

Presented to the governor May 17, 1993

Signed by the governor May 20, 1993, 2:16 p.m.

CHAPTER 309—S.F.No. 1000

An act relating to real estate; regulating fees, licenses, and agreements; requiring certain disclosures; providing for meetings of the real estate appraiser advisory board; changing terms; regulating fees and licenses; appropriating money; amending Minnesota Statutes 1992, sections 82.17, subdivision 4, and by adding subdivisions; 82.19, subdivision 5, and by adding subdivisions; 82.20, subdivision 15; 82.21, subdivision 1, and by adding a subdivision; 82.22, subdivisions 6 and 13; 82.24, subdivision 1; 82.27, subdivision 1; 82.33, subdivision 2, and by adding subdivisions; 82.34, subdivisions 3 and 7; 82B.02, by adding a subdivision; 82B.035, by adding a subdivision; 82B.05, subdivision 5; 82B.11; 82B.14; 82B.19, subdivision 2; and 507.45, subdivision 4; Laws 1992, chapter 555, article 1, section 12; proposing coding for new law in Minnesota Statutes, chapter 82; repealing Minnesota Statutes 1992, sections 82.22, subdivision 7; and 462A.201, subdivision 5; Minnesota Rules, part 2805.1200.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 82.17, subdivision 4, is amended to read:

Subd. 4. "Real estate broker" or "broker" means any person who:

(a) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities;

(b) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly negotiates or offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real estate;

(c) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or rental of any business opportunity or business, or its good will, inventory, or fixtures, or any interest therein;

(d) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly offers, sells or attempts to negotiate the sale of property that is subject to the registration requirements of chapter 83, concerning subdivided land;

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(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes to promote the sale of real estate through its listing in a publication issued primarily for this purpose; for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same, promotes the sale of real estate by advertising it in a publication issued primarily for this purpose, if the person:

(1) negotiates on behalf of any party to a transaction;

(2) disseminates any information regarding the property to any party or potential party to a transaction subsequent to the publication of the advertisement, except that in response to an initial inquiry from a potential purchaser, the person may forward additional written information regarding the property which has been prepared prior to the publication by the seller or broker or a representative of either;

(3) counsels, advises, or offers suggestions to the seller or a representative of the seller with regard to the marketing, offer, sale, or lease of the real estate, whether prior to or subsequent to the publication of the advertisement;

(4) counsels, advises, or offers suggestions to a potential buyer or a representative of the seller with regard to the purchase or rental of any advertised real estate; or

(5) engages in any other activity otherwise subject to licensure under this chapter;

(f) engages wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not the real estate is owned by the person. A person shall be presumed to be engaged in the business of selling real estate if the person engages as principal in five or more transactions during any 12-month period, unless the person is represented by a licensed real estate broker or salesperson;

(g) offers or makes more than five loans secured by real estate during any 12-month period and who is not a bank, savings bank, mutual savings bank, building and loan association, or savings and loan association organized under the laws of this state or the United States, trust company, trust company acting as a fiduciary, or other financial institution subject to the supervision of the commissioner of commerce, or mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration, or approved or certified by the Federal Home Loan Mortgage Corporation, or approved or certified by the Federal National Mortgage Association.

Sec. 2. Minnesota Statutes 1992, section 82.17, is amended by adding a subdivision to read:

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Subd. 11. DUAL AGENCY. "Dual agency" means a situation in which a licensee owes a duty to more than one party to the transaction.

Circumstances which establish dual agency include the following:

(1) when one licensee represents both the buyer and the seller in a real estate transaction; or

(2) when two or more licensees, licensed to the same broker, each represent a party to the transaction.

Sec. 3. Minnesota Statutes 1992, section 82.17, is amended by adding a subdivision to read:

Subd. 12. RESIDENTIAL REAL PROPERTY OR RESIDENTIAL REAL ESTATE. "Residential real property" or "residential real estate" means property occupied by, or intended to be occupied by, one to four families as their residence.

Sec. 4. Minnesota Statutes 1992, section 82.19, is amended by adding a subdivision to read:

Subd. 4a. SELF-SERVING PROVISION PROHIBITED. No purchase agreement, earnest money contract, or similar contract for the purchase, rental, or lease of real property may contain any hold harmless clause or arbitration clause which addresses the rights or liabilities of persons required to be licensed pursuant to this chapter unless the person required to be licensed is a principal in the transaction.

This does not prohibit separate and independent written agreements between any of the parties and persons required to be licensed pursuant to this chapter.

Sec. 5. Minnesota Statutes 1992, section 82.19, subdivision 5, is amended to read:

Subd. 5. DISCLOSURE REGARDING REPRESENTATION OF PARTIES. (a) No person licensed pursuant to this chapter or who otherwise acts as a real estate broker or salesperson shall represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that person makes an affirmative written disclosure to all parties to the transaction as to which party that person represents in the transaction. In a residential real property transaction, the disclosure must be made at the first substantive contact between the licensee and the party or potential party to the transaction. The disclosure shall be printed in at least 6-point bold type on the purchase agreement and acknowledged by separate signatures of the buyer and seller as a separate document, and acknowledged by the signature of the buyer, seller, or customer.

(b) The disclosure required by this subdivision must be made by the

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licensee prior to any offer being made to or accepted by the buyer. A change in licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made at once, with respect to any residential property transaction:

(1) when representing the seller, at the signing of a listing agreement;

(2) when representing the buyer, at the signing of a buyer's broker agreement;

(3) as to all other parties (potential buyers or sellers) who are not represented by the licensee, before discussion of financial information or the commencement of negotiations, which could affect that party's bargaining position in the transaction.

A change in the licensee's representation, including dual agency, that makes the initial disclosure required by this paragraph incomplete, misleading, or inaccurate requires that a new disclosure be made at once.

(c) The seller may, in the listing agreement, authorize the seller's broker to disburse part of the broker's compensation to other brokers, including the buyer's brokers solely representing the buyer. A broker representing a buyer shall make known to the seller or the seller's agent the fact of the agency relationship before any showing or negotiations are initiated.

Sec. 6. Minnesota Statutes 1992, section 82.19, is amended by adding a subdivision to read:

Subd. 8. CLOSING SERVICES. No real estate broker, salesperson, or closing agent shall require a person to use any particular lender, licensed attorney, real estate broker, real estate salesperson, real estate closing agent, or title company in connection with a residential real estate closing.

Sec. 7. [82.195] LISTING AGREEMENTS.

Subdivision 1. REQUIREMENT. Licensees shall obtain a signed listing agreement from the owner of real property or from another person authorized to offer the property for sale or lease before advertising to the general public that the real property is available for sale or lease.

For the purposes of this section "advertising" includes placing a sign on the owner's property that indicates that the property is being offered for sale or lease.

Subd. 2. CONTENTS. All listing agreements must be in writing and must include:

(1) a definite expiration date;

(2) a description of the real property involved;

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- (3) the list price and any terms required by the seller;
- (4) the amount of any compensation or commission or the basis for computing the commission;
- (5) a clear statement explaining the events or conditions that will entitle a broker to a commission;
- (6) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the expiration of the listing agreement;
- (7) the following notice in not less than ten point boldface type immediately preceding any provision of the listing agreement relating to compensation of the licensee:

“NOTICE: THE COMMISSION RATE FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT.”;

- (8) if the broker chooses to represent both buyers and sellers in connection with residential property transactions, a “dual agency” disclosure statement;
- (9) a notice requiring the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 1602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services; and
- (10) for residential listings, a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question. This notice may be used in the listing agreement for any other type of real estate.

Subd. 3. PROHIBITED PROVISIONS. Except as otherwise provided in subdivision 4, paragraph (b), licensees shall not include in a listing agreement a holdover clause, automatic extension, or any similar provision, or an override clause the length of which is more than six months after the expiration of the listing agreement.

Subd. 4. OVERRIDE CLAUSES. (a) Licensees shall not seek to enforce an override clause unless a protective list has been furnished to the seller within 72 hours after the expiration of the listing agreement.

(b) A listing agreement may contain an override clause of up to two years in length when used in conjunction with the purchase or sale of a business. The length of the override clause must be negotiable between the licensee and the

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seller of the business. The protective list provided in connection with the override clause must include the written acknowledgment of each party named on the protective list, that the business which is the subject of the listing agreement was presented to that party by the licensee.

Subd. 5. PROTECTIVE LISTS. A broker or salesperson has the burden of demonstrating that each person on the protective list has, during the period of the listing agreement, either made an affirmative showing of interest in the property by responding to an advertisement or by contacting the broker or salesperson involved or has been physically shown the property by the broker or salesperson. For the purpose of this section, the mere mailing or other distribution by a licensee of literature setting forth information about the property in question does not, of itself, constitute an affirmative showing of interest in the property on the part of a subsequent purchaser.

For listings of nonresidential real property which do not contain the notice described in subdivision 2, clause (10), the protective list must contain the following notice in boldface type:

"IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE."

Sec. 8. [82.196] BUYER'S BROKER AGREEMENTS.

Subdivision 1. REQUIREMENTS. Licensees shall obtain a signed buyer's broker agreement from a buyer before performing any acts as a buyer's representative.

Subd. 2. CONTENTS. All buyer's broker agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) the amount of any compensation or commission, or the basis for computing the commission;
- (3) a clear statement explaining the services to be provided to the buyer by the broker, and the events or conditions that will entitle a broker to a commission or other compensation;
- (4) a provision for cancellation of the agreement by either party upon terms agreed upon by the parties;
- (5) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the buyer with a protective list within 72 hours after the expiration of the buyer's broker agreement;

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(6) the following notice in not less than ten point bold face type immediately preceding any provision of the buyer's broker agreement relating to compensation of the licensee:

"NOTICE: THE COMMISSION RATE FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY IS NEGOTIABLE AND SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT."

(7) if the broker chooses to represent both buyers and sellers, a "dual agency" disclosure statement; and

(8) for buyer's broker agreements which involve residential real property, a notice stating that after the expiration of the buyer's broker agreement, the buyer will not be obligated to pay the licensee a fee or commission if the buyer has executed another valid buyer's broker agreement pursuant to which the buyer is obligated to pay a fee or commission to another licensee for the purchase, lease, or exchange of real property.

Subd. 3. PROHIBITED PROVISIONS. Licensees shall not include in a buyer's broker agreement a holdover clause, automatic extension, or any other similar provision, or an override clause the length of which is more than six months after the expiration of the buyer's broker agreement.

Subd. 4. OVERRIDE CLAUSES. Licensees shall not seek to enforce an override clause unless a protective list has been furnished to the buyer within 72 hours after the expiration of the buyer's broker agreement.

Subd. 5. PROTECTIVE LISTS. A licensee has the burden of demonstrating that each property on the protective list has been shown to the buyer, or specifically brought to the attention of the buyer, during the time the buyer's broker agreement was in effect.

Subd. 6. APPLICATION. This section applies only to residential real property transactions.

Sec. 9. [82.197] DISCLOSURE REQUIREMENTS.

Subdivision 1. AGENCY DISCLOSURE. The listing agreement or a buyer's broker agreement must include a clear and complete explanation of how the broker will represent the interests of the seller or buyer, and, if the broker represents both sellers and buyers, state how that representation would be altered in a dual agency situation, and require the seller or buyer to choose whether to authorize the broker to initiate any transaction which would give rise to dual agency. Disclosure to a customer of a licensee's agency relationship with other parties must be made at a time and in a manner sufficient to protect the customer's bargaining position.

Subd. 2. CREATION OF DUAL AGENCY. If circumstances create a dual agency situation, the broker must make full disclosure to all parties to the transaction as to the change in relationship of the parties to the broker due to dual agency. A broker, having made full disclosure, must obtain the consent of all parties to these circumstances before accepting the dual agency.

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Subd. 3. SCOPE AND EFFECT. The requirements for disclosure of agency relationships set forth in this chapter are intended only to establish a minimum standard for regulatory purposes, and are not intended to abrogate common law.

Subd. 4. AGENCY DISCLOSURE FORMS. (a) Disclosures of agency relationships shall be made in substantially the form set forth in paragraphs (b) to (e):

(b) ADDENDUM TO LISTING AGREEMENT

....(Broker).... will be representing you as your broker in the sale of your property located at This relationship is called an agency. As your agent,(Broker).... owes you the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting. However,(Broker).... also represents buyers looking for properties. If a buyer represented by(Broker).... becomes interested in your property, a dual agency will be created. This means that(Broker).... will owe the same duties to the buyer that we owe to you. This conflict of interest will prohibit(Broker).... from advocating exclusively on your behalf when attempting to effect the sale of your property. Dual agency will limit the level of representation which(Broker).... can provide.

If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct(Broker).... in writing to disclose specific information about you or your property. All other information will be shared. Regardless of whether a dual agency occurs,(Broker).... must disclose to the buyer any material facts of which(Broker).... is aware that may adversely and significantly affect the buyer's use or enjoyment of the property. In addition,(Broker).... must disclose to both parties any information of which(Broker).... is aware that a party will not perform in accordance with the terms of the purchase agreement or similar written agreement to convey real estate.

....(Broker).... cannot act as a dual agent unless both you and the buyer agree to the dual agency after it is disclosed to you. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want(Broker).... to represent you, you may give up the opportunity to sell your property to buyers represented by(Broker)....

SELLER'S INSTRUCTIONS TO BROKER

Having read and understood this information about dual agency, you now instruct(Broker).... as follows:

.... Seller agrees to dual agency representation and will consider offers made by buyers represented by(Broker)....

.... Seller does not agree to dual agency representation and will not consider offers made by buyers represented by(Broker)....

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..... Seller (Broker)
..... Seller	BY:
Dated:	Salesperson

(c) ADDENDUM TO BUYER REPRESENTATION AGREEMENT

....(Broker).... will be representing you as your broker to assist you in finding and purchasing a property. This relationship is called an agency. As your agent,(Broker).... owes you the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting. However,(Broker).... also represents sellers by listing their property for sale. If you become interested in a property listed by(Broker)...., a dual agency will be created. This means that(Broker).... will owe the same duties to the seller that(Broker).... owes to you. This conflict of interest will prohibit(Broker).... from advocating exclusively on your behalf when attempting to effect the purchase of the property. Dual agency will limit the level of representation(Broker).... can provide.

If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct(Broker).... in writing to disclose specific information about you. All other information will be shared. Regardless of whether a dual agency occurs,(Broker).... must disclose to the buyer any material facts of which(Broker).... is aware that may adversely and significantly affect the buyer's use or enjoyment of the property. In addition,(Broker).... must disclose to both parties any information of which(Broker).... is aware that a party will not perform in accordance with the terms of the purchase agreement or similar written agreement to convey real estate.

....(Broker).... cannot act as a dual agent unless both you and the seller agree to the dual agency after it is disclosed to you. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want(Broker).... to represent you, you may give up the opportunity to purchase the properties listed by(Broker)....

BUYER'S INSTRUCTIONS TO BROKER

Having read and understood this information about dual agency, you now instruct(Broker).... as follows:

.... Buyer will agree to a dual agency representation and will consider properties listed by(Broker)....

.... Buyer will not agree to a dual agency representation and will not consider properties listed by(Broker)....

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..... <u>Buyer</u> <u>(Broker)</u>
..... <u>Buyer</u>	<u>BY:</u>
<u>Dated:</u>	<u>Salesperson</u>

(d) DISCLOSURE TO CUSTOMER

Before(Broker).... begins to assist you in finding and purchasing a property, we must disclose to you that(Broker).... will be representing the seller in the transaction.

....(Broker).... will disclose to you all material facts about the property of which(Broker).... is aware, that could adversely and significantly affect your use or enjoyment of the property.(Broker).... will also assist you with the mechanics of the transaction.

When it comes to the price and terms of an offer,(Broker).... will ask you to make the decision as to how much to offer for any property and upon what terms and conditions.(Broker).... can explain your options to you, but the ultimate decision is yours.(Broker).... will attempt to show you properties in the price range and category you desire so that you will have information on which to base your decision.

....(Broker).... will present to the seller any written offer that you ask(Broker).... to present.(Broker).... asks you to keep to yourself any information about the price or terms of your offer, or your motivation for making an offer, that you do not want the seller to know.(Broker).... would be required, as the seller's agent, to disclose this information to the seller. You should carefully consider sharing any information with(Broker).... that you do not want disclosed to the seller.

..... <u>Customer</u> <u>(Broker)</u>
..... <u>Customer</u>	<u>BY:</u>
<u>Dated:</u>	<u>Salesperson</u>

(e) DISCLOSURE TO BUYER AND SELLER AT TIME OF OFFER TO PURCHASE

....(Broker).... represents the seller at the property located at

....(Broker).... also represents a buyer who offered to purchase the seller's property.

When(Broker).... represents both the buyer and the seller in a transaction, a dual agency is created. This means that(Broker).... and its agents owe a fiduciary duty to both buyer and seller. Because buyer and seller may have

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conflicting interests,(Broker).... and its agents are prohibited from advocating exclusively for either party.

....(Broker).... cannot represent both the buyer and seller in this transaction unless both the buyer and seller agree to this dual agency.

Buyer and seller acknowledge and agree that:

1. Confidential information communicated to(Broker).... which regards price, terms, or motivation to buy or sell will remain confidential unless buyer or seller instructs(Broker).... in writing to disclose this information about the buyer or seller. Other information will be shared.

2.(Broker).... and its salespersons will disclose to buyer all material facts of which they are aware which could adversely and significantly affect the buyer's use or enjoyment of the property or any intended use of the property of which(Broker).... or its salespersons are aware (this disclosure is required by law whether or not a dual agency is involved).

3.(Broker).... and its salespersons will disclose to both parties all information of which they are aware that either party will not perform in accordance with the terms of the purchase agreement or other written agreement to convey real estate (this disclosure is required by law whether or not a dual agency is involved).

4.(Broker).... and its salespersons will not represent the interests of either party to the detriment of the other.

5. Within the limits of dual agency,(Broker).... and its salespersons will work diligently to facilitate the mechanics of the sale.

With the knowledge and understanding of the explanation above, buyer and seller authorize and instruct(Broker).... and its salespersons to act as dual agents in this transaction.

.....
Buyer
.....
Buyer
Date:

.....
Seller
.....
Seller
Date:

Subd. 5. APPLICATION. The disclosures required by subdivision 4 apply only to residential real property transactions.

Sec. 10. Minnesota Statutes 1992, section 82.20, subdivision 15, is amended to read:

Subd. 15. **EXEMPTION.** The following persons, when acting as closing agents, are exempt from the requirements of sections 82.19 and 82.24 unless otherwise required in this section or chapter:

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(1) a direct employee of a title company, or a person who has an agency agreement with a title company in which the agent agrees to perform closing services on the title company's behalf and the title company assumes responsibility for the actions of the agent as if the agent were a direct employee of the title company;

(2) a licensed attorney or a direct employee of a licensed attorney;

(3) a licensed real estate broker or salesperson;

(4) a direct employee of a licensed real estate broker if the broker maintains all funds received in connection with the closing services in the broker's trust account; and

(5) any bank, trust company, savings and loan association, credit union, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of businesses within the scope of its corporate powers as provided by law.

Sec. 11. Minnesota Statutes 1992, section 82.21, subdivision 1, is amended to read:

Subdivision 1. **AMOUNTS.** The following fees shall be paid to the commissioner:

(a) A fee of \$100 per year for each initial individual broker's license, and a fee of \$50 per year for each ~~annual~~ renewal thereof;

(b) A fee of \$50 per year for each initial salesperson's license, and a fee of \$20 per year for each ~~annual~~ renewal thereof;

(c) A fee of \$55 per year for each initial real estate closing agent license, and a fee of \$30 per year for each ~~annual~~ renewal;

(d) A fee of \$100 per year for each initial corporate or partnership license, and a fee of \$50 per year for each ~~annual~~ renewal thereof;

(e) A fee ~~not to exceed~~ of \$40 per year for payment to the education, research and recovery fund in accordance with section 82.34;

(f) A fee of \$20 for each transfer;

(g) A fee of \$50 for a corporation or partnership name change;

(h) A fee of \$10 for an agent name change;

(i) A fee of \$20 for a license history;

(j) A fee of \$10 for a duplicate license;

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- (k) A fee of \$50 for license reinstatement;
- (l) A fee of \$20 for reactivating a corporate or partnership license without land;
- (m) A fee of \$100 for course coordinator approval; and
- (n) A fee of ~~\$10~~ \$20 for each hour or fraction of one hour of course approval sought.

Sec. 12. Minnesota Statutes 1992, section 82.21, is amended by adding a subdivision to read:

Subd. 2a. BROKER PAYMENT CONSOLIDATION. For all license renewal fees, recovery fund renewal fees, and recovery fund assessments pursuant to this section and section 82.34, the broker must remit the fees or assessments for the company, broker, and all salespersons licensed to the broker, in the form of a single check.

Sec. 13. Minnesota Statutes 1992, section 82.22, subdivision 6, is amended to read:

Subd. 6. INSTRUCTION; NEW LICENSES. (a) ~~After January 1, 1987,~~ Every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. ~~After January 1, 1987,~~ Every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 60 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules, before filing an application for the license. Every salesperson ~~licensed after January 1, 1987,~~ shall, within one year of licensure, be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner.

(b) ~~After December 31, 1983, and before January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. After December 31, 1983, and before January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before filing an application for the license. Every salesperson licensed after December 31, 1983, and before January 1, 1987, shall, within one year of the date a license was first issued, be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner.~~

- (e) The commissioner may approve courses of study in the real estate field

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offered in educational institutions of higher learning in this state or courses of study in the real estate field developed by and offered under the auspices of the national association of realtors, its affiliates, or private real estate schools. The commissioner shall not approve any course offered by, sponsored by, or affiliated with any person or company licensed to engage in the real estate business. The commissioner may by rule prescribe the curriculum and qualification of those employed as instructors.

(d) ~~After January 1, 1988,~~ (c) An applicant for a broker's license must successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules. The course must have been completed within six months prior to the date of application for the broker's license.

(e) ~~After August 1, 1989,~~ (d) An applicant for a real estate closing agent's license must successfully complete a course of study relating to closing services consisting of eight hours of instruction approved by the commissioner.

Sec. 14. Minnesota Statutes 1992, section 82.22, subdivision 13, is amended to read:

Subd. 13. **CONTINUING EDUCATION.** (a) ~~After July 1, 1987,~~ All real estate salespersons and all real estate brokers shall be required to successfully complete 15 hours of real estate education, either as a student or a lecturer, in courses of study approved by the commissioner, each year after their initial annual renewal date or after the expiration of their currently assigned three year continuing education due date. All salespersons and brokers shall report continuing education on an annual basis no later than ~~June 30, 1990~~ May 31. Hours in excess of 15 earned in any one year may be carried forward to the following year.

(b) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision.

(c) Any program approved by Minnesota continuing legal education shall be approved by the commissioner of commerce for continuing education for real estate brokers and salespeople if the program or any part thereof relates to real estate.

(d) As part of the continuing education requirements of this section, the commissioner shall require that all real estate brokers and salespersons receive:

(1) at least two hours of training every year in courses in laws or regulations on agency representation and disclosure; and

(2) at least two hours of training every even-numbered year in courses in state and federal fair housing laws, regulations, and rules, or other antidiscrimination laws.

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Clause (1) does not apply to real estate salespersons and real estate brokers engaged solely in the commercial real estate business who file with the commissioner a verification of this status on an annual basis no later than May 31 as part of the annual report under paragraph (a).

Sec. 15. Minnesota Statutes 1992, section 82.24, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** (a) All trust funds received by a broker or the broker's salespeople or closing agents shall be deposited forthwith upon receipt in a trust account, maintained by the broker for such purpose in a bank, savings and loan association, credit union, or an industrial loan and thrift company with deposit liabilities designated by the broker or closing agent, except as such money may be paid to one of the parties pursuant to express written agreement between the parties to a transaction. The depository bank shall be a Minnesota bank or trust company or any foreign bank and shall authorize the commissioner to examine its records of such deposits upon demand by the commissioner. The industrial loan and thrift company shall be organized under chapter 53. The savings and loan association or credit union shall be organized under the laws of any state or the United States.

(b) All trust accounts opened or maintained pursuant to requirements of paragraph (a) must be established through the use of an employer identification number. Any trust account currently identified with a broker's personal social security number must be changed to reflect the broker's employer's identification number rather than the broker's personal social security number.

Sec. 16. Minnesota Statutes 1992, section 82.27, subdivision 1, is amended to read:

Subdivision 1. The commissioner may by order deny, suspend or revoke any license or may censure a licensee if the commissioner finds (1) that the order is in the public interest, and (2) that the applicant or licensee or, in the case of a broker, any officer, director, partner, employee or agent or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker or closing agent or controlled by the broker or closing agent:

(a) has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(b) has engaged in a fraudulent, deceptive, or dishonest practice;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate business;

(d) has failed to reasonably supervise brokers, salespersons, or closing agents so as to cause injury or harm to the public;

New language is indicated by underline, deletions by ~~strikeout~~.

(e) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter; ~~or~~

(f) has, in the conduct of the licensee's affairs under the license, been shown to be incompetent, untrustworthy, or financially irresponsible; or

(g) has acted on behalf of any party to a transaction, where the licensee has a conflict of interest that may affect the licensee's ability to represent that party, without the knowledge and consent of the party.

Sec. 17. Minnesota Statutes 1992, section 82.33, subdivision 2, is amended to read:

Subd. 2. No person required by this chapter to be licensed shall be entitled to or may bring or maintain any action in the courts for any commission, fee or other compensation with respect to the purchase, sale, lease or other disposition or conveyance of real property, or with respect to the negotiation or attempt to negotiate any sale, lease or other disposition or conveyance of real property unless there is a written agreement with the person ~~bringing or maintaining the action~~ required to be licensed.

Sec. 18. Minnesota Statutes 1992, section 82.33, is amended by adding a subdivision to read:

Subd. 3. No person required by this chapter to be licensed shall be entitled to bring any action to recover any commission, fee, or other compensation with respect to the purchase, sale, lease, or other disposition or conveyance of residential real property, or with respect to the negotiation or attempt to negotiate any sale, lease, or other disposition or conveyance of residential real property unless the person's agency relationships have been disclosed to the parties to the transaction in accordance with the requirements of this chapter.

Sec. 19. Minnesota Statutes 1992, section 82.33, is amended by adding a subdivision to read:

Subd. 4. No person required to be licensed by this chapter may maintain an action in the courts of this state to enforce any provision of a purchase agreement, earnest money contract, or similar contract for the purchase, rental, or lease of real property if the provision to be enforced violates section 82.19, subdivision 4a.

Sec. 20. Minnesota Statutes 1992, section 82.34, subdivision 3, is amended to read:

Subd. 3. **FEE FOR REAL ESTATE FUND.** Each real estate broker, real estate salesperson, and real estate closing agent entitled under this chapter to renew a license shall pay in addition to the appropriate renewal fee a further fee of \$25 per year which shall be credited to the real estate education, research, and recovery fund. Any person who receives a an initial license shall pay the fee of \$50 in addition to all other fees payable.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 21. Minnesota Statutes 1992, section 82.34, subdivision 7, is amended to read:

Subd. 7. When any aggrieved person obtains a final judgment in any court of competent jurisdiction regardless of whether the judgment has been discharged by a bankruptcy court against an individual licensed under this chapter, on grounds of fraudulent, deceptive, or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, or performed acts permitted by section 327B.04, subdivision 5, the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews and appeals, file a verified application in the court in which the judgment was entered for an order directing payment out of the fund of the amount of actual and direct out of pocket loss in the transaction, but excluding any attorney's fees, interest on the loss and on any judgment obtained as a result of the loss, up to the sum of \$150,000 of the amount unpaid upon the judgment, provided that nothing in this chapter shall be construed to obligate the fund for more than \$150,000 per claimant, per transaction, subject to the limitations set forth in subdivision 14, regardless of the number of persons aggrieved or parcels of real estate involved in the transaction, provided that regardless of the number of claims against a licensee, nothing in this chapter may obligate the fund for more than \$250,000 per licensee. An aggrieved person who has a cause of action under section 80A.23 shall first seek recovery as provided in section 80A.05, subdivision 5, before the commissioner may order payment from the recovery fund. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant. A copy of the verified application shall be served upon the commissioner and upon the judgment debtor, and a certificate or affidavit of service filed with the court. For the purpose of this section, "aggrieved person" shall not include a licensee unless (1) the licensee is acting in the capacity of principal in the sale of interests in real property owned by the licensee; or (2) the licensee is acting in the capacity of principal in the purchase of interests in real property to be owned by the licensee. Under no circumstances shall a licensee be entitled to payment under this section for the loss of a commission or similar fee.

For the purposes of this section, recovery is limited to transactions where the property involved is intended for the direct personal habitation or commercial use of the buyer.

Except for securities permitted to be sold by a licensee pursuant to section 82.19, subdivision 7, for any action commenced after July 1, 1993, recovery under this section is not available where the buyer's participation is for investment purposes only, and is limited to providing capital to fund the transaction.

Sec. 22. Minnesota Statutes 1992, section 82B.02, is amended by adding a subdivision to read:

Subd. 14. TRANSACTION VALUE. "Transaction value" means:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) for loans or other extensions of credit, the amount of the loan or extension of credit;

(2) for sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

Sec. 23. Minnesota Statutes 1992, section 82B.035, is amended by adding a subdivision to read:

Subd. 3. GEOLOGISTS OR ENGINEERS. This chapter does not apply to an appraisal, analysis, opinion, or conclusion as to the value of oil, gas, coal, and other mineral resources performed by an engineer registered as provided in sections 326.01 to 326.15 or by a certified professional geologist, unless the appraisal, analysis, opinion, or conclusion of value is performed in connection with a federally related transaction subject to the requirements of United States Code, title 12, section 3331, et seq., the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Sec. 24. Minnesota Statutes 1992, section 82B.05, subdivision 5, is amended to read:

Subd. 5. CONDUCT OF MEETINGS. Places of regular board meetings must be decided by the vote of members. Written notice must be given to each member of the time and place of each meeting of the board at least ten days before the scheduled date of regular board meetings. The board shall establish procedures for emergency board meetings and other operational procedures, subject to the approval of the commissioner.

The members of the board shall elect a chair from among the members to preside at board meetings.

A quorum of the board is eight members.

~~The board shall meet at least quarterly, except that a meeting may be canceled, subject to the approval by the commissioner if as determined by a majority vote of the members determine that the meeting is not necessary or a call of the commissioner.~~

~~The commissioner or a majority of the members may schedule additional meetings as necessary.~~

Sec. 25. Minnesota Statutes 1992, section 82B.11, is amended to read:

82B.11 CLASSES OF LICENSE.

Subdivision 1. **GENERALLY.** There are five classes of license for real estate appraisers.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. **STATE REGISTERED REAL PROPERTY APPRAISER.** When a net income capitalization analysis is not required by the uniform standards of professional appraisal practice, a state registered real property appraiser may appraise residential real property or agricultural property.

Subd. 3. **FEDERAL RESIDENTIAL LICENSED REAL PROPERTY APPRAISER.** A ~~federal residential~~ licensed real property appraiser may appraise noncomplex ~~one to four~~ residential units property or agricultural property having a transaction value less than \$1,000,000 and complex ~~one to four~~ residential units or agricultural property having a transaction value less than \$250,000.

Subd. 4. **CERTIFIED ~~FEDERAL RESIDENTIAL~~ REAL PROPERTY APPRAISER.** A certified ~~federal residential~~ real property appraiser may appraise ~~one to four~~ residential units property or agricultural property without regard to transaction value or complexity.

Subd. 5. **CERTIFIED ~~FEDERAL~~ GENERAL REAL PROPERTY APPRAISER.** A certified ~~federal general~~ real property appraiser may appraise all types of real property.

Subd. 6. **TEMPORARY PRACTICE.** The commissioner shall issue a license for temporary practice as a real estate appraiser under subdivision 3, 4, or 5 to a person certified or licensed by another state if:

(1) the property to be appraised is part of a federally-related transaction and the person is licensed to appraise property limited to the same transaction value or complexity provided in subdivision 3, 4, or 5;

(2) the appraiser's business is of a temporary nature; and

(3) the appraiser registers with the commissioner to obtain a temporary license ~~prior to~~ before conducting appraisals within the state.

Sec. 26. Minnesota Statutes 1992, section 82B.14, is amended to read:

82B.14 EXPERIENCE REQUIREMENT.

(a) A license under section 82B.11, subdivision 3, 4, or 5, may not be issued to a person who does not have the equivalent of two years of experience in real property appraisal supported by adequate written reports or file memoranda.

(b) Each applicant for license under section 82B.11, subdivision 3, 4, or 5, shall give under oath a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant. Upon request, the applicant shall make available to the commissioner for examination, a sample of appraisal reports that the applicant has prepared in the course of appraisal practice.

(c) Applicants may not receive credit for experience accumulated while unlicensed, if the experience is based on activities which required a license under this section.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 27. Minnesota Statutes 1992, section 82B.19, subdivision 2, is amended to read:

Subd. 2. **RULES.** ~~(a)~~ The commissioner may adopt rules to assure that persons renewing their licenses as licensed real estate appraisers have current knowledge of real property appraisal theories, practices, and techniques that will provide a high degree of service and protection to those members of the public with whom they deal in a professional relationship under authority of their license. ~~The rules must include the following:~~

- ~~(1) policies and procedures for obtaining approval of courses of instruction;~~
- ~~(2) standards, monitoring methods, and systems for recording attendance to be employed by course sponsors as a prerequisite to approval of courses for credit; and~~
- ~~(3) coordination with real estate continuing education requirements so that as the commissioner considers courses or parts of courses appropriate they may be used to satisfy both real estate and appraiser continuing education requirements.~~

(b) To the extent the commissioner considers it appropriate, courses or parts of courses may be considered to satisfy both continuing education requirements under this section and continuing real estate education requirements.

(c) As a prerequisite for course approval, sponsors shall submit proposed monitoring methods, and systems for recording attendance sufficient to ensure that participants receive course credit only for portions actually attended.

Sec. 28. Minnesota Statutes 1992, section 507.45, subdivision 4, is amended to read:

Subd. 4. **CHOICE OF CLOSING AGENT; LISTING NOTICE; RULES.** (a) No real estate salesperson, broker, attorney, auctioneer, builder, title company, financial institution, or other person making a mortgage loan may require a person to use any particular licensed attorney, real estate broker, real estate salesperson, or real estate closing agent in connection with a residential real estate closing.

(b) All listing agreements must include a notice informing sellers of their rights under this subdivision. The notice must require the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 1602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services.

~~(c) The commissioner of commerce may adopt rules under chapter 14 to implement, administer, and enforce this subdivision.~~

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 29. Laws 1992, chapter 555, article 1, section 12, is amended to read:

Sec. 12. **PENDING CLAIMS.**

The change in the per year limit contained in section 6 does not apply to a ~~cause of action~~ civil or administrative proceeding that was commenced before August 1, 1992.

Sec. 30. **APPROPRIATION.**

\$27,000 for fiscal year 1994 and \$27,000 for fiscal year 1995 are appropriated from the general fund to the commissioner of commerce for implementation of sections 1 to 29.

Sec. 31. **REVISOR INSTRUCTION.**

The revisor shall change terms in Minnesota Statutes and Minnesota Rules to reflect the changes in the names of the five classes of licenses for real estate appraisers made in section 25.

Sec. 32. **REPEALER.**

(a) Minnesota Statutes 1992, sections 82.22, subdivision 7; and 462A.201, subdivision 5, are repealed.

(b) Minnesota Rules, part 2805.1200, is repealed.

Sec. 33. **EFFECTIVE DATE.**

Sections 1 to 9, 18, 19, and 32 are effective October 1, 1993.

Sections 10 to 17, 20 to 28, and 31 are effective July 1, 1993.

Section 29 is effective retroactive to the effective date of the section being amended.

Presented to the governor May 17, 1993

Signed by the governor May 20, 1993, 2:13 p.m.

CHAPTER 310—H.F.No. 836

An act relating to game and fish; sale of licenses through subagents; taking deer of either sex by residents under the age of 16; defining certain terms; changing eligibility for certain permits; amending Minnesota Statutes 1992, sections 86B.101, subdivision 2; 86B.305, subdivisions 1 and 2; 86B.820, subdivision 14; 97A.485, subdivision 4; and 97B.301, by adding a subdivision.

New language is indicated by underline, deletions by ~~strikeout~~.