



Buying and Selling a Home in South Dakota

A Consumer Guide

Published by
**South Dakota
Real Estate Commission**

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MISSION STATEMENT

The South Dakota Real Estate Commission is a regulatory body charged with administering the real estate licensing act, the timeshare act, the condominium act, and the subdivision act. The mission of the real estate commission is to protect the interest of the public when engaged in a real estate transaction. It is the commission's responsibility to enforce standards for education, licensing, and practice of real estate brokers, salespersons, auctioneers, property managers, residential rental agents, timeshare agents and home inspectors, and for registration of condominium, timeshare, and subdivision projects.

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INTRODUCTION

The buying or selling of residential real estate is an important matter for everyone involved. For many people, the purchase or sale of a home is one of the largest financial transactions in which they will ever be involved.

The South Dakota Real Estate Commission has developed this guide to help you, the home buyer or seller, understand the process of purchasing or selling residential real estate. This booklet contains answers to common questions that may arise during the home buying or selling process. The basic steps in a real estate transaction are discussed with the intent that it will help you become more knowledgeable in the purchase of your new home or the selling of your current home.

A referral guide is located at the back of this brochure to provide you with references to contact for further information on certain topics.

REAL ESTATE TERMS

In choosing a real estate licensee, it may be helpful to understand the different terms and types of representation available in a real estate transaction:

A **client** is any person, including a buyer or seller, who has entered into any agency relationship with a real estate licensee.

A **customer** is any party to a real estate transaction who does not have any agency relationship with a licensee.

Agency is any relationship by which one person acts for or on behalf of a client subject to the client's reasonable direction and control.

A **responsible broker** is the "boss" of the real estate brokerage, whose job it is to bring parties together in a real estate transaction. The responsible broker usually collects a fee (commission) from the seller of the real estate; however, sometimes the buyer pays the commission.

A real estate **broker associate** and **salesperson** perform many of the same duties as a broker. However, they cannot do so under their own authority – they must act as a representative of the responsible broker with whom they are affiliated. The responsible broker is ultimately responsible for the real estate activities conducted by any licensee associated with the broker.

A **single agent** is any real estate licensee who represents only one party (buyer or seller) to a transaction.

A **limited agent** is any licensee who has a written agency relationship with both the seller and the buyer in the same transaction. (Example: A buyer who has signed a buyer agency agreement with a broker becomes interested in purchasing a property owned by a seller who has a listing agreement with the same broker. When this happens, the fiduciary responsibilities of the broker change so that the buyer and seller are treated equally with the broker not being partial to either party.)

An ***appointed agent*** is any licensee chosen by the responsible broker to provide full representation to a client, whether or not another licensee in the same firm represents another client in the same transaction. (Example: A licensee associated with a responsible broker has a property listed and another licensee associated with the same broker represents a buyer who becomes interested in that property. As appointed agents, the licensees can act as single agents for their respective clients.)

A ***transaction broker agreement*** is a written contract in which the broker does not represent either the seller or the buyer in a fiduciary capacity. Therefore, the buyer and seller do not become clients of the broker but rather customers.

A ***transaction broker*** is a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interest of any party to the transaction. This term includes the licensees associated with the broker.

A ***home inspection*** is a visual inspection and written evaluation of several components of a residential building, including the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, and exterior and interior components.

A ***short sale*** is a process by which a home is sold for less than what is owed on the mortgage. The Lienholder releases its lien against the property and accepts a lesser amount than what is owed. The Lienholder must consent to the terms of the sale.

Foreclosure is the legal process by which a lender regains possession of a property because the borrower defaults on payments.

A real estate licensee who is a member of the NATIONAL ASSOCIATION OF REALTORS® is called a ***REALTOR®*** or ***REALTOR® ASSOCIATE***. These terms are not synonymous with broker, broker associate, or salesperson. In some areas of South Dakota, local boards of REALTORS® operate a ***Multiple Listing Service*** (MLS) for its members. The MLS compiles and distributes a list of all properties listed by its members and provides its members with information to better serve the consumer. When a property is sold through MLS, the listing brokerage and the selling brokerage divide the commission according to a negotiated agreement.

FOR THE BUYER

(For seller information, please go to page 22)

This section of the Real Estate Consumer Guide is related to the purchase of real property. It is the intent of this section to provide you, the buyer, with basic knowledge to assist you in the purchase of your new home.

LICENSEE REPRESENTATION

When dealing with a real estate licensee in the purchase of real estate, you are either a client or a customer of that licensee. A licensee has certain duties and obligations to assist you throughout the home buying process.

If you wish to be represented in a real estate purchase, you will become a client of the licensee. The licensee chosen represents your interests. In some transactions, the buyer and seller will receive the real estate services from the same responsible broker or from licensees associated with that broker. In other transactions, there can be a written agreement in which the broker does not represent either party. In other transactions, neither party wishes to be represented. No matter what type of relationship exists between you and the broker, a written agreement must be entered into. The different types of relationships a licensee can offer you are described in detail below.

LICENSEE REPRESENTING THE BUYER

Any licensee representing you has the following duties and obligations to you:

- To perform the terms of any written agreement made with you;
- To exercise reasonable skill and care for you;
- To promote your interest with the utmost good faith, loyalty, and fidelity, including:
 - Seeking a price and terms which are acceptable to you;
 - Presenting all written offers to and from you in a timely manner regardless of whether you are already a party to a contract to purchase property or already a party to a contract or a letter of intent to lease;
 - Disclosing to you any adverse material facts known by the licensee;

- Advising you 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;
- To account in a timely manner for all money and property received
- To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

LICENSEE REPRESENTING THE BUYER AND THE SELLER

When a licensee has a home listed for sale and also represents a buyer who wants to purchase the home, the licensee becomes a limited agent of the buyer and the seller. A licensee may act as a limited agent only with the informed written consent of the buyer and seller and has the following duties and obligations:

- To perform the terms of any written agreement made with the buyer and the seller;
- To exercise reasonable skill and care for the buyer and seller;
- To present all written offers between the buyer and seller in a timely manner regardless of whether the buyer or seller 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;
- To disclose to the buyer and seller adverse material facts known by the licensee;
- To advise the buyer and seller 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;
- To account in a timely manner for all money and property received;
- To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

When a licensee has a home listed for sale and another licensee associated with the same responsible broker represents a buyer who wants to purchase that home, those licensees must act as limited agents for that transaction, unless the responsible broker offers appointed agency.

LICENSEE REPRESENTING THE BUYER AS AN APPOINTED AGENT

A licensee who has been selected by the responsible broker to act as an appointed agent for you owes the same duties and obligations as a licensee representing a buyer described previously. Unlike limited agency, a licensee acting as an appointed agent for you can fully represent you if you become interested in a property listed with another licensee associated with the same responsible broker.

LICENSEE ACTING AS A TRANSACTION BROKER

Any licensee acting as a transaction broker to a buyer has the following duties and obligations:

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

A transaction broker may not advise any party to a transaction to the detriment of another party.

BUYER NOT WANTING A WRITTEN RELATIONSHIP AGREEMENT WITH A LICENSEE

You may choose not to utilize the services of a real estate licensee. In that instance, a buyer agency agreement will not be entered into. If no written relationship exists between you and the licensee, you must be very careful as to not release any confidential information to the licensee. You must assume that anything said to the licensee will be communicated to the seller who is the licensee's client.

Since there are several legal documents involved in the purchase of real estate, you may wish to work with an attorney to draft or interpret these documents.

FORMS

A real estate transaction requires a variety of forms. You, as the buyer, should be aware of the more commonly used forms in order to understand and protect your interests. If you have any doubts or concerns regarding any form, you should seek legal advice.

The first form presented to a potential buyer is the ***Real Estate Relationships Disclosure***. This is a form that describes agency and brokerage relationships available to the buyer.

At the first substantive contact with you, the licensee is required by law to disclose, in writing, the types of agency and brokerage relationships available. Examples of substantive contact are:

- (1) your specific financial qualifications or
- (2) your buying motives or objectives, in which you may divulge any confidential personal or financial information, which if disclosed to the seller, could harm your bargaining position.

The real estate relationships disclosure form is **NEITHER** a contract, **NOR** an addendum to a contract. By signing the form, you acknowledge that the licensee has discussed the types of brokerage services offered by the responsible broker. You will also acknowledge receipt of this consumer guide. If you decide not to be represented in the transaction, you will be asked to sign that acknowledgement as well. The licensee must provide a written copy of the disclosure to you.

If you and the real estate licensee consent to work together, you will need to enter into a written agreement with the licensee. The type of relationship agreed to determines the type of agreement used.

A ***buyer agency agreement*** is a written contract between you and a responsible broker whereby you become a client of the broker and the real estate licensee you selected. This agreement employs the licensee to seek a particular type of real estate, within a certain geographic area, during a given time, for which service you agree on the amount and method of compensation to be paid. Keep in mind that the brokerage fee is negotiable when entering into a buyer agency agreement.

In many instances, the compensation will be deducted from the seller's proceeds of the sale. However, if you become interested in a property that is offered for sale by the owner of the property who does not want the commission to come from the proceeds of the sale, you will be responsible for compensating the responsible broker.

Once you sign the buyer agency agreement, your agent will then present an **agency agreement addendum** to the buyer. This addendum becomes a part of the buyer agency agreement. It further explains agency relationships in a real estate transaction and allows you to instruct your agent to act solely as your agent or a limited agent. If your agent's responsible broker offers appointed agency, you may elect to choose that option. If you agree to limited and/or appointed agency, your agent is allowed to show properties listed with the responsible broker. If you select strictly buyer representation, the broker and the broker's associates cannot show any properties listed with the responsible broker to you.

If you do not want the real estate licensee to act in a fiduciary capacity, you may enter into a **transaction broker agreement**, if the responsible broker offers this option. An example of this would be if you and a seller have already reached an agreement and just want the broker to execute the paperwork. A transaction broker cannot advocate, nor negotiate for either party.

You will need to be aware of other forms used in a real estate transaction. These forms will be described throughout the remainder of this brochure.

PURCHASING A HOME

To meet the many kinds of needs that people have, a number of different types of housing have been developed over the years. You need to know about them. One thing to keep in mind is that eventually all homes are resold to new owners. The more unusual the type of construction, the more difficult it can be to find a buyer with similar architectural tastes.

TYPES OF HOUSING

Single Family Residence — The single-family dwelling has always been a very popular kind of housing. Each type of home has its advantages and disadvantages, and tastes vary in architectural styles.

Duplex — A duplex is basically two single-family dwellings joined together. The middle wall separating the units is common to both. This type of housing offers an owner the opportunity to live in one side and rent the other side. The income from the rental portion helps the owner pay for the entire property.

Twin-home — A twin home consists of two residential units owned by separate parties that adjoin each other and utilize a “zero lot line”. The owner of each unit owns the designated lot the home sits on. Twin-homes are constructed with independent party walls and roof structure systems but may share common footing and foundation structures, provided the same is described in the restrictions or covenants attached to the properties. The right to establish and enforce the restrictions, covenants and maintenance requirements is vested in owners of both lots and homes. There are no common areas, unless so provided for in the covenants attached to the properties. There may be common utility services provided maintenance and replacement are addressed in the restrictions or covenants.

Condominium — Condominium ownership is designed to provide exclusive use and ownership of a portion of a larger property, plus shared use and ownership of common areas. Under the condominium arrangement, the individual owner purchases the exclusive right to occupy the three dimensional space where the unit is located. The owner also receives an undivided interest in the land and common areas, such as hallways, elevators, structure of the building, and as a rule, the recreation facilities. A board of directors or a condominium association elected by unit owners administers the common area.

Townhouse — The townhouse combines features of a house and a condominium. The legal concept is that the owner enjoys a separate ownership of his/her dwelling and the land immediately beneath the dwelling, plus joint ownership of the common areas surrounding the dwelling units. There may be restrictions upon all separately owned lots and dwellings. The right to establish and enforce these restrictions is usually vested in an owner's association. Title to the common areas is vested in the association, and it governs how the residents use the area.

LOCATION

Although needs differ from family to family, there are certain general guidelines which every potential homebuyer should take into consideration. The following represents some of the items to consider:

- Availability and quality of schools in the area
- Distance from work
- Availability of shopping centers, churches and recreational facilities
- General condition of homes in the neighborhood
- Property taxes compared to similar houses in other neighborhoods
- Utility rates (gas, electricity, water, and telephone)
- Police; fire protection and garbage collection
- Availability of public transportation
- Quiet neighborhood or on an arterial street
- Rural or urban

PRICE

Give some thought into the approximate price range of the house, and how the monthly payments will be made once the house is occupied. During the qualifying interview, the real estate licensee can provide assistance to help determine the price range and/or payment that will be comfortable.

FINANCING A HOME

METHODS OF FINANCING

Almost everyone who buys a house borrows money to pay for it. This is done most often through a note and mortgage, but is sometimes done by contract for deed.

A *mortgage* involves making the house itself the security for the loan. The buyer receives the deed from the seller and becomes the legal owner. The buyer gives the lender the right to foreclose and obtain possession of the house if he/she fails to repay the loan. This is called a mortgage. Payments are generally made monthly, which include part of the principal and part of the interest.

A *contract for deed* is a contract where the seller remains the legal owner of the property and the buyer makes monthly payments to the seller to buy the house. The seller remains the legal owner of the property until the contract is paid. Contract for deed sales are usually made when a mortgage loan cannot be obtained, and the buyer and seller are both eager to do business.

MORTGAGE CONSIDERATIONS

You should take the following items into consideration when you begin looking for financing in the purchase of your new home:

Rate of Interest — Interest rates vary depending upon the nature of the loan and the economic conditions. Shop for the best possible rate available when considering a purchase of real property.

Length of Mortgage Period — The longer the mortgage, the lower the monthly payment. However, the total interest paid is more. Most home mortgages are for 15 to 30 years. Some loans are obtained with a “balloon” payment, which permits smaller monthly payments for a time period, and then the unpaid balance is due.

Acceleration Clauses — You should pay careful attention to what will happen if payments are not made timely. In many cases, the failure to meet payment requirements causes the entire debt to become due.

Prepayment Clauses — This permits paying off the mortgage before the end of its term. This right is necessary if refinancing is to be possible, or if the borrower wants to sell before the mortgage is paid. Some lenders charge a penalty for prepayment.

Due-on-Sale Clause — If a mortgage contains this clause, the mortgagor is required to pay off the mortgage debt, at the lender's option, when the property is sold. This eliminates the possibility of the buyer assuming the mortgage without the lender's consent.

Insurance and Taxes — The borrower will be required by the lender to maintain insurance on the property as a protection against loss. The borrower may be required to pre-pay the property taxes to the lender, either in a lump sum or on a monthly basis as a part of the payment to the lender. The insurance premium may also be part of the monthly payment.

Downpayment — In most cases, to obtain a mortgage loan, a downpayment is made. The amount depends upon the lender and type of loan.

Fee — When a borrower asks for a mortgage loan, the lender incurs a number of expenses, including such things as the time the loan officer spends interviewing the borrower, office overhead, the purchase and review of credit reports, title searches, legal and recording fees, and so on. The general practice is for lenders to charge 1% to 2% of the amount of the loan. This is commonly known as the origination fee.

Points — Points are percentage points of the amount of the loan. One point = 1%. Points are charged to raise the lender's yield. For example, a lender may be willing to offer an interest rate that is lower than the general market rate and in return require the borrower to pay points. The points are payable at closing.

Adjustable Rate Mortgages — Adjustable rate mortgages are generally originated at one rate of interest, with the rate fluctuating up or down during the loan term base upon economic conditions. Generally, interest rate adjustments are limited to one each year, and there are a maximum number of increases that may be made over the life of the loan.

TYPES OF LOANS

Real estate loans today are categorized into three general types:

Veterans Administration Loan. The main purpose of the VA loan is to assist veterans in financing the purchase of reasonably priced homes, including condominium units and mobile homes, with small or no down payments. The financing is limited to owner-occupied residential (1 to 4 family) dwellings.

Federal Housing Administration Loan. Purchasers wishing to use an FHA-insured mortgage must meet certain criteria. A charge will be made to the borrower as the premium for the FHA insurance. This protects the lender from loss. The property must be appraised by an FHA appraiser before the loan is made.

Conventional Loan. This type of loan is not insured by the government or guaranteed. The risk is therefore higher for the lender, which is reflected by higher interest rates and a larger down payment requirement. Lenders establish specific terms of the loan, and can vary according to market conditions, consumer needs, and state regulations.

The ***South Dakota Housing Development Authority*** is an agency created for the purpose of administering housing programs enabling low and moderate income families in South Dakota to obtain decent and safe housing. Some of these programs offer special incentives for first-time homebuyers, so if you fall under this category, you might want to contact this agency. For further information, please contact the South Dakota Housing Development Authority at 605-773-3181 or www.sdhda.org.

STOP BEFORE BUYING

Once you have found the house that seems to be “just perfect”, the tendency is to want to close the transaction right away and move in. ***STOP!*** Before getting swept away with the excitement of the moment, there are a number of things to check. The time to ask questions and check facts is *before* buying.

If the house falls under the disclosure requirements of property condition and/or lead-based paint disclosure, you will be presented with either one or both of these disclosure forms. The property condition disclosure will have been completed and signed by the seller and is to be furnished to you ***before making a written offer***. Some buyers are reluctant to sign the property condition disclosure because they think they might be committing themselves to a contract. By signing the property condition disclosure, you are simply acknowledging receipt of the form. However, the seller is verifying that the information contained in the form is true to the best of the seller's knowledge.

The seller's property condition form can be utilized during the inspection of the property as a “checklist” of items to review. ***The money spent for an inspection may be a very wise investment.*** There is no practical substitute for a professional inspection as a measure to discover and investigate defects or shortcomings about a home.

The seller of a newly constructed home that has never been lived in does not have to provide a property condition disclosure statement to you. However, you may still want to have a professional home inspection performed on the property.

You will also need to complete the "Purchaser's Acknowledgment" of the lead-based paint disclosure if the house was built prior to 1978. Providing this form to a buyer is a federal requirement and you need to sign the form certifying accuracy.

If obtaining a loan, most lenders will require a survey. Whether or not a loan is obtained, it may be wise to have a survey done prior to closing.

Other conditions you should inquire about, either before making an offer on the property or addressing them as a contingency on your offer to purchase are:

Zoning Restrictions – Ask how the area is zoned. Zoning is established by local government and designates the type of buildings and how they may be used, such as: residential, commercial, and industrial.

Restrictive Covenants – These are private agreements that restrict the use and occupancy of real property. Such things as the purpose of the structure to be built, architectural requirements, setbacks, size of structure and aesthetics are only some examples. You or your agent can contact the Register of Deeds in the county where the property is located to obtain further information.

Taxes – Find out the cost of property tax and if there are any special assessments regarding roads, streets, sewers, electrical, etc. Also check if there are any property tax reduction programs affecting the current year's taxes.

Easements – An easement is a right or privilege one party has to the use of another's land for a special purpose consistent with the general use of the land. Easements are commonly given to telephone and electric companies to erect poles and run lines, as well as gas and water companies. Other easements can be given to people to drive or walk across someone else's land. You or your agent can find what easements exist on the property by contacting the Register of Deeds in the county where the property is located.

Homeowner's association — ***The*** home you may become interested in could be a part of a homeowners' association that is responsible for collecting fees from its members to maintain common elements, such as swimming pools located within a condominium project or private roads within a subdivision. A homeowners' association will also establish policies and rules to ensure a safe environment for its members. Your agent should be able to provide this information to you.

Homeowner's insurance — This insurance is a single package policy designed to give the property owner protection against a wide variety of risks and will be required by your lender if you are financing the property. In some cases, a property may not be insurable, so you might want to make this a contingency on your offer to purchase.

Flood Plain Status — If the property is located in a flood zone, an additional annual insurance premium may be required. If the property is in an area deemed high risk, you may be required by your lender to obtain flood hazard insurance through the National Flood Insurance Program.

Health and Personal Issues — If you or a member of your family have allergy or indoor air quality concerns, i.e., mold, radon, carbon monoxide, you should address these issues prior to purchase. The manufacturing of methamphetamines can cause severe health risks to occupants of a home. If the home you become interested in was used for the manufacturing of this toxic drug, you must make necessary precautions for the safety of your well-being because of the lingering existence of this toxic drug within the property.

Some buyers do not want to occupy a house because of certain events or some fact relevant to the property, i.e. a violent crime, suicide, presence of ghosts. If you have concerns such as these, you should ask about these ***before*** you make an offer on the property.

By law, sex offenders have to register their residences with local law enforcement. The presence of a sex offender in the vicinity of the property is not a fact that is required to be disclosed by your agent. Contact local law enforcement to access this information.

Agencies that can assist you with some of these issues are listed in the "Links" section of the Commission's website at www.state.sd.us/sdrec. They are also listed in the back of this brochure.

MAKING THE OFFER

Once you are comfortable with your decision to purchase, you will need to make an offer to purchase with the seller. Your offer must be in writing and signed by you to be valid. Real estate licensees use standard purchase agreements as required by law. A ***purchase agreement*** is a contract between a buyer and seller for the purchase and sale of real property in which the buyer agrees to purchase for a certain price and the seller agrees to convey title. The terms of the offer will be the terms of the sale, when accepted.

Some items included in the purchase agreement are:

- Names of the buyer(s) and seller(s).
- The sales price.
- Method of payment, including earnest money, deposits, and amount paid at closing.
- Personal property (appliances, curtains, etc.) staying with the property is generally sold by bill of sale.
- The description (address and the legal description) of the property.
- Time period to arrange financing.
- Title insurance (Title insurance protects the buyer against title defects. It covers the whole term of possession of the property, not just until the owner takes possession. The lending agency often requires title insurance to be taken out to insure its interest in the property.)
- Closing date and possession date.
- Type of financing.
- Date and time of the signatures of the buyer(s) and seller(s).
- Contingencies.

Your agent can assist you with writing the offer, including contingencies, so that all your concerns can be addressed.

A **contingency** is a provision placed in the purchase agreement that requires the completion of a certain act or the happening of a particular event before that contract is binding. A contingency must be written clearly and precisely. **Be sure the offer is explained to you item by item before signing the contract.** Most real estate licensees are not attorneys, and cannot provide legal advice. If you have any questions or doubts about the clauses in the purchase agreement, you should seek legal counsel.

It is normal procedure for the buyer to pay a cash deposit (**earnest money**) to bind the buyer and show the seller that this is a sincere offer by the buyer. The earnest money is usually held by the listing broker in a real estate trust account, and is deposited by the next legal banking day after the offer is accepted. If the sale closes, the earnest money is applied to the total price of the property.

Your agent may wish to present your offer to the seller and the seller's agent, if the seller is represented. When your agent presents your offer, you will be assured that the seller has actually received the offer. In addition, your agent can further explain your offer and answer any questions about it.

If the offer is not accepted, or if the seller refuses to complete the transaction, or if the sale is not completed through no fault of yours, the earnest money will be refunded to you. If you do not follow through with the transaction after your offer is accepted by the seller, your earnest money may be forfeited, in addition to other possible legal remedies. ***By law, if a transaction is not consummated, a broker may not disburse any funds held in the trust account, except pursuant to a written instruction of all parties to the transaction or pursuant to a court order.***

Earnest money disputes are one of the most common types of complaints brought to the attention of the Commission. Unless it can be shown that the broker has acted in a reckless manner by holding or disbursing the earnest money, the Real Estate Commission will not get involved in this type of problem. It is up to the buyer and seller to reach an agreement or get the matter resolved in civil court. If the dispute involves \$12,000 or less, it may be handled in Small Claims Court. The broker may resort to paying the earnest money to the court until a legal decision is made as to who is entitled to the earnest money.

Once the purchase agreement has been prepared, the real estate licensee will take your offer to the seller or the seller's agent as soon as possible. If the seller accepts your offer, the contract becomes binding upon both parties. **If the real estate licensee tells you your offer has been accepted by the seller, make sure the seller has signed the purchase agreement. If the real estate licensee tells you the seller has verbally accepted your offer, you do not have a legal and binding contract.** Therefore, the seller could accept another offer if one would be presented.

Sellers don't always agree to some of the terms the buyer is proposing. When this happens, the seller can reject the offer or make a counteroffer. A ***counteroffer*** is a new offer made in response to an offer received by the buyer. This will change or alter the offer to purchase. The counteroffer is then presented to the buyer. If the counteroffer is not acceptable to the buyer, the buyer can make another offer to the seller. Sometimes negotiations can go back and forth several times before an agreement is reached. However, if negotiations continue for a considerable amount of time, the buyer may find a new property or the seller may accept another offer.

If you accept and sign a counteroffer, the offer is considered valid. An offer is not accepted unless it has been signed by both parties. **Remember, verbal acceptance will not bind any of the parties to the contract.**

Keep in mind that ALL offers/counteroffers must be in writing and signed by both parties to be enforceable. The real estate licensee must give a copy of every offer and counteroffer to anyone signing the agreement.

Seek legal advice if you have any questions about the documents you are asked to sign.

HOME INSPECTIONS

A home inspection is a visual inspection and written evaluation of several components of a residential building, including the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, and exterior and interior components. The purpose of the inspection is to evaluate the condition of the property and its components, and to inform the client, usually the buyer, of all observable defects. ***Although not required by law, buyers are strongly encouraged to order a home inspection!***

Home inspectors do not perform invasive procedures, but may probe structural components if deterioration is suspected or observed, provided such probing will not damage the component. Such probing will be made in accessible areas, and will not be required on finished surfaces. Evaluation of structural components are not structural engineering evaluations, but rather, inspections looking for evidence of a need for possible further evaluation by an engineer or other specialist. Depending on size and type of structure, a home inspection will vary in cost.

The home inspection does NOT address:

- the life expectancy of any component or system;
- the causes of the need for a major repair;
- the methods, materials, and costs of a major repair;
- the suitability of the property for any specialized use;
- compliance or non-compliance with applicable regulatory requirements;
- the market value of the property or its marketability;

- the advisability or inadvisability of purchase of the property;
- any component or system which was not observed;
- the presence or absence of pests such as wood damaging organisms, rodents, or insects; or
- cosmetic items, underground items, or items not permanently installed.

Home inspectors, like real estate agents, are licensed and regulated by the South Dakota Real Estate Commission. The purpose of the regulation is to establish standards for qualification of inspectors as well as for inspections and reporting.

Most real estate offices keep a list of home inspectors available for consumers. In addition, a list of licensed home inspectors can be found on the SDREC website.

An offer to purchase a home is often contingent upon the results of the home inspection. The written purchase agreement must define the timeframe in which the home inspection process should be completed. If the inspection reveals conditions unsatisfactory to the purchaser or unknown to the seller, further negotiation may be needed to determine the appropriate remedies. A buyer and seller may agree in writing that the seller will correct an existing condition, a buyer will accept an existing condition, OR both parties may agree upon a settlement. If a written agreement concerning the results of the inspection report cannot be reached within the specified time, the offer to purchase may be deemed null and void by the buyer.

CLOSING

Once a buyer and seller have signed the purchase agreement, they are responsible for meeting the conditions of the agreement by the closing deadline. If all goes smoothly, the closing will take place on time.

Closing can take place at the broker's office, the title company, or the lending agency. The procedures usually are not controlled by statute, although certain aspects of the closing may be regulated by laws such as the federal Real Estate Settlement Procedures Act (RESPA). Under the provisions of RESPA, the lender is required to give the borrower a copy of a government booklet on closing costs entitled "Settlement Costs and You." The lender must also provide a good-faith estimate of closing costs likely to be incurred in financing

the property. If the booklet and estimate are not provided at the time of loan application, they must be mailed within three business days.

Most likely, it will be necessary for you to pay the down payment and closing costs. Buyer closing costs are the expenses of the sale that must be paid in addition to the purchase price. You will be expected to pay for the cost of preparing your financial papers, most recording fees, any appraisal fee, the cost of any survey, and any attorney fees which you have incurred. You will also be responsible for your agent's commission plus sales tax on the commission unless those amounts are to be paid from the proceeds of the sale. Another cost, which is usually divided equally between the buyer and seller, is title insurance. It is used to furnish evidence of marketable title. The lender will notify you in advance what is required, to allow time to obtain a check or money order.

A closing statement detailing receipts and disbursements in the transaction will be furnished to you by the selling agent and to the seller by the listing agent. You should review the closing statement for accuracy and completeness. Any questions about the statement should be asked of the real estate licensee, the title company representative, or the lending agency representative. Ask these questions **BEFORE** you sign.

To establish your title to the property, the deed must be recorded in the county where the property is located. Make sure arrangements are made to have the deed filed as soon as possible after the closing.

Internal Revenue Service rules require settlement agents to report details of the closing to the IRS using Form 1099-B. Sales or exchanges of residences with four or fewer units must be reported.

FOR THE SELLER

This section of the Real Estate Consumer Guide is related to the sale of real property. It is the intent of this section to provide you, the seller, with basic knowledge to assist you in the sale of your home.

SELLING YOUR HOME

Now that you have made the decision to sell your home, you will need to decide if you will secure the services of a real estate licensee. If you elect to handle the sale yourself you will need to proceed with caution. Should your decision be to sell through a real estate licensee, you will be able to leave most of the work to your agent.

LICENSEE REPRESENTATION

When dealing with a real estate licensee in the sale of your home, you are either a client or a customer of that licensee. A licensee has certain duties and obligations to assist you throughout the home selling process.

If you wish to be represented in the sale of your home, you will become a client of the licensee. The licensee chosen represents your interests. In some transactions, the buyer and seller will receive the real estate services from the same responsible broker or from licensees associated with that broker. In other transactions, there can be a written agreement in which the broker does not represent either party. In other transactions, neither party wishes to be represented. No matter what type of relationship exists between you and the broker, a written agreement must be entered into. The different types of relationships a licensee can offer you, the seller, are described in detail below.

LICENSEE REPRESENTING THE SELLER

Any licensee representing you, as the seller, has the following duties and obligations to you:

- To perform the terms of any written agreement made with you;
- To exercise reasonable skill and care for you;
- To promote your interest with the utmost good faith, loyalty, and fidelity, including:
 - Seeking a price and terms which are acceptable to you;

- Presenting all written offers to and from you in a timely manner regardless of whether you are already a party to a contract to purchase
- Disclosing to you any adverse material facts known by the licensee;
- Advising you 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;
- To account in a timely manner for all money and property received on your behalf;
- To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

LICENSEE REPRESENTING THE BUYER AND THE SELLER

When a licensee has a home listed for sale and also represents a buyer who wants to purchase the home, the licensee becomes a limited agent of the buyer and the seller. A licensee may act as a limited agent only with the informed written consent of the buyer and seller and has the following duties and obligations:

- To perform the terms of any written agreement made with the buyer and seller;
- To exercise reasonable skill and care for the buyer and seller;
- To present all written offers between the buyer and seller in a timely manner regardless of whether the buyer or seller 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;
- To disclose to the buyer and seller adverse material facts known by the licensee;
- To advise the buyer and seller 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;
- To account in a timely manner for all money and property received;
- To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

When a licensee has a home listed for sale and another licensee associated with the same responsible broker represents a buyer who wants to purchase that home, those licensees must act as limited agents for that transaction, unless the responsible broker offers appointed agency.

LICENSEE REPRESENTING THE SELLER AS AN APPOINTED AGENT

A licensee who has been selected by the responsible broker to act as an appointed agent for you owes the same duties and obligations as a licensee representing a seller described previously. Unlike limited agency, a licensee acting as an appointed agent for you can fully represent you if a buyer, who is represented by another licensee associated with the same responsible broker as your agent, becomes interested in your property.

LICENSEE ACTING AS A TRANSACTION BROKER

Any licensee acting as a transaction broker to a seller has the following duties and obligations:

- To perform the terms of any written agreement made with you;
- To exercise reasonable skill and care for you;
- To present all offers in a timely manner;
- To account in a timely manner for all money and property received on your behalf;
- To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances including fair housing and civil rights statutes or regulations;
- To disclose to you any adverse material facts known by the licensee.

A transaction broker may not advise any party to a transaction to the detriment of another party.

SELLER WHO DOES NOT WANT A WRITTEN RELATIONSHIP AGREEMENT WITH A LICENSEE

You may choose not to utilize the services of a real estate licensee. In that instance, a listing agreement will not be entered into. If no written relationship exists between you and the licensee, you must be very careful as to not release any confidential information to the licensee.

You must assume that anything said to the licensee will be communicated to the buyer who is the licensee's client.

Since there are several legal documents involved in the sale of real estate, you may wish to work with an attorney to draft or interpret these documents.

FORMS

A real estate transaction requires a variety of forms. You, as the seller, should be aware of the more commonly used forms in order to understand and protect your interests. If you have any doubts or concerns regarding any form, you should seek legal advice.

The first form presented to a potential seller is the *Real Estate Relationships Disclosure*. This is a form that describes agency and brokerage relationships available to the seller.

At the first substantive contact with you, the licensee is required by law to disclose, in writing, the types of agency and brokerage relationships available. An example of substantive contact would be your reasons for selling your home in which you may divulge any confidential personal or financial information, which if disclosed to a buyer, could harm your bargaining position.

The real estate relationships disclosure form is **NEITHER** a contract, **NOR** an addendum to a contract. By signing the form, you acknowledge that the licensee has discussed the types of brokerage services offered by the responsible broker. You will also acknowledge receipt of this consumer guide. If you decide not to be represented in the transaction, you will be asked to sign that acknowledgement as well. The licensee must provide a written copy of the disclosure to you.

If you and the real estate licensee consent to work together, you will need to enter into a written agreement with the licensee. The type of relationship agreed to determines the type of agreement used. The written agreement made between you and the real estate licensee is a legally binding contract, so please seek legal advice if you do not understand it thoroughly.

A **listing agreement** is a written contract between you and a responsible broker whereby you become a client of the broker and the real estate licensee you selected. This agreement employs the licensee to sell real estate on your terms within a given time, for which service you agree on the amount and method of compensation to be paid. In many instances, the compensation will be deducted from your proceeds of the sale. Keep in mind that the brokerage fee is negotiable when you are entering into a listing agreement.

Once you sign the listing agreement, your agent will then present an **agency agreement addendum** to you. This addendum becomes a part of the listing agreement. It further explains agency relationships in a real estate transaction and allows you to instruct your agent to act solely as your agent or a limited agent. If the responsible broker offers appointed agency, you may elect to choose that option. If you agree to limited and/or appointed agency, your agent is allowed to show your property to buyers who have buyer agency agreements with the responsible broker. If you select strictly seller representation, the broker and the broker's associates cannot show any properties to buyers who they have agreed to represent. Be aware that this option could limit the marketing of your property.

If you do not want the real estate licensee to act in a fiduciary capacity, you may enter into a **transaction broker agreement**, if the responsible broker offers this option. An example of this would be if you and a buyer have already reached an agreement and just want the broker to execute the paperwork. A transaction broker cannot advocate, nor negotiate for either party.

You will need to be aware of other forms used in a real estate transaction. These forms will be described throughout the remainder of this brochure.

DETERMINING THE LISTING PRICE

You may already have a price in mind, but unless you have studied the market, you might erroneously price your property above or below market value. One of the most vital services your agent can render is that of offering his or her expertise to aid you in determining a marketable price for your property.

Whenever a listing is taken on a parcel of real property, it is appropriate for your agent to prepare an *estimated closing statement*. Based upon the listed price and financing arrangements assumed in the listing agreement, this statement will show you what your estimated net proceeds could be when the sale of your home becomes final.

MARKETING YOUR PROPERTY

Once you have selected and employed a real estate broker, the problem of marketing your property becomes largely that of your agent. Your agent's skill and knowledge in this area will substantiate why you chose a real estate professional to handle your sale.

Most likely your agent will utilize the local newspaper media, as well as real estate publications as marketing tools. Your agent may also encourage you to allow an *open house* to be held which will show your home to the public during established hours.

If your broker belongs to the Multiple Listing Service, you may wish to select that option on the listing agreement. By selecting this option, you are enabling your broker to allow licensees representing buyers the right to show your property to their clients. By utilizing this service, your property is exposed to more potential buyers. If you sell your property to one of these buyers, your broker will divide the commission with the broker of the buyer's agent as required by the Multiple Listing Service. Not all communities in South Dakota have this service, so check with your agent on its availability.

SELLER DISCLOSURE FORMS

If your home falls under the disclosure requirements of property condition and/or lead-based paint disclosure, you will be presented with either one or both of these disclosure forms.

You will need to complete and sign the *sellers property condition disclosure statement* which will be furnished to the buyer *before the buyer makes a written offer*. Some sellers are reluctant to sign the property condition disclosure because they think they might be committing themselves to a contract. By signing the property condition disclosure, you are simply verifying that the information contained in the form is true to the best of your knowledge.

The *lead-based paint disclosure form* is regulated by the U.S. Department of Housing and Urban Development (HUD). You must complete this form if your home was constructed before 1978.

It is very important that you answer all disclosure forms truthfully. If not, and the buyer finds a defect not disclosed by you or you have failed to complete the lead-based paint form, the buyer and/or HUD may have solid grounds to pursue legal action. Your agent can discuss the legal ramifications of not complying with disclosure requirement with you in further detail.

OFFER TO PURCHASE

Once an interested buyer is found, a written offer to purchase your property will be prepared. Your agent will explain to you the process of receiving and reviewing offers. Do not be surprised if you are presented with offers which differ dramatically from your listed asking price. Your agent is required by law to present all written offers to you for your consideration.

It is not uncommon for a buyer's agent to present the buyer's offer to you and your agent. When a buyer's agent presents the offer to you and your agent, be careful not to say anything that could harm your negotiating position. After presentation, the buyer's agent will leave and you will have an opportunity to discuss the offer with your agent.

Some items included in the offer to purchase:

- Names of the buyer(s) and seller(s)
- The price offered

- Method of payment, including earnest money deposit, amount of the cash down payment and details as to how the remainder of the purchase price will be financed (It is normal procedure for the buyer to pay a cash deposit (*earnest money*) to bind the buyer and show the seller that this is a sincere offer by the buyer. The earnest money is usually held by the listing broker in a real estate trust account, and is deposited by the next legal banking day after the offer is accepted. If the sale closes, the earnest money is applied to the total price of the property.
- Personal property (appliances, curtains, etc.) staying with the property is generally sold by bill of sale
- The description (address and the legal description) of the property
- Time period to arrange financing
- Title insurance (Title insurance protects the buyer against title defects. It covers the whole term of possession of the property, not just until the owner takes possession. The lending agency often requires title insurance to be taken out to insure its interest in the property.)
- Closing and possession dates
- Type of financing
- Date and time of the signatures of the buyer(s) and seller(s)
- A list of the contingencies, which are conditions that must be fulfilled before the sale can take place

When you receive one or more offers to purchase your home, it is in your own best interest to give considerable time and attention to reviewing each offer carefully. Your agent will assist you in understanding the terms and conditions contained in the offer and if working on your behalf as a seller's or appointed agent, will provide you with any advice you request. You are under no obligation to accept any one offer over another.

Before you decide, you may wish to have your agent prepare a revised estimate of the net cash proceeds you would receive at closing, based on the sale price and financing arrangements stated in the offer.

Once an offer has been presented to you, you have three options: accept an offer exactly as it stands, make a counteroffer or reject the offer.

Accepting an offer as it stands — If you decide that you would like to accept an offer, be sure you know the precise meaning of each term in the written offer before you sign the document. Once you sign the offer agreeing to its terms, and your acceptance has been conveyed to the buyer, it becomes a legally binding contract.

Legally binding means both you and the buyer will be bound by the terms of the contract and must perform your respective obligations as stated. Your performance can be enforced in a court of law.

If you are uncertain about any of the clauses contained in the offer, you may wish to seek legal counsel before signing the contract. However, keep the expiration date of the offer in mind if you decide to postpone acceptance.

Making a counteroffer — Sellers don't always agree to some of the terms the buyer is proposing. If you wish to change anything at all in the offer, you will need to make a counteroffer. A ***counteroffer*** is a new offer made in response to an offer received by the buyer. This will change or alter the offer to purchase. When the buyer receives your counteroffer, he or she may decide to make another counteroffer back to you. The process of counteroffers may continue until an agreement is reached or it becomes obvious that you and the buyer are unable to come to a meeting of the minds. If negotiations continue for a considerable amount of time, the buyer may find a new property or you may decide to accept another offer.

When you make a counteroffer, you are considered to have rejected the offer made by the buyer. If you accept and sign a counteroffer, the offer is considered valid. An offer is not accepted unless it has been signed by and communicated to both parties. **Remember, verbal acceptance will not bind any of the parties to the contract.**

A risk in making a counteroffer is if a buyer should change his or her mind and reject the counteroffer, you do not have the option to return to the original offer and accept it.

Keep in mind that ALL offers AND counteroffers must be in writing and signed by both parties to be enforceable. The real estate licensee must give a copy of every offer and counteroffer to anyone signing the agreement.

Be sure every offer presented is explained to you item by item before signing so that you understand it fully. Seek legal advice if you have any questions about the documents you are asked to sign.

Rejecting the offer — You are under no obligation to accept any offer or to make a counteroffer. However, if you reject an offer which exactly meets all the terms you agreed to in the listing agreement you signed with your agent, you may be legally obligated to pay your broker's commission plus sales tax. In a situation such as this, the agent's duty to find you a willing and able buyer, as stated in the listing agreement, is performed. Therefore, you have the duty to perform, as expressed in the listing agreement, by paying the commission.

Ultimately the decision to accept, counter or reject an offer is yours.

If the offer is not accepted, or if you refuse to complete the transaction, or if the sale is not completed through no fault of the buyer, the earnest money will be refunded to the buyer. If the buyer does not follow through with the transaction after the offer is accepted by you, the earnest money may be forfeited, in addition to other possible legal remedies. *By law, if a transaction is not consummated, a broker may not disburse any funds held in the trust account, except pursuant to a written instruction of all parties to the transaction or pursuant to a court order.*

Earnest money disputes are one of the most common types of complaints brought to the attention of the Commission. Unless it can be shown that the broker has acted in a reckless manner by holding or disbursing the earnest money, the Real Estate Commission will not get involved in this type of problem. It is up to the buyer and seller to reach an agreement or get the matter resolved in civil court. If the dispute involves \$12,000 or less, it may be handled in Small Claims Court. The broker may resort to paying the earnest money to the court until a legal decision is made as to who is entitled to the earnest money.

The offer presented to you may contain one or more contingency clauses. A **contingency** is a provision placed in the purchase agreement that requires the completion of a certain act or the happening of a particular event before that contract is binding. A contingency must be written clearly and precisely. If you have any questions or doubts about the contingency clauses in the purchase agreement, you should seek legal counsel.

One of the most common contingencies you might encounter on the purchase agreement is one in which the buyer makes the sale conditional upon finding the exact amount and type of financing which will enable the buyer to purchase your home. Another typical contingency is one based on the sale of the buyer's home.

An offer to purchase a home is often contingent upon the results of the **home inspection**. The written purchase agreement must define the timeframe in which the home inspection process should be completed. If the inspection reveals conditions unsatisfactory to the purchaser or unknown to the seller, further negotiation may be needed to determine the appropriate remedies. A buyer and seller may agree in writing that the seller will correct an existing condition, a buyer will accept an existing condition, OR both parties may agree upon a settlement. If a written agreement concerning the results of the inspection report cannot be reached within the specified time, the offer to purchase may be deemed null and void by the buyer.

Make sure that an agreed upon time for contingency to be met is specified in the offer to purchase. If one of the conditions contained in the contingency clause cannot be met after every reasonable effort has been made to do so, the contract ends and there is no legal obligation to complete the sale.

As a seller, you may wish to accept an offer containing a contingency clause yet still leave yourself free to consider other offers, in the event the buyer is unable to remove the contingency. You can do this by having the buyer agree to insert a time clause in the contract. A time clause will permit you to require the buyer to remove all contingencies within a short specified time period. If the buyer does not remove the contingencies within that time, the contract comes to an end and you are free to accept the second offer.

An offer to purchase will reveal how the buyer intends to finance the purchase of your property. If you currently have a mortgage loan on your home, you may be faced with one of two situations:

The buyer wants to pay cash and has no mortgage — This situation will require you to pay off your existing mortgage and there will probably be an interest penalty for doing this. Having to pay an interest penalty will reduce the price you will receive for your home.

The buyer offers to assume, or take over, your remaining mortgage loan — In this situation, before agreeing to allow the buyer to assume your mortgage loan, you should ensure that your mortgage lender will release you from any future obligation to repay the monies owing if the buyer defaults on the loan.

If you have no existing mortgage, an offer by the buyer to pay all cash is ideal and, of course, would be your preference. However, the buyer's offer might state that part of the purchase price is to be paid in cash and part is to be paid in payments over a specified period of time at a specified interest rate. In effect, the buyer would be asking you to become the lender.

When you are considering an offer containing a request to finance, think about whether or not you want the responsibility of collecting payment over an extended period of time. If you do feel comfortable with such an arrangement, be sure that you verify the buyer's source of income and credit history before making a decision. Ask your agent or a financial counselor to fully explain the financial significance and the possible consequences of the terms offered.

SELLER BEWARE!

It is strongly recommended that you secure competent advice from a real estate agent or legal counsel before finalizing any real estate contract. This recommendation is much more urgent when a seller is exposed to unusual financing arrangements and techniques proposed by the buyer that could jeopardize you financially.

Be wary of offers which require any of the following:

- no cash paid as a down payment

- offer made without earnest money deposit
- promissory note as earnest money
- an amount of cash being returned to the buyer
- sharing of your equity
- a promissory note without a registered mortgage
- agreeing to withhold the registration of the mortgage
- your securing a new loan before closing terms said to be included, but which are not written in the offer
- concealing information from a lending institution
- certain lease purchase plans
- early possession by the buyer
- buyer's closing costs to be paid by you

CLOSING THE DEAL

Once a buyer and seller have signed the purchase agreement, they are responsible for meeting the conditions of the agreement by the closing deadline. If all goes smoothly, the closing will take place on time.

Closing can take place at the broker's office, the title company, or the lending agency. The procedures usually are not controlled by statute, although certain aspects of the closing may be regulated by laws such as the federal Real Estate Settlement Procedures Act (RESPA). Under the provisions of RESPA, you will receive a copy of your settlement statement detailing your receipts and disbursements involved in the sale.

You are probably wondering what costs you can expect in the sale of your home. In many cases, if an item is not covered in the terms of the contract, the law will prevail. The offer to purchase can spell out responsibility regarding payment of expenses at settlement. Unless the terms of the contract specify otherwise, you are expected to pay the cost of the transfer taxes, the real estate commission, sales tax on the commission, any attorney fees incurred by you, and a prorated share of the real estate taxes, insurance and utility bills up to the day of the settlement. Another cost, which is usually divided equally between the buyer and seller, is title insurance. It is used to furnish evidence of marketable title.

Internal Revenue Service rules require settlement agents to report details of the closing to the IRS using Form 1099-B. Sales or exchanges of residences with four or fewer units must be reported.

Any questions about the settlement statement should be asked of the real estate licensee, the title company representative, or the lending agency representative. Ask these questions ***BEFORE*** you sign.

COMPLAINTS AND PROBLEMS

The South Dakota Real Estate Commission is charged with the responsibility of investigating complaints, which are brought to its attention involving real estate licensees, whereby misconduct is alleged. ***The Commission's jurisdictional authority covers disciplinary action over the license of the licensees involved in the complaint.*** The Commission may not force a licensee or a buyer to specifically perform under the terms of a contract, nor may it award damages. These problems would have to be settled by a court of law in a civil action brought by you. If the dispute involves \$12,000 or less, the matter may be settled in Small Claims Court.

COMPLAINT PROCEDURE

The South Dakota Real Estate Commission furnishes the complaint forms to the person registering the complaint. All complaints must be in writing in order for the Commission to investigate. The complaint must have a clear and concise statement of the facts, with supporting documentation. It is very important to include copies of all the documents in your transaction file. What may seem unimportant to the complainant may actually be a relevant piece of information for the Commission.

When a complaint is filed against a licensee, a copy of the complaint is forwarded to the licensee. The licensee must file an answer on forms furnished by the Commission within 20 days from receipt of the complaint. This answer must be in written affidavit form, be properly certified, and contain the licensee's factual response.

The licensee's response is filed with the Commission. A copy of the licensee's answer is forwarded to the person registering the complaint, and the Commission's staff investigates the matter. Priority of investigation is normally based on the date of receipt of the complaint.

The complaint, answer, and investigative report are submitted to the Real Estate Commission for its review. There are three options the Commission may take:

Dismissal — if the Commission determines the complaint is without merit, is frivolous, or charges conduct not constituting grounds for disciplinary action, it will dismiss the complaint and notify the parties in writing.

Informal consultation — if the Commission considers the complaint to be of a serious nature constituting grounds for disciplinary action, it may, at its discretion, consult with the party or parties affected in an effort to resolve the matter in an informal consultation.

Formal hearing — the Commission may, in lieu of, or after an informal consultation, decide to conduct a formal hearing. The parties involved are mailed a notice of hearing. The hearing is similar to a court proceeding; however, rather than a judge, an administrative hearing examiner presides. Parties have right to legal counsel; witnesses may be subpoenaed; testimony is sworn; documents are offered in evidence; and witnesses may be cross-examined. A court reporter is also present in order to provide a transcript of the hearing.

Once the hearing examiner has reviewed all testimony and evidence, the hearing examiner will make a recommendation to the Real Estate Commission. After considering and discussing the hearing examiner's recommendation, the Commission will render a decision at its next meeting. If the licensee is found guilty of misconduct, paperwork is prepared setting forth the violations found and disciplinary action to be taken. Disciplinary action may take the form of a letter of reprimand, suspension or revocation of license, monetary penalty, or a combination thereof.

REAL ESTATE RECOVERY FUND

The Real Estate Recovery Fund was established by the South Dakota Legislature to provide compensation to a consumer who has been intentionally harmed by the improper and dishonest conduct of a real estate licensee.

To be eligible to receive a payment from the Recovery Fund, a consumer must have already obtained a civil judgment against the real estate licensee and have tried and failed to collect on the judgment.

A consumer must 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 \$15,000.

It is important to understand that a claim made against the recovery fund is paid by the SD Real Estate Commission ONLY as a result of a court order. Consumers are strongly advised to seek legal counsel for assistance with this process.

DISCRIMINATION

The South Dakota Human Relations Act, Federal Fair Housing Act, and Fair Housing Act Amendments prohibit discrimination in housing.

State and federal law prohibits discrimination based upon race, sex, religion, color, creed, ancestry, disability, familial status or national origin. The unfair or discriminatory housing practices are defined in the South Dakota Codified Laws (SDCL) Chapter 20-13-20 through 20-13-21.2.

PROHIBITED ACTS:

- (1) Refusing to sell, rent, or negotiate with any person, or otherwise making a dwelling unavailable to any person.
- (2) Changing terms, conditions, or services for different individuals as a means of discrimination.
- (3) Advertising or making statements which would discourage applicants or buyers from applying or offering for real estate. Also inducing someone to sell because of potentially mixed neighborhoods.
- (4) Representing to any person, as a means of discrimination, that a dwelling is not available for sale or rent.

- (5) Refusing to allow alterations to accommodate the disabled when an escrow account has been set up for restoration.
- (6) Altering the terms or conditions for a home loan to any person who wishes to purchase or repair a dwelling, or otherwise denying such a loan as a means of discrimination.
- (7) Denying persons membership or limiting their participation in any multiple listing service, real estate brokers' organization, or other facility related to the sale or rental of a dwelling as a means of discrimination.

EXEMPTIONS

State law exempts dwellings with no more than two families if the owner lives in one of the units. Federal law applies to dwellings with four or more units.

Familial status exempts housing units where state and federal programs are specifically for the elderly; 100% of occupants are over 62; or if facilities and services are designed and advertised for the elderly and 80% of the units have at least one person over 55.

After 1991, all new apartment units must be constructed to allow ground floor access and access to common use areas by the disabled, unless terrain is prohibitive. If a person feels they have been discriminated against because of membership in a protected category, they should contact the South Dakota Division of Human Rights.

REFERRAL GUIDE

SD Attorney General's Office

Website: <http://atg.sd.gov>

Consumer hotline number (toll free): 800-300-1986; Fax: 773-7163

Environmental Protection Agency

Website: www.epa.gov

Telephone (Toll Free): 800-227-8917

Federal Emergency Management Agency
Website: www.fema.gov
Telephone (Toll Free): 800-621-FEMA (3362)

Scorecard (Environmental information services by the Environmental
Defense Fund) Website: www.scorecard.org

South Dakota Methamphetamine Awareness and Prevention Program
Website: www.mappsd.org

Legislative Research Council (SD Codified Laws and Administrative Rules)
Website: <http://legis.state.sd.us/index.cfm>
Telephone: 605-773-3251; Fax: 605-773-4576

South Dakota Department of Environment and Natural Resources
Website: www.state.sd.us/denr
Telephone: 605-773-3151; Fax: 605-773-6035

South Dakota Division of Human Rights
Website: <http://dlr.sd.gov/humanrights>
Telephone: 605-773-4493; Fax: 605-773-6893

South Dakota Housing Development Authority
Website: www.sdhda.org
Telephone: (605) 773-3181; Fax: (605) 773-5154

U.S. Department of Housing and Urban Development
Website: www.hud.gov
Telephone: (202) 708-1112

The material presented in this brochure is intended to assist buyers and sellers in making wise decisions regarding a residential real estate transaction in South Dakota. The South Dakota Real Estate Commission can be contacted at the address or phone number on the front of this booklet, or visit us at our website also listed on the front of this booklet.

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