

Real Estate Brokerage Laws and Customs: South Dakota

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A Q&A guide to state laws and customs on brokerage laws relating to commercial real estate transactions. This Q&A addresses the state-specific guidance on several questions relating to brokerage laws and customs, including licensing requirements, legal restrictions on a broker's role in a real estate transaction, brokerage agreements, commission payments, and brokers' lien rights. This Q&A guide also provides guidance on any licensing requirements for managing real estate. Answers to questions can be compared across a number of jurisdictions (see [Real Estate Brokerage Laws and Customs: State Q&A Tool](#)).

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see [Real Estate Global Coronavirus Toolkit \(W-024-8618\)](#).

LICENSING LAWS AND REQUIREMENTS

1. Does your state regulate real estate brokers? If so:

- What statutes or laws regulate licensing requirements for brokers?
- What department oversees the licensing and regulations of brokers?
- Are different types of brokers or other roles recognized by the regulations? If so, specify the scope of responsibilities of these different roles.

LICENSING LAWS

Licensing requirements for brokers and salespersons involved in both commercial and residential real estate transactions in South Dakota are regulated by:

- Chapter 36-21A of the South Dakota Codified Laws.
- Article 20:69 of the Administrative Rules of South Dakota.

REGULATOR

The South Dakota Real Estate Commission (SDREC), under the supervision of the South Dakota Department of Labor and Regulation (SDCL 36-21A-16), oversees the licensure, registration, and regulation of real estate professionals under Chapter 36-21A of the South Dakota Codified Laws.

TYPES OF BROKERS AND THEIR ROLES

Real Estate Broker and Responsible Broker

A broker must be licensed and is deemed to be any person performing any of the following for another, either for compensation or with the expectation of compensation:

- Selling, exchanging, buying, renting, or managing real estate.
- Negotiating or attempting to negotiate a loan secured by a mortgage.
- Negotiating a sale, exchange, or purchase of any business opportunity or business.

(SDCL 36-21A-6.)

A responsible broker is any person holding a broker's license issued under Chapter 36-21A of the South Dakota Codified Laws who is responsible for the real estate activities of licensees acting with or under the auspices of the responsible broker (SDCL 36-21A-1(16)).

Broker Associate

A broker associate is any broker acting in association with or under the auspices of a responsible broker (SDCL 36-21A-1(5); see Real Estate Broker (Responsible Broker)).

Real Estate Salesperson

A real estate salesperson is any person associated with a responsible broker and, for compensation, sells, buys, or negotiates the purchase, sale, or exchange of any of the following:

- Real property.
- Business opportunities.
- A business.

(SDCL 36-21A-12.)

Restricted Broker

The SDREC also provides restricted licenses for:

- Auctioneers.
- Property managers.
- Mortgage brokers.
- Time-share agents.
- Residential rental agents.

(SDCL 36-21A-47.)

These individuals may only perform the duties specified in their license. If an individual exceeds the authority granted by the restricted license, the license may be revoked and criminal proceedings brought against the individual. (SDCL 36-21A-47.)

Team and Team Leader

Effective July 1, 2019, South Dakota began recognizing the role of "team leader". A team leader is:

- Any person licensed by the SDREC and designated by his or her responsible broker as the leader for his or her team.
- Responsible for supervising the real estate activities of their team, subject to the overall supervision of the responsible broker of the team leader and team members.

(SDCL 36-21A-1(22).)

A team leader's "team" consists of any two or more licensed persons, having that designated team leader, working:

- Under the supervision of the same responsible broker.
- On real estate transactions to provide real estate brokerage services.

(SDCL 36-21A-1(21).)

2. What are the licensing requirements for brokers and other roles listed in Question 1?

All brokers and other real estate professionals must be licensed by the South Dakota Real Estate Commission (SDREC). There is no

difference in licensing requirements for commercial or residential brokers or other real estate professionals.

A table of licensing requirements for real estate professionals is available on the SDREC's website.

In addition to the requirements specific to each type of real estate professional, an applicant for a license must:

- Be at least 18 years of age and of reputable character.
- Be competent to transact the business of a licensee in a manner that safeguards the public's interest.
- Not have had:
 - their application in South Dakota or any other state rejected within the last one year for any reason other than failure to pass an examination; and
 - their license revoked within the last five years of their application.

- Be a citizen of the United States or a resident of South Dakota.

(SDCL 36-21A-30.)

BROKER

To qualify for a license as a responsible broker, an individual must:

- Have been licensed and worked as a licensed real estate salesperson or broker associate or a combination of both for two years (SDCL 36-21A-31).
- Either:
 - have completed 15 class hours beyond the broker associate education level of 116 hours; or
 - certify in writing that within six months of approval, they will give the SDREC evidence of completing the 15 additional class hours requirement.
- (SDCL 36-21A-31; S.D. Admin. R. 20:69:04:02 and :04.)
- Obtain an exam score of at least 75% (S.D. Admin. R. 20:69:03:07).
- Pay the application fee of \$225 (S.D. Admin. R. 20:69:03:10).
- Have the application, including a character inquiry, approved.

Any broker licensed before July 1, 1996 is exempt from these requirements (SDCL 36-21A-31).

BROKER ASSOCIATE

To qualify for a license as a broker associate, an individual must:

- Complete 116 pre-licensing education hours (SDCL 36-21A-30.1 and S.D. Admin. R. 20:69:04:02).
- Obtain an exam score of at least 75% (S.D. Admin. R. 20:69:03:07).
- Pay the application fee of \$225 (S.D. Admin. R. 20:69:03:10).
- Have the application, including a character inquiry, approved.

Broker associates are also required to complete 60 hours of post-licensing education within the first two active license cycles after their initial licensure (S.D. Admin. R. 20:69:11:02.01 and 20:69:11:02.02).

RESTRICTED BROKER

Individuals applying for a restricted license, other than as a residential rental agent, must:

- Obtain an exam score of at least 75% (S.D. Admin. R. 20:69:03:07).
- Pay the application fee of \$225 (S.D. Admin. R. 20:69:03:10).
- Have the application, including a character inquiry, approved.

Property managers must also complete 40 hours of education in a course on the fundamentals of property management within the two years before applying for a license (S.D. Admin. R. 20:69:14:02.01).

Residential rental agents are only required to have their application, including a character inquiry, approved.

3. What are the ongoing requirements for maintaining a license for brokers and other roles listed in Question 1?

The ongoing requirements for maintaining a real estate license are the same for commercial and residential real estate professionals. Renewal applications and a table of renewal requirements are available at the South Dakota Real Estate Commission's (SDREC) website.

BROKER (RESPONSIBLE BROKER)

Real estate brokers must renew their license every two years by completing an application and paying a fee of \$125 (SDCL 36-21A-61; SDREC License Renewal).

Real estate brokers renewing an active license must:

- Have completed at least 24 hours of continuing education during the preceding two license years, with at least 12 of those hours in required subject areas (S.D. Admin. R. 20:69:11:02).
- Provide proof of errors and omissions insurance coverage (SDCL 36-21A-119 and S.D. Admin. R. 20:69:15:02).

Attorneys licensed to practice in South Dakota and time-share agents are exempt from the continuing education requirements (SDCL 36-21A-62).

BROKER ASSOCIATES

After completing their post-licensing education requirements, broker associates must renew their license every two years by completing an application and paying a fee of \$125 (SDCL 36-21A-61; S.D. Admin. R. 20:69:11:02.02; SDREC License Renewal).

Broker associates renewing an active license must also:

- Have completed at least 24 hours of continuing education during the preceding two license years, with at least 12 of those hours in certain required subject areas (SDCL 36-21A-62; S.D. Admin. R. 20:69:11:02 and 20:69:11:02.02).
- Provide proof of errors and omissions insurance coverage (SDCL 36-21A-119 and S.D. Admin. R. 20:69:15:02).

REAL ESTATE SALESPERSONS

Real estate salespersons must renew their license every two years by completing an application and paying a fee of \$125 (SDCL 36-21A-61; SDREC License Renewal).

Real estate salespersons renewing an active license must also:

- Have completed at least 24 hours of continuing education during the preceding two license years, with at least 12 of those hours in required subject areas (S.D. Admin. R. 20:69:11:02).

- Provide proof of errors and omissions insurance coverage (SDCL 36-21A-119).

RESTRICTED BROKERS

Restricted brokers must renew their license every two years by completing an application and paying a fee. For residential rental agents, the fee is \$50. For all other restricted brokers, the fee is \$125 (SDCL 36-21A-61 and S.D. Admin. R. 20:69:14.01:08 and see SDREC License Renewal).

Restricted brokers renewing an active license must also:

- Have completed at least 24 hours of continuing education during the preceding two license years, with at least 12 of those hours in required subject areas (S.D. Admin. R. 20:69:11:02).
- Provide proof of errors and omissions insurance coverage (SDCL 36-21A-119).

Property managers licensed after January 1, 2019, must complete:

- 30 hours of approved continuing education in the initial licensing cycle.
- 24 hours of approved continuing education in each of the following licensing cycles.

(S.D. Admin. R. 20:69:11:02 and 20:69:14:13.)

4. What is the best way to determine if a real estate professional is duly licensed?

The South Dakota Real Estate Commission's licensee database can be used to determine if a real estate professional is duly licensed.

5. What is the best way to file a complaint against a real estate professional for fraud, material misrepresentations, negligent acts, or intentional misconduct?

A formal complaint form can be filed with the South Dakota Real Estate Commission, with complaint forms and procedures available on its website.

CUSTOMS IN PRACTICE FOR BROKERS

6. With regard to brokers in your jurisdiction, please briefly describe:

- The broker's customary involvement in a transaction.
- Whether there are any restrictions on the broker's role.

BROKER'S INVOLVEMENT

Brokers in South Dakota are regularly involved in real estate transactions. While brokers typically do not draft purchase agreements or leases, they frequently use form agreements available from the South Dakota Real Estate Commission website.

RESTRICTIONS ON BROKER'S INVOLVEMENT

While there are no major restrictions, a broker's involvement may not stray into the unauthorized practice of law.

CUSTOMS IN PRACTICE FOR ATTORNEYS

7. With regard to real estate attorneys in your jurisdiction, please briefly describe:

- When an attorney becomes involved in the transaction, if at all.
- If an attorney can receive commission without a real estate broker license?
- Whether the attorney is exempt from the licensing regulations in Question 1.
- Whether an attorney can act as broker and legal counsel in the same transaction? If so, are any disclosures required?

Attorneys in South Dakota are more involved in commercial than residential real estate transactions.

INVOLVEMENT

Residential Real Property

Because of the prevalent use of form purchase agreements available from the South Dakota Real Estate Commission's (SDREC) website, attorneys are not often involved in residential real estate transactions.

Commercial Real Property

Attorneys tend to be more frequently involved in commercial transactions from their legal representation of either the buyer or seller.

COMMISSION

In South Dakota, attorneys not licensed as real estate brokers may not obtain a commission payment.

EXEMPTION FROM LICENSING REGULATIONS

Attorneys are exempt from SDREC licensing requirements, unless the attorney holds himself out to be in or solicits real estate business. In that case, an attorney may obtain a real estate license without examination but is otherwise subject to the provisions of Chapter 36-21A of the South Dakota Codified Laws (SDCL 36-21A-29(7) and see Question 2).

ACTING AS BROKER AND LEGAL COUNSEL

There is no prohibition against an attorney acting as broker and legal counsel in the same transaction. However, attorneys should be aware of the potential for conflicts of interest in these types of transactions and should seek consent to the transaction if there is an actual or potential conflict of interest. In addition, if an attorney is acting as broker or agent (or both) for both buyer and seller, full disclosure and consent is required under both:

- The South Dakota Rules of Professional Conduct.
- The analogous ethics rules applicable to brokers.

BROKERAGE AGREEMENTS

8. Please describe different brokerage agreements commonly used in your jurisdiction between individuals selling or leasing their property and the brokers.

There are no major differences in the types of brokerage agreements available in residential or commercial real estate transactions. The South Dakota Real Estate Commission's website has several standard forms for the most common brokerage agreements. In addition, brokers are required to provide clients with a Real Estate Relationships Disclosure form describing the different types of agency arrangements available under South Dakota law (SDCL 36-21A-147 and S.D. Admin. R. 20:69:16:01).

The different types of brokerage agreements used in South Dakota include:

- **Single agency.** A firm and all of its agents represent only one client (buyer or seller) in a transaction (SDCL 36-21A-1(18)). If at any time during the transaction any agent of the same firm represents both the buyer and seller, limited agency applies.
- **Appointed agency.** A specific agent of a firm named in the agency agreement is appointed to represent one client (buyer or seller) in a transaction. If at any time during the transaction the responsible broker or a non-appointed agent within the firm represents the other party, limited agency applies to the responsible broker. If at any time during the transaction the appointed agent represents both parties simultaneously, limited agency applies. (SDCL 36-21A-141.1; S.D. Admin. R. 20:69:16:03 to :05.)
- **Limited agency.** A firm or broker represents both sides to a transaction and no agent within the firm solely represents one party. Limited agency **may only occur** with prior written permission from both sides to a transaction. Within limited agency, the limited agent must represent the interests of both parties equally, and the agent cannot disclose one party's confidential information to the other party unless required to do so by law or failure to disclose would be considered misrepresentation. (SDCL 36-21A-1(13), 36-21A-140, and 36-21A-142; S.D. Admin. R. 20:69:16:10.)
- **Transaction broker agreements.** Some firms may offer transaction broker agreements that do not create an agency relationship between the broker and the buyer or seller but instead are used in situations where the buyer and seller have already reached an agreement and simply want the broker to execute the paperwork. A transaction broker cannot advocate or negotiate for either party. (SDCL 36-21A-1.)

A net listing agreement is defined as a contract to find a buyer or lessee for the property at a certain net price to the owner. Accepting a net listing agreement is considered unprofessional conduct for a real estate professional in South Dakota (SDCL 36-21A-71(26)).

9. Is there a customary tail period for exclusive brokerage agreements?

Tail periods are common in both residential and commercial transactions. However, the duration of the tail period varies on a case-by-case basis, and there is no established custom in South Dakota on the duration of the tail period.

COMMISSION PAYMENTS

10. With regard to commission in your jurisdiction:

- Does a broker need a written brokerage agreement to claim its commission?
- When is a broker entitled to its commission?
- May a commission be earned if the closing does not occur?
- Are there any statutory restrictions on commission rates?
- If the parties are permitted to negotiate a commission, what is the customary range for commission rates?

WRITTEN BROKERAGE AGREEMENT

In South Dakota, all real estate brokerage agreements must be in writing (SDCL 36-21A-130; S.D. Admin. R. 20:69:17:01).

TIMING OF COMMISSION PAYMENT

In South Dakota residential and commercial real estate transactions, the timing of the commission payment is customarily specified in the real estate brokerage agreement.

COMMISSION PAYMENT WITHOUT CLOSING

In South Dakota, a broker is not entitled to compensation until the transaction has been consummated or terminated (SDCL 36-21A-84).

However, if an agency agreement provides for compensation for services other than brokering the sale or lease of an interest in real property, the licensee may collect compensation for those services before closing the sale or lease of the interest in the real property (S.D. Admin. R. 20:69:03:19).

STATUTORY RESTRICTIONS

Commission rates in South Dakota are not prescribed by law but are negotiated by the parties.

RANGE OF NEGOTIATED RATES

Parties are free to negotiate commission rates in residential, commercial, and agricultural transactions. There is no customary rate, especially for agricultural and commercial sales. Residential commission rates also vary but are typically in the range of 2% to 6% of the purchase price.

11. Is it customary for the seller or the landlord to pay the commission? If so, how is payment to the purchaser's or tenant's broker usually ensured?

In South Dakota, the seller or the landlord customarily pays the commission in both residential and commercial transactions. The seller's or landlord's agent customarily splits the commission equally with the purchaser's or tenant's agent if the transaction closes.

12. Is fee splitting permitted or customary in your state? If so, are there any restrictions?

Fee splitting is permitted, customary, and without restriction in both residential and commercial transactions in South Dakota. Local

Multiple Listing Service Listings (MLS) rules help govern the fee splitting for agents using the MLS.

13. When real property is sold, is the grantor deemed released from any deferred commission payment obligations that are scheduled to come due after the transfer of fee title to the grantee or must there be an express release? Are deferred commission payments automatically assumed by the grantee or must the assumption be express?

GRANTOR RELEASE FROM DEFERRED COMMISSION

Deferred commissions are not specifically addressed under South Dakota law.

GRANTEE'S ASSUMPTION OF DEFERRED COMMISSION

Deferred commissions are not specifically addressed under South Dakota law.

COSTS

14. With regard to the marketing and advertising costs associated with the listing:

- Does a broker typically pass on these costs to the seller or the landlord?
- Are provisions dealing with these costs usually found in exclusive or non-exclusive agreements, or both?

REIMBURSEMENT OF COSTS

Marketing and advertising costs are customarily not reimbursed by the seller or landlord in either commercial or residential real estate transactions in South Dakota.

In unique circumstances, the agency agreement may provide that marketing and advertising cost are passed on to the seller or landlord.

COST PROVISIONS

Cost provisions are typically found in both exclusive and non-exclusive agreements for residential and commercial real estate transactions in South Dakota.

DISCLOSURE LAWS

15. Describe any disclosure laws affecting real estate brokers or salespersons. Is a broker required to disclose its dual agency?

Disclosure requirements are the same for both commercial and residential real estate transactions in South Dakota.

GENERAL DISCLOSURE LAWS

Relationship Disclosure

Every broker must develop and maintain a written office policy that specifies the agency and brokerage relationships that the broker may establish. The type of agency or brokerage relationship that a broker is offering to an individual must be disclosed at the first substantive

contact with a buyer or seller (SDCL 36-21A-147; S.D. Admin. R. 20:69:16:01; see Question 8).

Sex Offender Disclosure

A licensee representing a buyer, seller, landlord, or tenant does not have a duty to investigate or volunteer information about a sex offender residing on or near the property. However, if a licensee's client inquires, the licensee must disclose any "actual knowledge" the licensee has about a registered sex offender residing on or near the property. (SDCL 36-21A-134.1 and 36-21A-138.1.)

Disclosure of Existence of Prior Manufacturing of Methamphetamine

The lessor of residential property with "actual knowledge" of the existence of any prior manufacturing of methamphetamines on the premises must disclose that information to any lessee or potential lessee. If the residential premises consist of two or more housing units, the disclosure requirements provided by this section only apply to the unit where there is knowledge of the existence of any prior manufacturing of methamphetamines. (SDCL 43-32-30.)

Seller's Disclosures

There are several other disclosures that must be made by the seller to the buyer of real estate within South Dakota. Sellers of residential property must:

- Before a buyer makes a written offer, complete a property disclosure statement in the form provided by Section 43-4-44 of the South Dakota Codified Laws.
- At the earlier of the closing or the buyer taking possession of the property, amend the disclosure statement if the seller becomes aware of any change of material fact that would affect the disclosure statement they have provided to the buyer or the buyer's agent.

(SDCL 43-4-38.)

While making the disclosures is ultimately the seller's responsibility, brokers and other salespersons should be aware of them.

DUAL AGENCY DISCLOSURE

A limited agent acts as agent for both buyer and seller in a transaction. An individual may act as a limited agent only with the express written consent of all parties to the transaction (SDCL 36-21A-140).

BROKER'S LIENS

16. Can a broker file a lien against real property if it has a claim for its commission? Is a broker's lien an inchoate lien?

South Dakota law does not provide for a broker's lien against real property based on unpaid commissions.

17. How can a real property owner remove a broker's lien?

South Dakota law does not provide for a broker's lien on real property.

MANAGING REAL ESTATE

18. Is a broker's license required to manage real estate and collect rents on behalf of a landlord? If so, what are the statutes regulating the licensing requirements?

A property manager license is required to manage real estate and collect rents on behalf of a landlord and is one of the restricted broker's licenses issued under Section 36-21A-47 of the South Dakota Codified Laws (S.D. Admin. R. 20:69:14:01, :02).

There is no distinction between requirements for managing commercial or residential real property.

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