

**South Dakota Real
Estate Commission**

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In this issue from the

**South Dakota Real
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Fall Edition

September 2019

From The Director

Wow...summer just flew by. As always, I'm excited for the fall season and renewal time.

The Commission is now under the leadership of Ryan Wordeman who took the gavel from Mark Wahlstrom. Carol Lawhun is serving as vice-chair.

Licensees who need to renew this year will be receiving an email reminding you to go online and renew your license. The renewal and fee must be received no later than November 30, 2019. Renewals received after that date will have to pay a late fee. If you do not renew your license by December 31, 2019 your license will be placed on an inactive status.

All active licensees who carry errors and omissions insurance from Rice Insurance Services Company will be receiving notices to renew your E&O insurance. Even if your license is not due to renew this year, proof that you are current on your E&O insurance coverage needs to be sent to us. If the premium is not paid and the coverage expires, your license will be placed on inactive status.

We receive several phone calls from unlicensed staff at firms requesting information regarding licensees that work at the firm. We need to talk to the licensee themselves. It is their license and they need to call or email us on any changes or questions they have.



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Commission Calendar

Tuesday, October 1st - Online renewal begins

Monday, November 11th - Office closed in observance of Veterans Day

Wednesday, November 13th - Commission Meeting

Thursday, November 28th and Friday, November 29th - Office closed in observance of Thanksgiving

Monday, Tuesday, and Wednesday, December 23rd, 24th, and 25th - Office closed in observance of Christmas

Tuesday, December 31st - Renewal deadline

Wednesday, January 1st - Office closed in observance of New Year's Day



Renewal Reminders

- ⇒ Renewal will open October 1st for all licensees due to renew this year.
- ⇒ All licensees, active or inactive, that renew this year, need to have their renewal application completed. The application is found on our website.
- ⇒ All licensees renewing/maintaining active status, must have their errors and omissions insurance as well as continuing education completed prior to December 31st to avoid inactive status.
- ⇒ Licenses that have not been renewed and/or have updated e/o coverage by December 1st, will be placed on an inactive status.

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License Law Update

This past legislative session, the commission has implemented some important changes that took effect July 1, 2019. These updates may affect you and/or your office staff.

The below laws have been added to License Law and Regulation:

Under statute 36-21A-1. Terms used in this chapter mean:

(21) "Team," any two or more licensed persons who work under the supervision of the same responsible broker, work together on real estate transactions to provide real estate brokerage services, who are designated as a team by the responsible broker, and have a team leader designated by the responsible broker;

(22) "Team leader," any person licensed by the commission and designated by his or her responsible broker as the leader for his or her team. A team leader is responsible for supervising the real estate activities of his or her team performed under this chapter, subject to the overall supervision of the responsible broker of the team leader and team members;

Under statute 36-21A-72. A licensee who advertises shall comply with the following:

(2) Each advertisement of a real estate team shall clearly state the name of the brokerage company the team is affiliated with, shall clearly identify the non-licensed individuals included in the advertisement, and may not contain language that would lead the public to believe that the team is offering real estate brokerage services independent of the real estate broker;

Under statute 36-21A-89. The commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter in the following areas:

(11) Requirements for establishing and maintaining teams and the requirements, duties, and responsibilities of team leaders.

*Please review changes to above statutes to ensure compliance effective July 1, 2019.

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HUD Proposes Significant Changes to Fair Housing “Disparate Impact” Rules

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The Department of Housing and Urban Development (HUD) has issued proposed rules that would significantly alter its current standards for establishing Fair Housing Act liability where a challenged policy or practice is neutral "on its face" or unintentional, but nonetheless has a prohibited "discriminatory effect."

The Fair Housing Act (FHA) prohibits discrimination in the sale or rental of housing because of race, color, religion, sex, handicap, familial status, or national origin. The FHA does not specifically address liability based on the discriminatory effects of a policy or practice, but appellate courts in 11 federal judicial circuits have, over time, endorsed the proposition that FHA liability may arise not only from intentional discrimination, but also from practices that have a "disparate impact" on protected persons.

HUD interprets and administratively enforces the FHA and, in 2013, promulgated rules establishing that a practice has a discriminatory effect where it actually or predictably results in a disparate impact on an FHA-protected class or creates, increases, reinforces, or perpetuates segregated housing patterns [24 CFR Part 100]. The rule established a three-part, burden-shifting test under which disparate impact-based FHA claimants must show that a challenged policy caused, or predictably will cause, a discriminatory effect; then the defendant may show that the practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest; upon which showing the plaintiff must establish that the interest could be served by another practice that has a less discriminatory effect.

In many such cases plaintiffs rely, at least in part, on statistical evidence of the discriminatory disparate impact that a challenged practice has on protected persons. For example, in 2016 HUD issued a [guidance document](#)  warning housing providers (landlords, property managers, etc.) about the potential for FHA-discriminatory effect liability that may arise from making adverse housing decisions, such as refusing to rent or renew a lease, based on an individual's criminal history. The guidance addresses how disparate impact methods of proof (e.g., statistical data regarding criminal justice disparities, housing, applicants, census demographics, etc.) may be used to support such FHA claims.

In 2015 the U.S. Supreme Court decided [Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al.](#), a case in which the plaintiff relied on statistical analyses to support allegations that a state housing agency perpetuated segregated housing patterns, and thus violated the FHA, by the manner in which it handled low-income housing tax credits. In a 5-4 decision, the Supreme Court affirmed that disparate impact claims are cognizable under the FHA.

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HUD (Cont.)

However, HUD's recent rulemaking notice asserts that the Supreme Court decision references, but does not rely on, the current disparate impact rules and presents standards and limitations that should apply to disparate impact cases. HUD says that its proposed rules do not eliminate discriminatory effect/disparate impact as a basis for unintentional FHA discrimination claims, but rather more closely align the rules with the Supreme Court decision.

Among numerous other changes, the proposed rules would clarify available discriminatory effect defenses, require a common law principal-agent relationship for vicarious FHA liability, and adjust the available remedies in federal administrative FHA cases. Notably, the proposed rules would also implement a new five-element test under which FHA plaintiffs (and charging parties) would be required to:

- Plead that a challenged housing policy or practice has a specific, identifiable, discriminatory effect and is "arbitrary, artificial and unnecessary." Only then would the defendant have the burden of identifying a valid interest served by the practice, which may then be rebutted by the plaintiff;
- Allege a "robust causal link" between the challenged practice and its disparate impact on members of an FHA-protected class, with new standards for the use of statistical disparity data;
- Allege an adverse effect on members of a protected class as a whole, not just on an adversely impacted plaintiff member of the class;
- Allege that the challenged disparity caused by the policy or practice is "significant"; and
- Directly caused by the challenged policy or practice (a codification of the FHA's "direct relation" proximate cause requirement).

In a statement, HUD Secretary Ben Carson said, "At the end of the day, this rule not only increases Americans' access to fair and affordable housing, but also permits businesses and local governments to make valid policy choices." However, several advocacy groups such as the Fair Housing Alliance are adamantly opposed to the rules and assert that they are intended to dismantle longstanding fair housing protections and make it more difficult to pursue housing discrimination claims.

New Licensees

06.01.19 - 09.01.19

Broker

Hagelstrom Jr, Harlan	Arvada, CO	Sailor, Dwight	Prior Lake, MN
Punzel, Jason	Naperville, IL	Sanders, Timothy	Piedmont

Broker Associate

Alexander, Kenneth	Black Hawk	Kimball, Matthew	Rapid City
Anderson, Jeffrey	Rapid City	Lewis, Gavin	Sioux Falls
Avery, Dawn	Sioux Falls	Lewis, Thomas	Ellsworth AFB
Berkey, Richard	Piement	Ling, Darla	Renner
Bryan, Laura	Hermosa	Luther, Alicia	Sioux Falls
Burbach, Christina	Watertown	Maeyaert, Dean	Gary
Burg, Brandon	Madison	Miller, Andrew	Sioux Falls
Burke, David	Sioux Falls	Moore, Jade	Lead
Calkins, Meghan	Winner	Oliver, Alicia	Sioux Falls
Carmody, Phillip	Sioux Falls	Olson, Dennis	Huron
Cary, Jack	Sioux Falls	O'Neal, Joseph	Rapid City
Cavanaugh, Scott	Sioux Falls	Preston, Mary	Box Elder
Denief, Richard	Rapid City	Queen, Victoria	Windsor, CO
Derschan, Erica	Newell	Reeves, Madison	Belle Fourche
Diep, Lam	Vermillion	Roth, Julie	Harrisburg
Eliason, Brian	Mitchell	Salameh, Ramzi	Coralville, IA
Enderby, Nellie	Spearfish	Soundy, Alexander	Sioux Falls
Eng, Jonathan	Sioux Falls	Steilen, Annette	Alexandria
Fawcett, Riley	Sioux Falls	Sternhagen, Dean	Tabor
Fox, Mary	Montrose	Stoks, Elizabeth	Aberdeen
Garry, Jerome	Madison	Suridis, Jerilyn	Box Elder
Gass, Kimberly	Tea	Tellers, April	Sioux Falls
Graeb, Brian	Nunda	Templeton, Taylor	Sioux Falls
Graeb, Katie	Nunda	Theisen, Chad	Sioux Falls
Halvorson, Amber	Harrisburg	Tieszen, Alyssa	Sioux Falls
Harvey, Brandon	Spearfish	Timmermans, Nathan	Brandon
Hawkins, Joel	Hot Springs	VanderHaar, Debra	Sioux Falls
Headrick, Christian	Brandon	VanderPol, Sara	Rapid City
Henris, Diana	Spearfish	Walker, John	Sioux Falls
Hruska, Angela	Sioux Falls	Ward, Jason	Belle Fourche
Inhofer, Noah	Sioux Falls	Werning, Jayme	Hartford
Inlay, Katie	Tea	Wiseman, Brandy	Sioux Falls
Jensen, Peter	Rapid City		

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New Licensees (Cont.)

Property Manager

Baertsch, Dustin	Rapid City
Campbell, Andrew	West Fargo, ND
Donnell, Cynthia	Hot Springs
Gourneau, Kachiri	Rapid City
Koopman, Logan	Tea
Miller, Alicia	Rapid City
Mogensen, Megan	Sioux City, IA
O'Hara, Ashley	Rapid City
Perdue, Joseph	Lead
Schmidt, Cortnee	Lead
Wilch, David	Sioux City, IA

Res. Rental Agent

Barton, Emma	Vermillion
Bertelsen, Dakota	Sioux Falls
Fernandez, Jessica	Sioux Falls
Graf, Diana	Sioux Falls
Hinkkanen, Kendra	Sioux Falls
Jergensen, Gabriel	Sioux Falls
Lobban, Marlon	Harrisburg
Moody, Chelsea	Mitchell
Parisien, Helen	Mobridge
Roberts, Careen	Sioux Falls
Stock, Dylan	Sioux Falls
Todd, Jeffrey	Yankton
Ward, Shanna	Mitchell
Young, Michelle	Akron, IA

Reg. Home Inspector

Bajema, Timothy	Sioux Center, IA
Comerford, Michael	Custer
Graham, Jared	Tea
Hickman, Brian	Sioux City, IA
Maggart, Jacob	Rapid City
Slanina, Nicholas	Rapid City
VandeKop, Jack	Spearfish

Salesperson

Cramer, Brian	Sioux Falls
Gilbertson, Jennifer	West Fargo, ND
Gordon, Kimberly	Sioux City, IA
Kuehn, Julie	Brandon
Musgrave, Amber	Sioux City, IA
O'Donnell, Clark	Alzada, MT
Ohlrich, Nathan	Omaha, NE
Quinn, Nickie	Sioux City, IA
Ralston, Rhonda	Phoenix, IA
Wilkison, Laura	Mesa, IA

Auctioneer

Curtis, Donald	Mitchell
Gran, Brad	Winner

Timeshare Agent

Arch, Anna	Rapid City
Cayot, Stephanie	Rapid City

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

- ◇ David Brenneman, Black Hawk, Property Manager. Violation of 36-21A-28. Administrative fine of \$2,500.
- ◇ Saboin Vifquain, Rapid City, Property Manager. Violation of 36-21A-28. Administrative fine of \$1,000.
- ◇ Angela Munce, Tea, Property Manager. Violation of 36-21A-130. Administrative fine of \$200 plus 3 hours of education in Agency.
- ◇ Kevin Paugh, Rapid City, Broker Associate. Violation of 36-21A-137, 36-21A-147, and 20:69:16:01. Administrative fine of \$250 plus 6 hours of education in Agency.