

**South Dakota Real Estate Commission**

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**In this issue from the**  
**South Dakota Real Estate Commission:**

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**From The Director**

First and foremost, I hope all of you and your families are healthy and doing well. No one could have truly prepared for the devastation COVID-19 is bringing to the U.S. from both a health and an economic concern.

In February, I attended the 2020 Chili/Oyster Feed in Pierre and would like to commend the SD Association of REALTORS and other groups who hosted this fine event. As usual, everyone involved in the event went the extra mile to provide a wonderful opportunity for real estate licensees to connect with our legislators.

The 95th Legislative Session has come to an end. Starting July 1, 2020, we will no longer have an application for a restricted auctioneers license, however, current auctioneers are grandfathered in, allowing them to maintain a license because the services they provide will still require a license. Broker/broker associates can perform auctions as part of their scope of practice, so those new applicants who want to do auctions will apply for a broker associates license. Unlicensed auctioneers can call or take bids.

Other legislative bills that will go into effect July 1, 2020 that may be of interest to you:

- ⇒ House Bill 1126 provide authority for real estate brokers to conduct real property evaluations.
- ⇒ House Bill 1178 revise the seller's property condition disclosure statement.

Reminder - it is the responsibility of the responsible broker to know, at all times, the license status of the agents that are associated with the brokerage firm. Not only can the licensee be disciplined for engaging in the practice of real estate without an active license, but the broker may face disciplinary action as well.

It's never too soon to start working on your continuing education for those of you renewing this year. :)

Have a good spring and summer! Stay safe!



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**Commission Calendar**

**Thursday, May 14th** - Commission Meeting

**Monday, May 25th** - Closed in observance of Memorial Day

**Thursday, July 4** - Closed in observance of Independence Day

**Wednesday, July 15th or Thursday, July 16th** - Commission Meeting

**Reminders**

- ⇒ The Real Estate Commission staff are currently working remotely until further notice. This action was taken to assist in mitigating the impact of Covid-19. The transition to work remotely may result in a delayed response to your communication. Thank you for your patience and understanding.
- ⇒ Classroom courses have ceased during the Covid-19 pandemic (some are being offered via Zoom) - now would be a good time to take some online courses for continuing education requirements.
- ⇒ Lack of classroom courses will not be an accepted excuse for CE not being completed for the 2020 renewal
- ⇒ June 30th will be here before we know it! Licenses that were due to renew in 2019, will no longer be eligible for renewal after June 30th.
- ⇒ The office will be emailing a reminder notice for renewal the end of September. Now would be a good time to log in online and make sure we have your correct email listed.

**A New Face - Suzanne Wetz**



I am no stranger to the real estate world having worked as an administrative assistant for the Bismarck-Mandan Board of REALTORS®, as well as communication/membership director for the North Dakota Association of REALTORS® for several years. That experience was very helpful in my role as an administrative assistant for property with the Burleigh County Auditor's Office before becoming the Special Projects/Elections coordinator for the second largest county in North Dakota during a very busy oil boom period. I am a South Dakota girl at heart though having grown up in Java, SD, and graduating from Western Dakota Tech in Rapid City. My husband, Max, and I lived and worked in Pierre previously and are glad to be back. We have been spending a lot of time taking our two dogs, Edgar and Emery, for long walks along the river and playing fetch until we're all too tired to go anymore.

## Coronavirus Update: Industry and Regulators

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As in virtually all other aspects of the "new normal" global reality, the spread of the coronavirus (COVID-19) has presented the real estate industry and its regulators with a broad array of challenges. New developments are emerging daily and the ultimate impacts of the outbreak are unknown. Here are some representative examples of industry/regulatory responses to the crisis:

**The National Association of REALTORS®** published [Coronavirus: A Guide for REALTORS®](#), which acknowledges that "The coronavirus pandemic continues to impact the real estate industry. Everything from managing brokerage operations, to marketing listings, and closing transactions, requires REALTORS® to adapt to these extraordinary circumstances." The publication includes General Guidance During COVID-19, Open House Guidance, Transaction Guidance, and Shelter-in-Place Guidance; each of which addresses specific issues and challenges.

Real estate brokers and companies around the world are making difficult **decisions about how, or whether, to conduct business**. Some have closed their physical offices for a period of time, with guidance and suggestions on how agents can keep developing and conducting business. Many have stopped home showings in favor of virtual and remote-chat guided tours, and other technological solutions. Others may be using appointment software to stagger by-appointment-only showings, and/or are imposing social distancing and other coronavirus-related safety rules; assuming, of course, that local stay-at-home orders have not been issued. In Washington, where such orders are in place, real estate and mortgage lending have been deemed essential activities that must continue, but Governor Inslee has [issued guidelines](#) prohibiting open houses and placing restrictions on in-person meetings, property viewings, appraisals, final walk-throughs, closing processes, new listings, etc.

**Multiple Listing Services** have also taken action. In just one example, Washington state's Northwest Multiple Listing Service ("NWMLS"), the largest full-service MLS in the Northwest, issued a [press release](#) announcing its "difficult decision to temporarily disable the public and broker open house features in its MLS system." At least initially, up until March 31st, brokers were not able to input, search, or view public or broker open house information in the MLS system. Also, the information was not available for display on NWMLS-member broker public websites. Numerous other MLSs across the country have instituted similar measures, to varying degrees.

Real estate brokers and/or their attorneys and industry associations have developed "**coronavirus clauses and addendums**" to address situations in which a transaction party may be temporarily unable to meet required contract terms and deadlines involving matters such as closing dates, loan contingency deadlines, and earnest money/escrow deposits. Also, real estate licensees face transaction challenges and potential delays in other areas such as property inspections, appraisals, and title services and recording.

**Some ibuyer companies** that use automated valuation models and other technologies to make direct, quick cash offers on homes and resell them, such as Zillow, RedfinNow, and OpenDoor, have suspended their programs citing health concerns, suddenly reduced buyer demand, price uncertainties, and other coronavirus-related factors.

*cont.*

## Coronavirus Update: Industry and Regulators (Cont.)

**Wire Fraud Warning:** Real estate brokers and agents may want to be especially vigilant regarding the escrow/closing **wire fraud scam** in which hackers compromise the email accounts of real estate professionals in order to identify upcoming real estate transactions and divert escrow/closing funds. Industry professionals routinely work remotely, but due to coronavirus business closure/stay-at-home restrictions in many areas, some may be conducting business with alternate personal devices, software, and/or free email services that can present data security risks.

**Residential rental, multifamily, and commercial property** owners, landlords, and property managers face potentially complex issues such as upcoming lease expirations for tenants who are sick, quarantined, or otherwise unable to move out, building health and maintenance challenges, tenant eviction moratoriums, anticipated commercial lease forbearance and modification requests, the impact of *force majeure* clauses, the impact of government forced business shut-downs, and many more. Eviction moratoriums in some areas have been expanded to include commercial tenants.

And, of course, **market analysts** are struggling to see the "end of the tunnel" and gauge the long-term effects of the coronavirus on real estate markets and related businesses that may result from reduced sale transactions and new listings, among other outcomes.

**Governments and their real estate and other occupational regulators** have also developed responses. For example:

- Real Estate board/council/commission meetings are being cancelled or converted to digital meeting formats such as Zoom, GoToMeeting, etc.
- Online solutions are also being reviewed by regulators whose education rules do not currently accommodate distance education, or do so only in part. Many are developing guidance on converting scheduled live classroom courses to an online format.
- Similar challenges exist in some jurisdictions with respect to in-person licensing examinations, proctoring rules, and related exam procedure issues.
- Licensing examination providers closed their own physical test centers in the U.S. and elsewhere (effective dates depend on the provider), are monitoring situations involving partner administrators, and will be adhering to country and local closure requirements. Similar measures have been undertaken by regulators who directly administer examinations.
- Regulators have put work-from-home plans in effect for many employees and/or have implemented office social distancing, workspace sanitization, and other measures to protect staff. For those maintaining staffed office hours, public access is either strictly limited or prohibited. Many have cancelled scheduled trust account and education-related audits and are performing only essential agency functions with limited and/or remote staff. In New Jersey, real estate licensees and other stakeholders have been advised that all notices, inquiries, and correspondence to the Department of Banking and Insurance/Real Estate Commission must be submitted electronically by email, rather than by courier, overnight, mail, or fax.
- In another variation, the Alaska Real Estate Commission recently announced that "Due to the ever-changing circumstances surrounding COVID-19 and our expressed concern for the health and safety of our licensees, the Commission is now accepting digital signatures on licenses that are returned for transfers and terminations."
- Regulators are also developing plans to address anticipated extension requests for examinations, fingerprint submissions, license/renewal applications and many other license law requirements that involve completion/compliance deadlines.

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## **It's Fair Housing Month 2020!** ***(Used with Permission by ARELLO)***

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In 1968 U.S. President Lyndon Johnson signed the Civil Rights Act of 1968, Title VIII of which is known as the Fair Housing Act (FHA). The Act, as subsequently amended, prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, national origin, religion, sex, familial status, and disability. April is designated as "Fair Housing Month" in the U.S., which usually brings community-level education, public information campaigns, official proclamations, and other initiatives designed to highlight the ongoing struggle against housing discrimination. Here are a few FHA-related updates:

**Maryland Source of Income Protections:** The Maryland General Assembly recently enacted the **Housing Opportunities Made Equal Act (SB 530)**/HB 231 which prohibits a broad range of discriminatory conduct involving the sale or rental of a dwelling, based on a person's source of income. "Source of income" includes income from a lawful profession, occupation, or job; any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937 [known as "Section 8" vouchers]; and several others. The Act does not prevent private landlords from considering relevant nondiscriminatory factors such as prior tenancy histories and applicants' ability to comply with lease terms. The General Assembly found that, while the federal FHA does not include source of income protections, fifteen other states and many municipal/local governments have enacted such standards.

**NAR's New Fair Housing Action Plan:** In a **January news release**, the National Association of Realtors® (NAR) announced a new action plan that will "directly ramp up and reinvigorate NAR's fair housing commitment." The new "ACT" initiative will emphasize "Accountability, Culture Change and Training" to ensure that NAR's 1.4 million member Realtors® "are doing everything possible to protect housing rights in America." NAR says that ACT will ensure that its members uphold NAR Code of Ethics fair housing standards, begin integrating fair housing into all conferences and engagements, and form partnerships with fair housing advocates to pursue shared goals. According to **NAR's webpage**, other ACT initiatives will include a public service campaign, explore the creation of a voluntary fair housing self-testing program, and work to "ensure that state licensing laws include effective fair housing training requirements and hold real estate agents accountable to their fair housing obligations." The webpage article also notes that the recent **New York Newsday** investigation into extensive housing discrimination in the Long Island area "underscored the need for NAR to further ramp up and reinvigorate its fair housing commitment." In related news, a state Senate committee recently issued subpoenas to several real estate entities and individuals to present testimony on the subject during hearings that were scheduled for April.

**Sexual Harassment:** HUD approved a Conciliation Agreement requiring the owners and the property manager of a California apartment complex to pay \$14,500 to several female residents to settle allegations of sexual harassment. The alleged conduct is not specifically referenced, but HUD said that FHA prohibitions against sexual harassment include creating a severe or pervasive hostile housing environment, or conditioning housing or housing-related services on the tenant's acquiescence to sexual demands. In addition to the payment, the owners will complete fair housing training and the property manager will be permanently prohibited from engaging in or conducting property management responsibilities.

In January, the Department of Justice (DOJ) announced a Consent Order requiring the owner/manager of Kansas rental properties, and a vicariously liable co-owner, to pay \$160,000 in damages and civil penalties to resolve allegations of sexual harassment against tenants.

**cont.**

## It's Fair Housing Month 2020! (Cont.)

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The allegations included "among other things, making unwelcome sexual advances and comments, engaging in unwanted sexual touching, and terminating the tenancies of women who refused to engage in sexual conduct . . ." The order prohibits the owner/manager from engaging in property management, and requires both defendants to sell their residential rental properties and refrain from acquiring new ones.

Families With Children: HUD also recently announced a Conciliation Agreement between a California property owner and its licensed leasing agent, settling claims that the agent allegedly denied a father of two young daughters, who would be living with him part-time, the opportunity to rent a condominium. The father alleged that the leasing agent refused to consider his application for the unit, saying, "I don't want to waste your time or mine. Sorry." Under the terms of the agreement, the owners and brokerage agency will pay \$10,000 to the father and make appropriate revisions to their fair housing policy. In addition, representatives of the owners and their agents will attend fair housing training.

*[The foregoing case summaries are based on HUD/DOJ announcements and charging or other documents in resolved/settled cases. The recited allegations reported by HUD/DOJ have been denied by the defendants/ respondents and have not been proven or adjudicated. In resolved/settled cases, the affected parties make no factual or legal admissions and deny violation of any laws.]*

The "Mrs. Murphy Exception": A federal district court in Louisiana recently considered pretrial motions in a Fair Housing Act case involving a family with four children that rented one of four units in a condominium building. The family alleged that the individual owners of the other three units engaged in FHA-prohibited familial status discrimination by assessing an owner's association fine against their owner/landlord and attempting to force him to evict them because they have children. The defendants asserted, among other things, that they were exempt from liability because the FHA does not apply "to . . . rooms or units in dwellings containing living quarters occupied . . . by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence" [42 U.S.C. §3603(b)(2)]. This is commonly referred to as the "Mrs. Murphy exception" "because it was designed to exempt the hypothetical elderly woman who chooses to convert a portion of her home into a rental unit." The district court rejected the argument, finding that the three defendants each individually own a part of the building. Therefore, the building does not have just one owner, as required by the exception. The decision resolved only some of the pending issues in the case, which is ongoing.

*[Treece v. Perrier Condo. Owners Ass'n, 2019 U.S. Dist. LEXIS 207091.]*

[Please click here](#) to access more information from HUD about Fair Housing Month and the FHA.

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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.

- ◇ Jackson Hegerfeld, Brookings, Broker. Violation of 36-21A-71(24) and 36-21A-132. Administrative fine of \$1,500 plus 6 hours of education in Agency.
- ◇ Shauna Sheets, Rapid City, Broker Associate. Violation of 36-21A-132(3) and 36-21A-147. Administrative fine of \$500 plus 6 hours of education in Agency.
- ◇ Megan Hammond, Brookings, Broker Associate. Violations of 36-21A-71(24) and 36-21A-132(3)(d). Administrative fine of \$500 plus 6 hours of education in Agency.
- ◇ Paula Lewis, Rapid City, Broker. Violation of 36-21A-136(2). Administrative fine of \$250.
- ◇ Allison Byington, Dell Rapids, Broker Associate. Violation of 36-21A-71(8)(30), 36-21A-130, 36-21A-132(2). Administrative fine of \$500.
- ◇ Paul Gourley, Sioux Falls, Property Manager. Violation of 36-21A-28, 36-21A-37, 36-21A-66 and 36-21A-71(1). Administrative fine of \$100.
- ◇ Jody Fiedler, Watertown, Broker. Violation of 36-21A-132(2). Administrative fine of \$200.

Failure to maintain errors and omission 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)

Stunes, Tyler	Broker Assoc.	Sioux Falls
Zacher, Megan	Broker Assoc.	Sioux Falls
Willette, Joel	Broker Assoc.	Watertown
Miller, Brian	Broker Assoc.	Sioux Falls
Vanderweide, Shannon	Broker Assoc.	Sioux Falls
Stockberger, Stefanie	Broker Assoc.	Sioux Falls
Stockberger, Brad	Broker Assoc.	Sioux Falls
Sundby, Bobby	Broker Assoc.	Rapid City
Quail, Chris	Broker Assoc.	Rapid City
Selberg, Marshall	Broker Assoc.	Sioux Falls
Wehrkamp, Stephanie	Prop, Manager	Sioux Falls
Ode, Paul	Broker Assoc.	Sioux Falls
Sweets, Alyssa	Broker Assoc.	Sioux Falls
Hardy, Erin	Broker Assoc.	Sioux Falls
Vogt, Dana	Broker Assoc.	Rapid City
Smith, James	Broker Assoc.	Sioux Falls

## Disciplinary Action (Cont.)

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);

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Richards, Cody	Home Inspector	Yankton
Ambur, Tracy	Broker Assoc.	Sioux Falls
Kaufmann, Nikkita	Broker Assoc.	Spearfish
Crow, Tyler	Prop, Manager	Rapid City
Hatten, Keighton	Broker Assoc.	Spearfish
Evans, Amy	Broker Assoc.	Sioux Falls
Zieske, Griffin	Broker Assoc.	Sioux Falls
Ehlers, Eddie	Broker Assoc.	Sioux Falls
Bornitz, Terry	Broker Assoc.	Sioux Falls
Geiken, Teresa	Broker Assoc.	Sioux Falls
Hurkes, Chanelle	Prop, Manager	Sioux Falls
Burgard, Darlene	Broker Assoc.	Aberdeen
Breen, Mitchel	Broker Assoc.	Wagner
Burns, Mike	Broker	Rapid City
Walgrave, Marcus	Broker Assoc.	Sioux Falls
Travis, Donna	Broker Assoc.	Platte
Johnson, Archie	Broker Assoc.	Rapid City
Youngberg, Kathy	Broker Assoc.	Yankton
Flyger, Thomas	Broker Assoc.	Sioux Falls
Zueger, Kristen	Broker Assoc.	Sioux Falls
Petit, Nikki	Broker	Sioux Falls
Burke, Julie	Prop. Manager	Spearfish
West, Randy	Broker	Watertown
Tysdal, Ryan	Broker Assoc.	Sioux Falls
Hoag, James	Broker Assoc.	Black Hawk
Brooke, Brian	Broker Assoc.	Spearfish
Bartlett, Cheri	Broker Assoc.	Pierre
Elsasser, Jake	Broker Assoc.	Rapid City
Harms, Doug	Broker Assoc.	Sioux Falls
Petit, Chad	Broker Assoc.	Sioux Falls
Erschens, Julie	Broker Assoc.	Sioux Falls
Nutter, Joe	Broker	Rapid City
Karels, Tim	Broker	Sioux Falls
Wilber, Tony	Broker Assoc.	Sioux Falls