

ELECTRONIC RECORD STORAGE

South Dakota Codified Law 36-21A-74 Preservation of Records states, “A licensee shall preserve for four years all listings, offers to purchase, closing statements and other records relating to any real estate transaction. In addition, SDCL 36-21A-82 states, “...The ledger sheet, deposit slip and any other record shall be made available for inspection by the commission upon request...”

The Commission has taken the position that these statutes are broad enough to allow imaged/electronic documents. As a part of the position, the Commission has developed the following policy regarding imaging and electronic storage of records subject to inspection by the Commission.

COMMISSION POLICY — OPTICAL IMAGE STORAGE

A real estate licensee may use electronic image storage media to retain and store copies of all contracts, deposit receipts, canceled checks, trust records and other documents executed or obtained by the licensee in connection with any transaction for which a real estate license is required, provided the following conditions are met:

1. The electronic image storage system must be in a format that once scanned, does not allow changes to the stored document or record.
2. An electronically stored document must be an exact duplicate of the original.
3. The original record from which the stored document or record was copied was made or prepared by the licensee or licensee’s employees at or near the time of the act, conditions or event reflected in the record.
4. The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.
5. The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time. The indexing system must be able to identify a record according to the licensee(s) involved in the transaction.
6. The electronic storage system must be safeguarded by password or security codes controlled by the licensee.
7. The electronic record must be maintained in a manner allowing reconstruction in the event of destruction of electronic data.
8. Records copied and stored under electronic imaged storage shall be retained for four years pursuant to SDCL 36-21A-74.
9. The licensee will maintain at the broker’s office a means of viewing copies of documents or records stored electronically.
10. An electronically stored record must be legible for the entire retention period of the record.
11. A licensee shall provide, at the licensee’s expense, a paper copy of any document or record requested by the Commission.