

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

445J0341

HOUSE BILL NO. 1250

Introduced by: Representative Adelstein

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of escrow agents.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Controlling person," any person who owns or controls ten percent or more of the
5 beneficial ownership of any escrow agent, regardless of the form of business
6 organization employed and regardless of whether such interest stands in such person's
7 true name or in the name of a nominee;

8 (2) "Department," the Department of Revenue and Regulation;

9 (3) "Designated escrow officer," any licensed escrow officer designated by a licensed
10 escrow agent and approved by the secretary as the licensed escrow officer responsible
11 for supervising that agent's handling of escrow transactions, management of the
12 agent's trust account, and supervision of all other licensed escrow officers employed
13 by the agent;

14 (4) "Escrow," any transaction, except the acts of a qualified intermediary in facilitating
15 an exchange under section 1031 of the Internal Revenue Code, wherein any person,
16 for the purpose of effecting and closing the sale, purchase, exchange, transfer,



1 encumbrance, or lease of real or personal property to another person, delivers any
2 written instrument, money, evidence of title to real or personal property, or other
3 thing of value to a third person to be held by such third person until the happening
4 of a specified event or the performance of a prescribed condition or conditions, when
5 it is then to be delivered by such third person, in compliance with instructions under
6 which the third person is to act, to a grantee, grantor, promisee, promisor, obligee,
7 obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof;

8 (5) "Escrow agent," any person engaged in the business of performing for compensation
9 the duties of the third person referred to in subdivision (4) of this section;

10 (6) "Licensed escrow agent," any sole proprietorship, firm, association, partnership, or
11 corporation holding a license as an escrow agent under the provisions of this Act;

12 (7) "Licensed escrow officer," any natural person handling escrow transactions and
13 licensed as such by the secretary;

14 (8) "Secretary," the secretary of revenue and regulation;

15 (9) "Split escrow," a transaction in which two or more escrow agents act to effect and
16 close an escrow transaction.

17 Section 2. No person may engage in business as an escrow agent by performing escrows or
18 any of the functions of an escrow agent within this state or with respect to transactions that
19 involve personal property or real property located in this state unless such person possesses a
20 valid license issued by the secretary. The licensing requirements of this Act do not apply to:

21 (1) Any person doing business under the law of this state or the United States relating to
22 banks, trust companies, mutual savings banks, savings and loan associations, credit
23 unions, insurance companies, or any federally approved agency or lending institution
24 under the National Housing Act, 12 U.S.C. § 1703;

- 1 (2) Any person licensed to practice law in this state while engaged in the performance
2 of the person's professional duties;
- 3 (3) Any licensee under chapter 36-21A, while performing acts in the course of or
4 incidental to sales or purchases of real property handled or negotiated by the licensee
5 as long as no compensation is received for escrow services;
- 6 (4) Any transaction in which money or other property is paid to, deposited with, or
7 transferred to a joint control agent for disbursal or use in payment of the cost of labor,
8 material, services, permits, fees, or other items of expense incurred in the
9 construction of improvements upon real property;
- 10 (5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other
11 person acting under the supervision or order of any circuit court of this state or of any
12 federal court;
- 13 (6) Title insurance companies having a valid certificate of authority issued by the
14 director of insurance.

15 Section 3. An application for an escrow agent license shall be in writing in such form as is
16 prescribed by the secretary. An application for an escrow agent license shall include fingerprints
17 for all officers, directors, owners, partners, and controlling persons, and, unless waived by the
18 secretary, the following:

- 19 (1) The applicant's form of business organization and place of organization;
- 20 (2) If the applicant is a corporation or limited liability company, the address of its
21 physical location, a list of officers, controlling persons, and directors of such
22 corporation or company and their residential addresses, telephone numbers, and other
23 identifying information as the secretary may determine by rule promulgated pursuant
24 to chapter 1-26. If the applicant is a sole proprietorship or partnership, the address of

1 its business location, a list of owners, partners, or controlling persons and their
2 residential addresses, telephone numbers, and other identifying information as the
3 secretary may determine by rule promulgated pursuant to chapter 1-26. Any
4 information in the application regarding the personal residential address or telephone
5 number of any officer, director, partner, owner, controlling person, or employee is
6 exempt from the public records disclosure requirements;

7 (3) In the event the applicant is doing business under an assumed name, a copy of the
8 master business license with the registered trade name shown;

9 (4) The qualifications and business history of the applicant and all of its officers,
10 directors, owners, partners, and controlling persons;

11 (5) A personal credit report from a recognized credit reporting bureau satisfactory to the
12 secretary on all officers, directors, owners, partners, and controlling persons of the
13 applicant;

14 (6) Whether any of the officers, directors, owners, partners, or controlling persons have
15 been convicted of any crime within the preceding ten years which relates directly to
16 the business or duties of escrow agents, or have suffered a judgment within the
17 preceding five years in any civil action involving fraud, misrepresentation, any unfair
18 or deceptive act or practice, or conversion;

19 (7) The identity of the licensed escrow officer designated by the escrow agent as the
20 designated escrow officer responsible for supervising the agent's escrow activity;

21 (8) Evidence of compliance with the bonding and insurance requirements; and

22 (9) Any other information the secretary may require by rule promulgated pursuant to
23 chapter 1-26.

24 The secretary may share any information contained within a license application, including

1 fingerprints, with the Federal Bureau of Investigation and other regulatory or law enforcement
2 agencies.

3 Section 4. A licensed escrow agent may not operate an escrow business in a location other
4 than the location set forth on the agent's license or branch office license issued by the secretary.
5 The licensed escrow agent may apply to the secretary for authority to establish one or more
6 branch offices under the same name as the main office. Each branch office operated by a
7 licensed escrow agent shall be supervised by a licensed escrow officer designated by the
8 licensed escrow agent as the designated branch escrow officer for that branch. Any person
9 desiring to operate a branch escrow office shall make application on a form provided by the
10 secretary and pay the required fee as promulgated by the secretary pursuant to chapter 1-26. The
11 application shall identify the licensed escrow officer designated as the designated branch escrow
12 officer to supervise the agent's escrow activity at the branch office.

13 No escrow agent branch office license may be issued until the applicant has satisfied the
14 secretary that the escrow activity of the branch meets all financial responsibility requirements
15 governing the conduct of escrow activity.

16 Section 5. Upon the filing of the application for an escrow agent branch office and satisfying
17 the requirements of this Act, the secretary shall issue and deliver to the applicant a license to
18 engage in the business of an escrow agent at the branch location set forth on the license.

19 Section 6. A licensed escrow agent shall provide notice in writing to the secretary and to the
20 insurer providing coverage under section 22 of this Act of any change of business location,
21 branch office location, or business name. Such notice shall be given in a form prescribed by the
22 secretary and shall be delivered at least ten business days prior to the change in business location
23 or name. Upon the surrender of the original license for the agent or the applicable branch office
24 and a payment of a fee, the secretary shall issue a new license for the new location.

1 Section 7. A licensed escrow agent shall ensure that all escrow transactions are supervised
2 by a licensed escrow officer. In the case of a partnership, the designated escrow officer shall be
3 a partner in the partnership and shall act on behalf of the partnership. In the case of a
4 corporation, the designated escrow officer shall be an officer of the corporation and shall act on
5 behalf of the corporation. The designated escrow officer is responsible for that agent's handling
6 of escrow transactions, management of the agent's trust account, and supervision of all other
7 licensed escrow officers employed by the agent. Responsibility for the conduct of any licensed
8 escrow officer covered by this Act rests with the designated escrow officer or designated branch
9 escrow officer having direct supervision of such person's escrow activities. The branch
10 designated escrow officer is responsible for supervision of all other licensed escrow officers or
11 other persons performing escrow transactions at a branch escrow office.

12 Section 8. Any person desiring to be a licensed escrow officer shall meet the requirements
13 of section 21 of this Act. The applicant shall make application endorsed by a licensed escrow
14 agent to the secretary on a form to be prescribed and furnished by the secretary. Such application
15 shall be received by the secretary within one year of passing the escrow officer examination.
16 With this application the applicant shall:

- 17 (1) Pay a license fee as set forth by rule; and
- 18 (2) Furnish such proof as the secretary may require concerning the applicant's honesty,
19 truthfulness, good reputation, and identity, including fingerprints, residential address
20 and telephone number, qualifications and employment history, a personal credit
21 report, and any other information required under section 3 of this Act.

22 Section 9. An escrow officer license issued under the provisions of this Act expires on the
23 date one year from the date of issue, which date is the renewal date. An annual license renewal
24 fee in the same amount shall be paid on or before each renewal date. If the application for a

1 license renewal is not received by the secretary on or before the renewal date such license is
2 expired. The license may be reinstated at any time prior to the next succeeding renewal date
3 following its expiration upon the payment to the secretary of the annual renewal fee then in
4 default. Acceptance by the secretary of an application for renewal after the renewal date is not
5 a waiver of the delinquency. A license not renewed within one year of the renewal date shall be
6 canceled. A new license may be obtained by satisfying the procedures and qualifications for
7 initial licensing, including if applicable, successful completion of any examination.

8 Section 10. The license of a licensed escrow officer shall be retained and displayed at all
9 times by the licensed escrow agent. If the officer ceases for any reason to represent the agent,
10 the license shall cease to be in force. Within three business days of termination of the licensed
11 escrow officer's employment, the licensed escrow agent shall notify the secretary that the
12 terminated escrow officer no longer represents the escrow agent. Within ten business days of
13 termination of the licensed escrow officer's employment, the licensed escrow agent shall deliver
14 the surrendered escrow officer license to the secretary. Failure to notify the secretary within
15 three business days or deliver the surrendered license to the secretary within ten business days
16 may, at the discretion of the secretary, subject the escrow agent to penalties under section 37 of
17 this Act.

18 Section 11. The secretary may hold the licensed escrow officer's license inactive upon
19 notification of termination by the escrow agent or designated escrow officer. The licensed
20 escrow officer shall pay the renewal fee annually to maintain an inactive license. An inactive
21 license may be activated upon application of a licensed escrow agent on a form provided by the
22 secretary and the payment of a fee. If the licensed escrow officer continues to meet the
23 requirements of licensing in section 8 of this Act, the secretary shall issue a new license for the
24 unexpired term of the licensed escrow officer. An escrow officer's first license may not be

1 issued inactive.

2 Section 12. Each escrow agent license, each escrow agent branch office license, and each
3 escrow officer license shall be issued in the form and size prescribed by the secretary and shall
4 state in addition to any other matter required by the secretary:

- 5 (1) The name of the licensee;
- 6 (2) The name under which the applicant will do business;
- 7 (3) The address at which the applicant will do business;
- 8 (4) The expiration date of the license; and
- 9 (5) In the case of a corporation, partnership, or branch office, the name of the designated
10 escrow officer or designated branch escrow officer.

11 Section 13. The secretary shall charge and collect the following fees as promulgated by rule
12 pursuant to chapter 1-26 by the secretary:

- 13 (1) A fee for filing an original or a renewal application for an escrow agent license, not
14 to exceed four hundred dollars; a fee for each application for an additional licensed
15 location, not to exceed twenty-five dollars; a fee for an application for a change of
16 address for an escrow agent, not to exceed twenty-five dollars; annual fees for the
17 first office or location and for each additional office or location, not to exceed
18 twenty-five dollars; and the annual fee for an escrow agent license, not to exceed four
19 hundred dollars;
- 20 (2) A fee for filing an original or a renewal application for an escrow officer license, not
21 to exceed two hundred dollars; a fee for an application for a change of address for
22 each escrow officer license being so changed, not to exceed twenty-five dollars; a fee
23 to activate an inactive escrow officer license or transfer an escrow officer license, not
24 to exceed twenty-five dollars; and the annual fee for an escrow officer license, not

1 to exceed two hundred dollars;

2 (3) A fee for filing an application for a duplicate of an escrow agent license or of an
3 escrow officer license lost, stolen, destroyed, or for replacement, not to exceed
4 twenty-five dollars;

5 (4) A fee for providing license examinations, not to exceed two hundred dollars;

6 (5) An hourly audit fee, not to exceed two hundred dollars. In setting this fee, the
7 secretary shall ensure that every examination and audit, or any part of the
8 examination or audit, of any person licensed or subject to licensing in this state
9 requiring travel and services outside this state by the secretary or by employees
10 designated by the secretary, shall be at the expense of the person examined or audited
11 at the hourly rate established by the secretary, plus the per diem compensation and
12 actual travel expenses incurred by the secretary or the secretary's employees
13 conducting the examination or audit. When making any examination or audit under
14 this Act, the secretary may retain attorneys, appraisers, independent certified public
15 accountants, or other professionals and specialists as examiners or auditors, the cost
16 of which shall be borne by the person who is the subject of the examination or audit.

17 All fees received pursuant to this Act shall be paid into the state treasury to the credit of the
18 escrow agent fund.

19 Section 14. Upon the filing of the application for an escrow agent license on a form provided
20 by the secretary and satisfying the requirements as set forth in this Act, the secretary shall issue
21 and deliver to the applicant a license to engage in the business of an escrow agent at the location
22 set forth in the license.

23 Section 15. An escrow agent's license shall remain in effect until surrendered, revoked,
24 suspended, or until the license expires, and shall at all times be kept conspicuously posted in all

1 places of business of the agent.

2 Section 16. Each escrow agent's license shall expire at noon on the first day of January of
3 any calendar year. The license may be renewed by filing an application and paying the annual
4 license fee for the next succeeding calendar year.

5 Section 17. An escrow agent's license which has not been renewed may be reinstated at any
6 time prior to the thirtieth day of January following its expiration, upon the payment to the
7 secretary of the annual license fees then in default and a penalty equal to one-half of the annual
8 license fees then in default.

9 Section 18. Any person required by this Act to obtain a license who engages in business as
10 an escrow agent without applying for and receiving the license required by this Act, or willfully
11 continues to act as an escrow agent or licensed escrow officer after surrender, expiration,
12 suspension, or revocation of the person's license, is guilty of a Class 2 misdemeanor.

13 Section 19. No person engaged in the business or acting in the capacity of an escrow agent
14 may bring or maintain any action in any court of this state for the collection or compensation
15 for the performances of any services entered upon after December 31, 2005, for which licensing
16 is required under this Act without alleging and proving that the person was a duly licensed
17 escrow agent at the time of commencement of such services.

18 Section 20. The secretary may hold educational conferences for the benefit of the industry
19 and shall conduct examinations for licenses as an escrow officer.

20 Section 21. Any person desiring to become a licensed escrow officer shall successfully pass
21 an examination. The escrow officer examination shall encompass the following:

22 (1) Appropriate knowledge of the English language, including reading, writing, and
23 arithmetic;

24 (2) An understanding of the principles of real estate conveyancing and the general

1 purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale,
2 exchanges, rental and optional agreements, leases, earnest money agreements,
3 personal property transfers, and encumbrances;

4 (3) An understanding of the obligations between principal and agent;

5 (4) An understanding of the meaning and nature of encumbrances upon real property;

6 (5) An understanding of the principles and practice of trust accounting; and

7 (6) An understanding of this Act and other applicable law such as the Real Estate
8 Settlement Procedures Act, 12 U.S.C. § 2601, and Regulation X, 24 C.F.R. § 3500.

9 The examination shall be in such form as prescribed by the secretary with the advice of the
10 Escrow Commission and shall be given at least annually.

11 Section 22. At the time of filing an application for an escrow agent license, or any renewal
12 or reinstatement of an escrow agent license, the applicant shall provide satisfactory evidence to
13 the secretary of having obtained the following as evidence of financial responsibility:

14 (1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand
15 dollars with a deductible no greater than ten thousand dollars covering each corporate
16 officer, partner, escrow officer, and employee of the applicant engaged in escrow
17 transactions;

18 (2) An errors and omissions policy issued to the escrow agent providing coverage in the
19 minimum aggregate amount of fifty thousand dollars or, alternatively, cash or
20 securities in the principal amount of fifty thousand dollars deposited in an approved
21 depository on condition that they be available for payment of any claim payable
22 under an equivalent errors and omissions policy in that amount and pursuant to rules
23 promulgated pursuant to chapter 1-26 by the secretary for that purpose; and

24 (3) A surety bond in the amount of ten thousand dollars executed by the applicant as

1 obligor and by a surety company authorized to do a surety business in this state as
2 surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in
3 subdivision (1) of this section does not have a deductible. The bond shall run to the
4 State of South Dakota as obligee and shall run to the benefit of the state and any
5 person who suffers loss by reason of the applicant's or its employee's violation of this
6 Act. The bond shall be conditioned that the obligor as licensee will faithfully
7 conform to and abide by this Act and any rules promulgated under this Act, and shall
8 reimburse all persons who suffer loss by reason of a violation of this Act or rules
9 promulgated under this Act. The bond shall be continuous and may be canceled by
10 the surety upon the surety giving written notice to the secretary of its intent to cancel
11 the bond. The cancellation is effective thirty days after the notice is received by the
12 secretary. Whether or not the bond is renewed, continued, reinstated, reissued, or
13 otherwise extended, replaced, or modified, including increases or decreases in the
14 penal sum, it shall be considered one continuous obligation, and the surety upon the
15 bond is not liable in an aggregate amount exceeding the penal sum set forth on the
16 face of the bond. In no event may the penal sum, or any portion thereof, at two or
17 more points in time be added together in determining the surety's liability.

18 For the purposes of this section, a fidelity bond is a primary commercial blanket bond or its
19 equivalent satisfactory to the secretary and written by an insurer authorized to transact this line
20 of business in the state. Such bond shall provide fidelity coverage for any fraudulent or
21 dishonest acts committed by any one or more of the employees or officers as defined in the
22 bond, acting alone or in collusion with others. This bond shall be for the sole benefit of the
23 escrow agent and under no circumstances whatsoever may the bonding company be liable under
24 the bond to any other party. The bond shall name the escrow agent as obligee and shall protect

1 the obligee against the loss of money or other real or personal property belonging to the obligee,
2 or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held
3 by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond
4 may be canceled by the insurer upon delivery of thirty days' written notice to the secretary and
5 to the escrow agent.

6 For the purposes of this section, an errors and omissions policy is a group or individual
7 insurance policy satisfactory to the secretary and issued by an insurer authorized to transact
8 insurance business in the state. Such policy shall provide coverage for unintentional errors and
9 omissions of the escrow agent and its employees and may be canceled by the insurer upon
10 delivery of thirty days' written notice to the secretary and to the escrow agent.

11 Section 23. Except as provided in section 25 of this Act, the fidelity bond, surety bond, and
12 the errors and omissions policy required by section 22 of this Act shall be kept in full force and
13 effect as a condition precedent to the escrow agent's authority to transact escrow business in this
14 state, and the escrow agent shall supply the secretary with satisfactory evidence thereof upon
15 request.

16 Section 24. In the event of cancellation of either the fidelity bond, the surety bond, or both,
17 the secretary shall require a new bond filing. Failure to provide the secretary with satisfactory
18 evidence of a new bond after receipt by the secretary of notification that one is required or by
19 the effective date of the cancellation notice, whichever is later, is sufficient grounds for the
20 suspension or revocation of the escrow agent's license.

21 Section 25. The secretary shall, within thirty days after the written request of the Escrow
22 Commission, hold a public hearing to determine whether the fidelity bond, surety bond, or the
23 errors and omissions policy specified in section 22 of this Act is reasonably available to a
24 substantial number of licensed escrow agents. If the secretary determines and the director of

1 insurance concurs that such bond or bonds or policy is not reasonably available, the secretary
2 shall waive the requirements for such bond or bonds or policy for a fixed period of time.

3 Section 26. After a written determination by the secretary that the fidelity bond, the surety
4 bond, or the errors and omissions policy is cost-prohibitive, or after a determination that such
5 bond or policy is not reasonably available, an association comprised of licensed escrow agents,
6 with the consent of the director of insurance, may organize a corporation for the purpose of
7 insuring or self-insuring against claims arising out of escrow transactions. The director of
8 insurance may limit the authority of the corporation to the insuring or self-insuring of claims
9 which would be within the coverage specified in section 22 of this Act. The director of
10 insurance may revoke the authority of the corporation to transact insurance or self-insurance if
11 the director determines that the corporation is not acting in a financially responsible manner or
12 for the benefit of the public.

13 Section 27. The following criteria shall be considered by the secretary when deciding
14 whether to grant a licensed escrow agent a waiver from the errors and omissions policy
15 requirement:

- 16 (1) Whether the secretary has determined that an errors and omissions policy is not
17 reasonably available to a substantial number of licensed escrow agents;
- 18 (2) Whether purchasing an errors and omissions policy would be cost-prohibitive for the
19 licensed escrow agent requesting the exemption;
- 20 (3) Whether a licensed escrow agent has wilfully violated the provisions of this Act,
21 which violation thereby resulted in the termination of the agent's certificate, or
22 engaged in any other conduct resulting in the termination of the escrow certificate;
- 23 (4) Whether a licensed escrow agent has paid claims directly or through an errors and
24 omissions carrier, exclusive of costs and attorney fees, in excess of ten thousand

1 dollars in the calendar year preceding the year for which the waiver is requested;

2 (5) Whether a licensed escrow agent has paid claims directly or through an errors or
3 omissions insurance carrier, exclusive of costs and attorney fees, totaling in excess
4 of twenty thousand dollars in the three calendar years preceding the calendar year for
5 which the exemption is requested; and

6 (6) Whether the licensed escrow agent has been convicted of a crime involving honesty
7 or moral turpitude.

8 These criteria are not intended to be a wholly inclusive list of factors to be applied by the
9 secretary when considering the merits of a licensed escrow agent's request for a waiver of the
10 required errors and omissions policy.

11 Section 28. The secretary shall, within thirty days following submission of a written petition
12 for waiver of the insurance requirements found in section 22 of this Act, issue a written
13 determination granting or rejecting an applicant's request for waiver.

14 Section 29. The proceedings for revocation, suspension, or refusal to renew or accept an
15 application for renewal of an escrow agent's registration or escrow officer license, and any
16 appeal therefrom or review thereof shall be governed by the provisions of chapter 1-26.

17 Section 30. Upon granting a waiver of insurance requirements found in section 22 of this
18 Act, the secretary shall issue a certificate of waiver. The certificate shall be mailed to the escrow
19 agent who requested the waiver.

20 Section 31. Upon determining that a licensed escrow agent is to be denied a waiver of the
21 errors and omissions policy requirements of section 22 of this Act, the secretary shall within
22 thirty days of the denial of an escrow agent's request for a waiver, provide to the escrow agent
23 a written explanation of the reasons for the secretary's decision to deny the requested waiver.

24 Section 32. Nothing in sections 22, 27, 28, 30, and 31 of this Act may be construed as

1 prohibiting a person applying for an escrow license from applying for a certificate of waiver of
2 the errors and omissions policy requirement when seeking an escrow license.

3 Section 33. It is a violation of this Act for any escrow agent, controlling person, officer,
4 designated escrow officer, independent contractor, employee of an escrow business, or other
5 person subject to this Act to:

6 (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead
7 borrowers or lenders or to defraud any person;

8 (2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

9 (3) Directly or indirectly obtain property by fraud or misrepresentation;

10 (4) Knowingly make, publish, or disseminate any false, deceptive, or misleading
11 information in the conduct of the business of escrow, or relative to the business of
12 escrow or relative to any person engaged therein;

13 (5) Knowingly receive or take possession for personal use of any property of any escrow
14 business, other than in payment authorized by this Act, and with intent to defraud,
15 omit to make, or cause or direct to be made, a full and true entry thereof in the books
16 and accounts of the business;

17 (6) Make, or concur in making, any false entry or omit, or concur in omitting, to make
18 any material entry in its books or accounts;

19 (7) Knowingly make or publish, or concur in making or publishing any written report,
20 exhibit, or statement of its affairs or pecuniary condition containing any material
21 statement which is false, or omit or concur in omitting any statement required by law
22 to be contained therein;

23 (8) Willfully fail to make any proper entry in the books of the escrow business as
24 required by law;

- 1 (9) Fail to disclose in a timely manner to the other officers, directors, controlling
2 persons, designated escrow officer, or other licensed escrow officers the receipt of
3 service of a notice of an application for an injunction or other legal process affecting
4 the property or business of an escrow agent, including in the case of a licensed
5 escrow agent an order to cease and desist or other order of the secretary; or
- 6 (10) Fail to make any report or statement lawfully required by the secretary or other public
7 official.

8 Section 34. A licensed escrow agent shall keep adequate records of all transactions handled
9 by or through the agent including itemization of all receipts and disbursements of each
10 transaction. These records shall be maintained in this state, unless otherwise approved by the
11 secretary, for a period of six years from completion of the transaction. These records shall be
12 open to inspection by the secretary.

13 A licensed escrow agent shall keep separate escrow fund accounts in recognized state
14 depositories authorized to receive funds, and the funds shall be segregated from the agent's own
15 funds. All funds or moneys of clients which are being held by the agent pending the closing of
16 a transaction shall be deposited not later than the first banking day following receipt thereof.

17 An escrow agent, unless exempted by section 2 of this Act, may not make disbursements on
18 any escrow account without first receiving deposits directly relating to the account in amounts
19 at least equal to the disbursements. An escrow agent may not make disbursements until the next
20 business day after the business day on which the funds are deposited unless the deposit is made
21 in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to
22 cash on the same day the deposit is made. The deposits shall be in one of the following forms:

- 23 (1) Cash;
- 24 (2) Interbank electronic transfers such that the funds are unconditionally received by the

1 escrow agent or the agent's depository;

2 (3) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and
3 certified checks that are payable in South Dakota and drawn on financial institutions
4 located in South Dakota;

5 (4) Any depository check, including any cashier's check, certified check, or teller's check,
6 which is governed by the provisions of the Federal Expedited Funds Availability Act,
7 12 U.S.C. § 4001 et seq.

8 For purposes of this section, the term, item, means any instrument for the payment of money
9 even though it is not negotiable, but does not include money.

10 A violation of this section constitutes grounds for suspension or revocation of the license
11 of any licensed escrow agent or licensed escrow officer. In addition, an escrow agent who is
12 required to be licensed under this Act and who violates this section or a person who is required
13 to be licensed as an escrow officer under this Act and who violates this section, may be subject
14 to penalties as prescribed in section 37 of this Act.

15 Section 35. The secretary shall administer this Act to facilitate the delivery of services to
16 citizens of this state by escrow agents and others subject to this Act. The secretary shall enforce
17 all laws and rules relating to the licensing of escrow agents and escrow officers and fix the time
18 and places for holding examinations of applicants for licenses and prescribe the method of
19 conducting the examinations. The secretary may hold hearings and suspend or revoke the
20 licenses of violators and may deny, suspend, or revoke the authority of an escrow officer to act
21 as the designated escrow officer of a person who commits violations of this Act or of the rules
22 promulgated pursuant to this Act. The hearings conducted shall be in accordance with chapter
23 1-26.

24 Section 36. The secretary may:

- 1 (1) Make necessary public or private investigations within or outside of this state to
2 determine whether any person has violated this Act or any rule or order pursuant to
3 this Act, or to aid in the enforcement of this Act or in the prescribing of rules and
4 forms under this Act; or
- 5 (2) Require or permit any person to file a statement in writing, under oath or otherwise
6 as the secretary determines, as to all facts and circumstances concerning the matter
7 to be investigated.

8 For the purpose of any investigation or proceeding under this Act, the secretary or any
9 officer designated by the secretary may administer oaths or affirmations, and upon the
10 secretary's own motion or upon request of any party, may subpoena witnesses, compel their
11 attendance, take evidence, and require the production of any matter which is relevant to the
12 investigation, including the existence, description, nature, custody, condition, and location of
13 any books, documents, or other tangible things and the identity and location of persons having
14 knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery
15 of material evidence.

16 Upon failure to obey a subpoena or to answer questions propounded by the investigating
17 officer and upon reasonable notice to all persons affected thereby, the secretary may apply to
18 the circuit court for an order compelling compliance. All proceedings under this Act shall be in
19 accordance with chapter 1-26.

20 Section 37. The secretary may upon notice to the escrow agent and to the insurer providing
21 coverage under section 22 of this Act, deny, suspend, decline to renew, or revoke the license of
22 any escrow agent or escrow officer if the secretary finds that the applicant or any partner,
23 officer, director, controlling person, or employee has committed any of the following acts or
24 engaged in any of the following conduct:

- 1 (1) Obtaining a license by means of fraud, misrepresentation, concealment, or through
2 the mistake or inadvertence of the secretary;
- 3 (2) Violating any of the provisions of this Act or any lawful rules made by the secretary
4 pursuant to this Act;
- 5 (3) The commission of a crime against the laws of this or any other state or government,
6 involving moral turpitude or dishonest dealings;
- 7 (4) Knowingly committing or being a party to, any material fraud, misrepresentation,
8 concealment, conspiracy, collusion, trick, scheme, or device whereby any other
9 person lawfully relying upon the word, representation, or conduct of the licensee or
10 agent or any partner, officer, director, controlling person, or employee acts to the
11 injury or damage of the relying person;
- 12 (5) Conversion of any money, contract, deed, note, mortgage, or abstract or other
13 evidence of title to the applicant's own use or to the use of the applicant's principal
14 or of any other person, when delivered to the applicant in trust or on condition, in
15 violation of the trust or before the happening of the condition. Failure to return any
16 money or contract, deed, note, mortgage, abstract, or other evidence of title within
17 thirty days after the owner thereof is entitled thereto, and makes demand therefor, is
18 prima facie evidence of such conversion;
- 19 (6) Failing, upon demand, to disclose any information within the applicant's knowledge
20 to, or to produce any document, book, or record in the applicant's possession for
21 inspection of the secretary;
- 22 (7) Committing any act of fraudulent or dishonest dealing, and a certified copy of the
23 final holding of any court of competent jurisdiction in such matter is conclusive
24 evidence in any hearing under this Act;

1 (8) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit
2 on expenditures made for the principal;

3 (9) Committing acts or engaging in conduct that demonstrates the applicant or licensee
4 to be incompetent or untrustworthy, or a source of injury and loss to the public.

5 Any conduct of an applicant or licensee that constitutes grounds for enforcement action
6 under this Act is sufficient regardless of whether the conduct took place within or outside of the
7 state.

8 In addition to or in lieu of a license suspension, revocation, or denial, the secretary may
9 remove or prohibit from participation in the conduct of the affairs of any licensed escrow agent,
10 any officer, controlling person, director, employee, or licensed escrow officer.

11 Section 38. The secretary may issue an order requiring the person to cease and desist from
12 the unlawful practice and to take such affirmative action as in the judgment of the secretary will
13 carry out the purposes of this Act, if the secretary determines after notice and hearing that a
14 person has:

15 (1) Violated any provision of this Act;

16 (2) Directly, or through an agent or employee, engaged in any false, unfair and deceptive,
17 or misleading advertising or promotional activity or business practices; or

18 (3) Violated any lawful order or rule of the secretary.

19 If the secretary makes a finding of fact in writing that the public interest will be irreparably
20 harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order.
21 Each temporary cease and desist order shall include in its terms a provision that upon request
22 a hearing will be held to determine whether or not the order becomes permanent.

23 Section 39. The revocation, suspension, surrender, or expiration of an escrow agent's license
24 does not impair or affect preexisting escrows accepted by the agent prior to such revocation,

1 suspension, surrender, or expiration. The escrow agent shall, within five work days, provide
2 written notice to all principals of such preexisting escrows of the agent's loss of license. The
3 notice shall include, at a minimum, the reason for the loss of license, the estimated date for
4 completing the escrow, and the condition of the agent's bond and whether it is in effect or
5 whether notice of cancellation has been given. The notice shall afford the principals the right
6 to withdraw the escrow without monetary loss.

7 Section 40. Upon application by the secretary or any other interested party and upon a
8 showing that the interest of the creditors so requires, the circuit court may appoint a receiver to
9 take over, operate, or liquidate any escrow office in this state.

10 Section 41. Upon petition by the attorney general, the circuit court may, in its discretion,
11 order the dissolution, or suspension or forfeiture of franchise, of any corporation for a repeated
12 or flagrant violation of this Act or the terms of any order of injunction issued pursuant to this
13 Act.

14 Section 42. The secretary, through the attorney general, may prosecute an action in any court
15 of competent jurisdiction to enforce any order made by the secretary pursuant to this Act and
16 is not required to post a bond in any such court proceedings.

17 If the secretary has cause to believe that any person has violated any penal provision of this
18 Act, the secretary may refer the violation to the attorney general or the prosecuting attorney of
19 the county in which the offense was committed.

20 If the secretary has cause to believe that any person, required to be licensed by this Act, is
21 conducting business as an escrow agent without a valid license, or that any licensed escrow
22 agent, directly or through an agent or employee, is engaged in any false, unfair, deceptive, or
23 misleading advertising or promotional activity or business practice, or is conducting business
24 in a manner deemed unsafe or injurious to the public, or has violated, is violating, or is about

1 to violate any of the provisions of this Act or a rule promulgated pursuant to this Act, the
2 secretary, through the attorney general, may bring an action in any court of competent
3 jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance
4 of the violation. Upon proper showing, injunctive relief or a temporary restraining order shall
5 be granted by the court and a receiver or conservator may be appointed.

6 The attorney general or any state's attorney may prosecute proceedings brought pursuant to
7 this Act upon notification of the secretary.

8 Section 43. There is established an Escrow Commission to consist of the secretary as chair,
9 and five other members who shall act as advisors to the secretary as to the needs of the escrow
10 profession, including the design and conduct of tests to be administered to applicants for escrow
11 licenses, the schedule of license fees to be applied to the escrow licensees, educational
12 programs, audits and investigations of the escrow profession designed to protect the consumer,
13 and such other matters determined appropriate. The secretary may appoint the other members,
14 each of whom shall have been a resident of this state for at least five years and shall have at least
15 five years experience in the practice of escrow as an escrow agent or as a person in responsible
16 charge of escrow transactions.

17 The members of the first commission shall serve for the following terms: one member for
18 one year, one member for two years, one member for three years, one member for four years,
19 and one member for five years, from the date of their appointment, or until their successors are
20 duly appointed and qualified. Each member of the commission shall receive a certificate of
21 appointment from the secretary. On the expiration of the term of each member, the secretary
22 shall appoint a successor to serve for a term of five years or until the member's successor has
23 been appointed and qualified.

24 The secretary may remove any member of the commission for cause. Any vacancy in the

1 commission for any reason shall be filled by appointment for the unexpired term.

2 Members shall be compensated in accordance with § 3-9-2.

3 Section 44. That § 25-7A-56 be amended to read as follows:

4 25-7A-56. A state agency or board may not issue or renew the professional, sporting, or
5 recreational license, registration, certification, or permit of any applicant after receiving notice
6 from the Department of Social Services that the applicant has support arrearages in the sum of
7 one thousand dollars or more, unless the applicant first makes satisfactory arrangements with
8 the Department of Social Services for payment of any accumulated arrearages. An applicant
9 who disputes a determination by the Department of Social Services that the applicant has
10 support arrearages of one thousand dollars or more shall, upon request, be given a due process
11 hearing by the department. Upon recommendation by the department, the licensing agency or
12 board may issue a temporary license, registration, certification, or permit to the applicant
13 pending final resolution of the due process hearing. The department may promulgate rules
14 pursuant to chapter 1-26 to implement the provisions of this section.

15 The term professional license, registration, certification, or permit as specified by this
16 section includes appraisers as specified in chapter 36-21B; abstractors as specified in chapter
17 36-13; accountants as specified in chapter 36-20A; barbers as specified in chapter 36-14;
18 chiropractors as specified in chapter 36-5; cosmetologists as specified in chapter 36-15;
19 counselors as specified in chapter 36-32; dentists and dental hygienists as specified in chapter
20 36-6A; electricians as specified in chapter 36-16; engineers, architects, and surveyors as
21 specified in chapter 36-18; embalmers and funeral directors as specified in chapter 36-19; nurses
22 as specified in chapter 36-9; nurse practitioners and nurse mid-wives as specified in chapter
23 36-9A; physical therapists as specified in chapter 36-10; medical assistants as specified in
24 chapter 36-9B; hearing aid dispensers as specified in chapter 36-24; physicians and surgeons

1 as specified in chapter 36-4; physician's assistants as specified in chapter 36-4A; advanced life
2 support personnel as specified in chapter 36-4B; nursing facility administrators as specified in
3 chapter 36-28; optometrists as specified in chapter 36-7; pharmacists as specified in chapter
4 36-11; plumbers as specified in chapter 36-25; podiatrists as specified in chapter 36-8;
5 psychologists as specified in chapter 36-27A; real estate brokers and salesmen as specified in
6 chapter 36-21A; social workers as specified in chapter 36-26; veterinarians as specified in
7 chapter 36-12; insurance brokers, agents, and solicitors as specified in chapter 58-30; teachers
8 and administrators as specified in chapters 13-42 and 13-43; attorneys as specified in chapter
9 16-16; securities agents, securities brokers, investment advisers, or investment adviser
10 representatives as specified in chapter 47-31A; pilots as specified in chapter 50-11; day care
11 providers as specified in chapter 26-6; gaming employees as specified in chapter 42-7B; ~~and~~ law
12 enforcement officers as specified in chapter 23-3, and escrow officers as specified in this Act.
13 The state agencies or boards which govern the professions, recreational licenses, and
14 occupations listed in this paragraph may adopt rules pursuant to chapter 1-26 to implement the
15 provisions of this section for their particular profession or occupation.

16 Section 45. This Act is effective on January 1, 2005.