

REAL ESTATE RELATIONSHIPS DISCLOSURE LF051006-09

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South Dakota real estate brokers are required to develop and maintain a written office policy that sets forth agency and brokerage relationships that the broker may establish. The broker must disclose in writing the types of agency and brokerage relationships the broker offers to consumers and to allow a consumer the right to choose or refuse among the various real estate relationships. The following real estate relationships are permissible under South Dakota law.

Single Agent-Seller's/Landlord's Agent: Works on behalf of the seller/landlord and owes duties to the seller/landlord, which include good faith, loyalty, and fidelity. The agent will negotiate on behalf of and act as an advocate for the seller/landlord. The agent may not disclose confidential information without express authority of the seller or landlord.

Single Agent-Buyer's/Tenant's Agent: Works on behalf of the buyer/tenant and owes duties to the buyer/tenant which include good faith, loyalty, and fidelity. The agent will negotiate on behalf of and act as an advocate for the buyer/tenant. The agent may not disclose confidential information without express authority of the buyer or tenant.

Appointed Agent: Works on behalf of the seller/landlord or buyer/tenant and owes the same duties to the client as that of a single agent. A seller/landlord or buyer/tenant with an appointed agency agreement is represented by agents specifically named in the agreement. Any agents of the firm not named in the agreement do not represent the seller/landlord or buyer/tenant. The named appointed agent acts solely on behalf of his or her client and may only share confidential information about the client with the agent's responsible broker or the broker's designee who is also named in the agreement. Other agents in the firm have no duties to the seller/landlord or buyer/tenant and may act solely on behalf of another party in the transaction. The responsible broker and the broker's designee act as a disclosed limited agent when appointed agents within the same firm are representing their respective clients in the same transaction.

Disclosed Limited Agent: Works on behalf of more than one client to a transaction, requiring the informed written consent of the clients before doing so. A limited agent may not disclose confidential information about one client to another without written permission releasing that information. While working to put the transaction together, agents in a limited agency transaction cannot negotiate nor advocate solely on behalf of either the seller/landlord or buyer/tenant. A limited agent may not be able to continue to provide other fiduciary services previously provided to the client.

Transaction Broker: Exercises reasonable skill and care in assisting one or more parties with a real estate transaction without being an advocate for any party. Although the transaction broker will help facilitate the transaction, the licensee will serve as a neutral party, offering no client-level services (such as negotiation) to the customer. The transaction broker may not disclose confidential information about a party to another without written permission releasing that information.

Duties of a buyer, tenant, landlord, or seller: The duties of the real estate licensees in a real estate transaction do not relieve a party to a transaction from the responsibility to protect the party's own interests. Persons should carefully read all documents to ensure that they adequately express their understanding of the transaction. If legal or tax advice is desired, consult a competent professional in that field.

All real estate licensees must provide disclosure of all actually known adverse material facts about the subject property or a party's ability to perform its obligations.

South Dakota law requires a written agreement which sets forth the duties and obligations of the parties as described in the brokerage relationships itemized above.

The office policy of West Forty Realty (company) is to offer only those services marked above.

By Terrance S. Rathbun, CCIM Broker [Signature] (licensee)

**Acknowledgment:** I have been presented with an overview of the brokerage relationship options available and hereby acknowledge receipt of:

Real Estate Relationships Disclosure form

Consumer Real Estate Information Guide (residential property sales transaction only)

I understand that receipt of these materials is for disclosure purposes only and does not constitute a contract or agreement with the licensee.

Signature: [Signature] Date: 2/21/06 Time: 1:30 PM am/pm

Signature: [Signature] Date: 2/21/06 Time: \_\_\_\_\_ am/pm

By marking a box and signing below, it is understood that the consumer is working without the benefit of client or transaction broker representation.

Buyer/tenant understands that Broker is not representing Buyer as a client or working with Buyer as a transaction broker. Buyer further understands that Broker is acting as agent for the seller or is assisting the seller as a transaction broker.

Seller/Landlord understands that Broker is not representing Seller/Landlord as a client or working with Seller/Landlord as a transaction broker. Seller further understands that Broker is acting as agent for the buyer or is assisting the buyer as a transaction broker.

Signature(s) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ am/pm  
SDREC/AGCYDISC7/1/05

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# EXCLUSIVE AGREEMENT TO REPRESENT BUYERS

(This is a legally binding contract. If you do not understand it, seek legal advice.)

As a buyer's agent, Broker will assist Buyer under the following terms:

1. Buyer gives Broker the exclusive right to locate and/or assist in negotiations for the purchase, exchange, or option to purchase property (purchase) at a price and with terms acceptable to Buyer.
2. Buyer agrees to compensate Buyer's Broker. **THE AMOUNT OF COMPENSATION SHALL BE \$ 50.00 per hour** OR \_\_\_\_\_ percent of the selling price plus appropriate sales/service tax, which may be satisfied in whole or in part by payments from a cooperating Broker or Seller. *In an amount not to exceed \$1,500. JAR*
3. Broker will represent Buyer as outlined in Article II of the attached Agency Agreement Addendum when showing Buyer another firm's listings. Broker will act, with Buyer's consent, as outlined in Article III when showing Broker's listings to Buyer.
4. Buyer acknowledges and consents that Broker may represent other buyers who may have an interest in presenting purchase agreements on any given property for sale by a Seller.
5. **BUYER'S OBLIGATION: Buyer will:**
  - A. Work exclusively with Broker for the purchase of property.
  - B. Provide Broker with accurate and relevant personal financial information to determine Buyer's ability to purchase property.
  - C. Compensate Broker as outlined in paragraph two (2) if Buyer purchases property or defaults on an Agreement to Purchase during the period of this contract.
  - D. Compensate Broker as outlined in paragraph two (2) if Buyer purchases a property within 90 days after the end of this Agreement which Broker has shown to Buyer during the term of this Agreement unless Buyer enters into an Exclusive Agreement with another broker.

6. Description of property desired:

- A. Type of property: Commercial Building
- B. General location: 800 block of Centre St. Rapid City, South Dakota
- C. Price range: [REDACTED] JAR

7. This agreement shall begin February 10, 2006 10 a.m./p.m., and shall continue until the earlier of August 10, 2006 10 a.m./p.m., or completion of the acquisition of the property.

Buyer: [Signature] Date: 2-10-06 [Signature]  
 Buyer: CITY OF RAPID CITY Date: \_\_\_\_\_

Address: 300 6th. St. Rapid City South Dakota 57701  
City State Zip

Broker: Terrance S. Rathbun, CCIM by Agent: [Signature] Date: February 7, 2006

Receipt of copy acknowledged: \_\_\_\_\_  
 Buyer

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THIS AGREEMENT IS EXTENDED TO: \_\_\_\_\_

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Broker: \_\_\_\_\_ by Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Receipt of copy acknowledged: \_\_\_\_\_  
 Buyer

AGENCY AGREEMENT ADDENDUM

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This addendum is attached to and made a part of the agency agreement dated February, 2006, between Terrance S. Rathbun, CCIM West Forty Realty (Brokerage Firm) and CITY OF RAPID CITY (Client).

I. IF THE BROKER REPRESENTS THE SELLER/LANDLORD or X BUYER/TENANT: If a broker enters into an agreement to represent an seller/landlord or buyer/tenant as a client, the broker and all licensees associated with that broker represent the client. An agent/subagent owes the client the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.

II. IF THE BROKER APPOINTS AN ASSOCIATE LICENSEE TO REPRESENT THE SELLER/LANDLORD or BUYER/TENANT: If a broker enters into an agreement to represent a seller/landlord or buyer/tenant as a client, the broker appoints as the client's appointed agent. For the purposes of this addendum, the client shall have an agency relationship with ONLY the appointed agent, the responsible broker and, if applicable, responsible broker's designated broker. The responsible broker may appoint other affiliated licensees during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the responsible broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client.

III. IF THE BROKER, ASSOCIATE LICENSEE OR APPOINTED AGENT REPRESENTS BOTH THE SELLER/LANDLORD AND THE BUYER/TENANT: A real estate broker acting directly or through an associate licensee or appointed agent can legally be the agent of both the seller/landlord and the buyer/tenant in a transaction, but only with the knowledge and written consent of both parties. If a buyer/tenant represented by a broker wants to see a property of a seller/landlord being represented by the same broker, the following provisions will govern the actions of the broker.

- A. The broker may not knowingly say anything or do anything which might place one party at a disadvantage, disclose personal confidences of one party or the other party, or any other information a party specifically instructs the broker in writing not to disclose, unless disclosure is required by law.
B. The broker may not, without the prior express written consent of the owner, disclose to the buyer/tenant that the owner might accept a price less than the listing price, nor shall the broker, without the prior express written consent of the buyer/tenant, disclose to the owner that the buyer/tenant may be willing to pay a higher price, or accept terms less favorable to the buyer/tenant than those indicated in the buyer's/tenant's previous offer.
C. The broker may not represent the interests of either the owner or buyer/tenant to the detriment of the other party. The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the owner and the buyer/tenant.

CONSENT AGREEMENT: If the seller/landlord elects to negotiate with a buyer/tenant that is a client of the broker, or a buyer/tenant elects to negotiate with a seller/landlord that is a client of the broker, it is understood that both parties will be required to confirm, in writing, their election to have the broker act as a consensual limited agent.

AGENT OBLIGATIONS: Regardless of representation, the broker shall: Disclose all known material facts about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties. The duties of the broker in a real estate transaction do not relieve an owner or buyer/tenant from the responsibility to protect their own interests. You should carefully read all documents to assure that they adequately express your understanding of the transaction. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further.

Having read and understood this information about agency, I instruct Broker as initialed below:

I agree to an appointed agency relationship as described in section II above. \_\_\_/\_\_\_ Yes \_\_\_/X No

I agree to a potential limited agency representation as described in section III above. \_\_\_/\_\_\_ Yes \_\_\_/X No

Handwritten signatures and dates for Buyer/Tenant, Seller/Landlord, Broker, and Agent.

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AGENCY OFFICE POLICY

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I. Terrance S. Rathbun, shall act either as agent or sub-agent of the seller and, as such, will work with both sellers and buyers as customers. All sellers will be advised of the dual agency concept and an agreement will be met between myself and the seller regarding the same. However, should the buyer fall into any of the buyer/client categories, I shall represent the buyer as a client, upon the consensus of the consumer. If such a buyer should desire to see an in house listing, I, will adhere to the previously agreed upon agency with the seller. Subagency also will be discussed an agreed to previously cooperating with any other brokers or salespeople.

II. Should the buyer request to work in a transaction brokerage capacity, I will first advise that should they desire to view an in-house listing, their relationship status would need to change to either a represented client or a non-represented customer. Buyer/profiles where transaction brokerage may apply are buyers interested in for sale by owner porperites, parties wishing confidentiality, (by no agency relationship), and those capable of representing themselves.

III. as the listing agent, I will cooperate and share commissions with selling agents from other companies that accept sub-agency, with sellers previously obtained consent, work in buyer agency, with sellers previously obtained consent or work as transaction broker, all parties consent.

IV. As the selling agent in a co-op sale, I will work with the buyer as either a customer or as a client. If in a client capacity, I will seek compensation first from the transaction according to terms agreed to in the buyer agency agreement. If compensation is not available from the transaction, I will look to the buyer/client for payment as stated in the buyer agency agreement.

V) I will work for clients on a per hour basis agreed upon in advance and reduced to writing upon a buyer broker agreement or client agreement as needed. I will work for clients on a fee basis as above.

V. Implementation

A) Steps for disclosure- Buyer- previous to any property showing, early in the discussion.

B) Decisions to be made regarding limited agency- as proper from transaction to transaction.

C) Decisions to be made regarding release of confidential information- as proper from transaction to transaction.

D) Paper Work agreements to be signed- As dictated by license law

E) Copies Given to consumer- after each signing.

F. All files will be the responsibility of Terrance S. Rathbun

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  - D. Compensate Broker as outlined in paragraph two (2) if Buyer purchases a property within \_\_\_\_\_ days after the end of this Agreement which Broker has shown to Buyer during the term of this Agreement unless Buyer enters into an Exclusive Agreement with another broker.

6. **Description of property desired:**

- A. Type of property: Residential income property
- B. General location: Block 19, Original Town of Rapid City, App. 1st and Philadelphia St. Property known as Walenta and Lowell property.
- C. Price range: \_\_\_\_\_

7. This agreement shall begin \_\_\_\_\_, \_\_\_\_\_ a.m./p.m., and shall continue until the earlier of \_\_\_\_\_, \_\_\_\_\_ a.m./p.m., or completion of the acquisition of the property.

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_  
Buyer: City of Rapid City Date: \_\_\_\_\_  
Address: 300 6th. St., Rapid City, South Dakota  
City State Zip  
Broker: Terrance S. RATHBUN, CCIM by Agent: [Signature] Date: 1/1/06

Receipt of copy acknowledged: \_\_\_\_\_  
Buyer

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THIS AGREEMENT IS EXTENDED TO: \_\_\_\_\_

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Broker: \_\_\_\_\_ by Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Receipt of copy acknowledged: \_\_\_\_\_  
Buyer