broker Associate, Sioux Falls

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);

Chantel Olson, Broker Associate, Sioux Falls
Terry Bornitz, Broker Associate, Sioux Falls
Shane Preheim, Broker Associate, Sioux Falls

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Jon Farmer, Broker Associate, Sioux Falls
Dorcie Johner, Broker Associate, Rapid City
Tyler Crow, Property Manager, Rapid City
Matt Kenaston, Property Manager, Rapid City
Josiah LaFrance, Broker, Rapid City

Failure to reconcile a trust account at least monthly (SDCL 36-21A-80). Failure to maintain individual ledger sheets, deposit slips, check registers or bank statements of any trust account. (SDCL 36-21A-82);

Jami Baedke, Broker, Vermillion
Jackson Dorhout, Property Manager, Sioux Falls

Gregory Roth, Broker, Rapid City. Violation of SDCL 36-21A-71(1) (22). Administrative Fine of \$250.00.

Karrie Swenson, Broker, Chamberlain. Violation of SDCL 36-21A-71 (1) (22) (30), 36-21A-130, and 36-21A-140. Administrative fine of \$750.00.

Patricia Schultz, Broker Associate, Hot Springs. Violation of SDAR 20:69:10:03. Administrative fine of \$250.00.