

OFFICIAL OPINION NO. 76-114, Licensing of appraisers by the South Dakota Real Estate Commission

December 3, 1976

Mr. Jack C. Burchill, Secretary  
South Dakota Real Estate Commission  
Post Office Box 638  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-114

**Licensing of appraisers by the South Dakota Real Estate Commission**

Dear Mr. Burchill:

You have requested an opinion from this office in regard to the following factual situation:

FACTS:

There are individuals who are appraising real property throughout the State of South Dakota who do not hold a broker's or salesman's real estate license or any other kind of an appraiser's license.

SDCL 36-21-1.1 defines a real estate broker and includes therein any person who "Appraises, offers, attempts, or agrees to appraise real estate (unless said person is licensed to appraise under some other provision of South Dakota law or is an accredited member of a recognized appraisal organization)."

SDCL 36-21-28.1 provides for a restricted broker's license, but does not specifically include appraisers as one of the categories. SDCL 36-21-28.1 does, however, include "such categories as the commission feels are warranted." It further states that "no restricted license shall be required until further rules adopted under this section become effective."

Based on the above facts, you ask:

QUESTIONS:

(1) Do the above statutes mean that everyone who appraises (unless he is exempted by membership in a recognized appraisal organization or is a regular employee of the bona fide owner or lessor) is required to have a broker's license?

(2) More specifically, are appraisers employed by loaning institutions, who are neither the owner nor lessor, but are furnishing funds for loans for purchasers, required to hold brokers' licenses?

(3) Can the Commission, by rule, provide for the issuance of a restricted appraiser's license to persons who would not qualify for a broker's license, but would be qualified by their education and experience to appraise? If so, must the Commission qualify such appraisers by examination?

(4) Assuming the Commission *can* license appraisers, do they *have* to do so?

IN RE QUESTION NO.1:

There is no denying the fact that SDCL 36-21-1.1(8) uses broad terminology to describe what sort of appraisal activity becomes, by definition, the activity of a real estate broker. Section 36-21-1.1 provides in part:

As used in this chapter unless the context otherwise requires, "real estate broker" or "broker" means any person who:

(8) Appraises, offers, attempts, or agrees to appraise real estate (unless said person is licensed to appraise under some other provision of South Dakota law or is an accredited member of a recognized appraisal organization); . . . .

It is worth noting that several other subdivisions of SDCL 36-21-1.1 include provisions which limit the conduct of brokers to circumstances where the conduct is done "for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly." No such terminology exists with respect to the conduct enumerated in subdivision (8) of SDCL 36-21-1.1.

Another significant statute in this regard is SDCL 36-21-1.2. That statute provides:

Any person unless exempted under this chapter, who, directly or indirectly, for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs *any single act* described in §36-21-1.1, whether as a part of a transaction, or as an entire transaction, shall be deemed a broker or salesman within the meaning of this chapter.

No real estate broker or salesman licensed in this state shall come within the exceptions set forth in this chapter including any transactions wherein they have a personal interest.

(Emphasis added.)

SDCL 36-21-1.2 clearly states that unless otherwise exempted by Chapter 36-21, a single act of appraising real estate as defined in SDCL 36-21-1.1(8) is the act of a broker or salesman within the meaning of the chapter *if such single act of appraising real estate for another is done with the intention or upon the promise of receiving any valuable consideration for such act*. This, in my opinion, clearly means that not every isolated act of appraisal of real estate is covered by the licensure provisions of Chapter 36-21. If no valuable consideration is received, promised or intended to be received for the act of appraisal for another, I do not believe that licensure is required by Chapter 36-21 as a prerequisite to such acts of appraisal.

IN RE QUESTION NO.2:

In regard to your second question, SDCL 36-21-19.1 and 19.2 provide:

36-21-19.1. This chapter shall not be construed to include any bank, trust company, savings and loan association, public utility, or any land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

36-21-19.2. This chapter shall not be construed to include employees of persons enumerated in §§36-21-16 to 36-21-19.1, inclusive, whose principal duties are other than those duties described in §36-21-1.1, when engaged in the specific performance of their duties.

The above statutes clearly exempt the financial loaning institutions from the chapter and the employees of the institution who do not perform as their principal duty the activities

described in SDCL 36-21-1.1. The key to answering this question in any particular case will rest on a factual analysis of whether or not the employee's *principal* duties are those described in SDCL 36-21-1.1. If the answer is yes, the employee will need to comply with the requirements of chapter 36-21. If someone is specifically employed as an appraiser by a financial institution, I believe the person's principal duties would fall under SDCL 36-21-1.1 and that he must be licensed.

IN RE QUESTION NO.3:

As to your third question, it is my view that SDCL 36-21-28.1 does grant the Real Estate Commission authority to provide by rule for restricted licenses to categories of persons (such as appraisers) covered by the general requirements of chapter 36-21.

Since certain appraisers are covered by chapter 36-21, and since there is, as you note, a difference in the education and training required for being a broker as opposed to being an appraiser, I believe there is authority for the commission to decide that a restricted appraiser's license could be issued and limited to the work of appraisals, without meeting the full requirements for a broker's license. The fact that such a restricted licensee would not have the qualifications of a broker is not controlling since the restricted license would not allow the licensee to function as a real estate broker in the broad sense of that term, but would limit the licensee to the work of appraisals.

If the commission is going to provide such a restricted appraiser's license, I believe it follows that the commission must have some basis on deciding whether or not to issue such a license. In my opinion, the only reasonable way of insuring the integrity of such a licensing process is to provide for some sort of examination or, in lieu thereof, completion of certain recognized academic curriculum in the area of real estate appraisal.

IN RE QUESTION NO.4:

In regard to your fourth question, it is my opinion that since the Legislature has provided licensing requirements for persons engaged in certain types of real estate appraisals, and since the Legislature has further placed the licensing function here upon the Real Estate Commission, the commission must make available appropriate procedures whereby appraisers can be licensed and comply with the law. Whether the commission must provide for *restricted* brokers' licenses for appraisers, pursuant to SDCL 36-21-28.1, is clearly a

discretionary matter for the commission to determine.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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