

CHAPTER 199--H.F.No. 2694

An act relating to commerce; modifying regulation of real estate brokers and salespersons; amending Minnesota Statutes 2012, sections 82.55, subdivisions 13, 15, 16, by adding subdivisions; 82.57, subdivisions 1, 3, 7; 82.58, subdivisions 2, 4; 82.59, subdivision 7; 82.61; 82.62, subdivisions 1, 3; 82.63, subdivisions 1, 3, 6, 10, 12; 82.64; 82.66, subdivision 2; 82.67, subdivision 3; 82.68, subdivision 3; 82.69; 82.70, subdivisions 1, 5; 82.71, subdivision 5; 82.72, subdivisions 2, 3; 82.735, subdivision 1; 82.75, subdivisions 1, 2, 5; 82.81, subdivision 6; Minnesota Statutes 2013 Supplement, sections 82.62, subdivision 7; 82.63, subdivision 8; repealing Minnesota Statutes 2012, section 82.55, subdivision 17.

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

Section 1. Minnesota Statutes 2012, section 82.55, is amended by adding a subdivision to read:

Subd. 3a. **Buyer's broker.** "Buyer's broker" means a licensee who represents a buyer under a signed buyer's broker agreement. A buyer's broker owes to the buyer fiduciary duties.

Sec. 2. Minnesota Statutes 2012, section 82.55, subdivision 13, is amended to read:

Subd. 13. **Override clause.** "Override clause" means:

(1) a provision in a listing agreement or similar instrument allowing the broker to receive compensation when, after the listing agreement has expired, the property is sold to persons with whom a broker or salesperson had negotiated or exhibited shown the property prior to the expiration of the listing agreement; or

(2) a provision in the buyer's representation agreement or similar instrument allowing the broker to receive compensation when, after the buyer's representation agreement has expired, the buyer has purchased a property the salesperson had shown the buyer prior to the expiration of the buyer's agreement.

Sec. 3. Minnesota Statutes 2012, section 82.55, subdivision 15, is amended to read:

Subd. 15. **Primary broker.** "Primary broker" means the broker on whose behalf salespersons are licensed to act pursuant to section 82.63, subdivision 4. In the case of a corporation licensed as a broker, "primary broker" means each officer of the corporation who is individually licensed to act as broker for the corporation. In the case of a partnership, "primary broker" means each partner licensed to act as a broker for the partnership. In the case of a limited liability company licensed as a broker, "primary broker" means each officer of the company who is individually licensed to act as a broker for the company.

Sec. 4. Minnesota Statutes 2012, section 82.55, subdivision 16, is amended to read:

Subd. 16. **Protective list.** "Protective list" means:

(1) the written list of names and addresses of prospective buyers with whom a licensee has negotiated the sale or rental of the property or to whom a licensee has exhibited the property before the expiration of the listing agreement. For the purposes of this subdivision, "property" means the property that is the subject of the listing agreement in question; or

(2) the written list of addresses of properties that a licensee has negotiated the sale or rental of before the expiration of the buyer's agreement.

Sec. 5. Minnesota Statutes 2012, section 82.55, is amended by adding a subdivision to read:

Subd. 23a. **Seller's broker.** "Seller's broker" means a licensee who represents a seller under a signed seller's broker agreement. A seller's broker owes to the seller fiduciary duties.

Sec. 6. Minnesota Statutes 2012, section 82.57, subdivision 1, is amended to read:

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

- (a) a fee of \$150 for each initial individual broker's license, and a fee of \$100 for each renewal thereof;
- (b) a fee of \$70 for each initial salesperson's license, and a fee of \$40 for each renewal thereof;
- (c) a fee of \$85 for each initial real estate closing agent license, and a fee of \$60 for each renewal thereof;
- (d) a fee of \$150 for each initial corporate, limited liability company, or partnership license, and a fee of \$100 for each renewal thereof;
- (e) a fee for payment to the education, research and recovery fund in accordance with section 82.86;
- (f) a fee of \$20 for each transfer;
- (g) a fee of \$50 for license reinstatement;
- (h) a fee of \$20 for reactivating a corporate, limited liability company, or partnership license ~~without~~ land; and
- (i) in addition to the fees required under this subdivision, individual licensees under clauses (a) and (b) shall pay, for each initial license and renewal, a technology surcharge of up to \$40 under section 45.24, unless the commissioner has adjusted the surcharge as permitted under that section.

Sec. 7. Minnesota Statutes 2012, section 82.57, subdivision 3, is amended to read:

Subd. 3. **Broker payment consolidation.** For all license renewal fees, recovery fund renewal fees, and recovery fund assessments pursuant to this section and section 82.86, 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 payment.~~

Sec. 8. Minnesota Statutes 2012, section 82.57, subdivision 7, is amended to read:

Subd. 7. **Overpayment of fees.** An overpayment of a fee paid pursuant to this chapter shall be refunded within a reasonable time after a letter requesting the refund is received by the commissioner and signed by the person making the overpayment.

Refunds shall not be given for anything other than overpayment of fees. A request for a refund of an overpayment must be received by the commissioner within six months of the date of deposit or it will be forfeited.

Sec. 9. Minnesota Statutes 2012, section 82.58, subdivision 2, is amended to read:

Subd. 2. **Application for license; contents.** (a) An applicant for a license as a real estate broker or real estate salesperson shall make an application in the format prescribed by the commissioner. The application shall be accompanied by the license fee required by this chapter.

(b) Each application for a real estate broker license or real estate salesperson license shall contain such information as required by the commissioner consistent with the administration of the provisions and purposes of this chapter.

(c) The application for a real estate salesperson license shall give the applicant's legal name, age, residence address, and the name and place of business of the real estate broker on whose behalf the salesperson is to be acting.

(d) The commissioner may require such further information as the commissioner deems appropriate to administer the provisions and further the purposes of this chapter.

(e) In addition to the application for licensure, an applicant for a real estate salesperson license shall submit to the commissioner, ~~along with the application for licensure,~~ a copy of the course completion certificate for courses I, II, and III and passing examination results.

Sec. 10. Minnesota Statutes 2012, section 82.58, subdivision 4, is amended to read:

Subd. 4. **Business entity; brokerage licenses.** (a) A business entity applying for a license shall have at least one responsible person individually licensed to act as broker for the brokerage. The business entity broker's license shall extend no authority to act as broker to any person other than the business entity. Each responsible person who intends to act as a broker shall obtain a license.

(b) A business entity applying for a license shall have at least one responsible person individually licensed to act as broker for the business entity. Each responsible person who intends to act as a broker shall obtain a license.

(c) An application for a business entity license shall be verified by at least two ~~a~~ responsible persons person for the business entity.

(d) A responsible person who ceases to act as broker for a business entity shall notify the commissioner upon said termination. The individual licenses of all salespersons acting on behalf of a brokerage are automatically ineffective upon the revocation or suspension of the license of the brokerage. The commissioner may suspend or revoke the license of a responsible person licensee without suspending or revoking the license of the business entity.

(e) The application of all responsible persons of a business entity who intend to act as brokers on behalf of a business entity shall accompany the initial license application of the business entity. Responsible persons intending to act as brokers subsequent to the licensing of the business entity shall procure an individual real estate broker's license prior to acting in the capacity of a broker. No responsible person who maintains a salesperson's license may exercise any authority over any trust account administered by the broker nor may they be vested with any supervisory authority over the broker.

(f) The business entity applicant shall make available upon request, such records and data required by the commissioner for enforcement of this chapter.

(g) The commissioner may require further information, as the commissioner deems appropriate, to administer the provisions and further the purposes of this chapter.

Sec. 11. Minnesota Statutes 2012, section 82.59, subdivision 7, is amended to read:

Subd. 7. **Reexaminations.** An examination may be required before the ~~renewal~~ reactivation of any license which has been suspended, ~~or before the issuance of a license to any person whose license has been ineffective for a period of two years, except~~ or revoked. No reexamination shall be required of any individual who has failed to cause renewal of an existing license because of ~~absence from the state while on active duty with the armed services of the United States of America~~ for reasons that qualify the individual for the exemption for military service under section 326.56, subdivision 2, and no reexamination shall be required of an individual whose license has not been renewed under section 82.82, subdivision 9.

Sec. 12. Minnesota Statutes 2012, section 82.61, is amended to read:

82.61 LICENSING: CONTINUING EDUCATION AND INSTRUCTION.

(a) All real estate salespersons and all real estate brokers shall be required to successfully complete 30 hours of real estate continuing education, either as a student or a lecturer, in courses of study approved by the commissioner, during the initial license period and during each succeeding 24-month license period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Licensees may not claim credit for continuing education not actually completed ~~as of the date their report of continuing education compliance is filed~~.

(b) The commissioner may adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of prelicense instruction as required under section 82.59, subdivision 8, and continuing education as required under this section and sections 82.58, subdivision 5; 82.59; 82.62, subdivisions 1 and 5 to 7; and 82.64. The commissioner may not approve a course which can be completed by the student at home or outside the classroom without the supervision of an instructor except accredited courses using new delivery technology, including interactive technology, and the Internet. The commissioner may approve courses of study in the real estate field 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. Courses in motivation, salesmanship, psychology, or time management shall not be approved by the commissioner for continuing education credit. The commissioner may approve courses in any other subjects, including, but not limited to, communication, marketing, negotiation, and technology for continuing education credit.

(c) As part of the continuing education requirements of this section and sections 82.58, subdivisions 5 and 6; 82.59; 82.62, subdivisions 1 and 5 to 7; and 82.64, the commissioner shall require that all real estate brokers and salespersons receive:

(1) at least one hour of training during each license period in courses in laws or regulations on agency representation and disclosure; and

(2) at least one hour of training during each license period in courses in state and federal fair housing laws, regulations, and rules, other antidiscrimination laws, or courses designed to help licensees to meet the housing needs of immigrant and other underserved populations.

Clauses (1) and (2) do 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 ~~along with the continuing education report required under paragraph (a)~~.

(d) The commissioner is authorized to establish a procedure for renewal of course accreditation.

(e) Approved continuing education courses may be sponsored or offered by a broker of a real estate company and may be held on the premises of a company licensed under this chapter. All continuing education course offerings must be open to any interested individuals. Access may be restricted by the education provider based on class size only. Courses must not be approved if attendance is restricted to any particular group of people. A broker must comply with all continuing education rules prescribed by the commissioner. The commissioner shall not approve any prelicense instruction courses offered by, sponsored by, or affiliated with any person or company licensed to engage in the real estate business.

(f) Credit may not be earned if the licensee has previously obtained credit for the same course as either a student or instructor during the same licensing period.

~~(g) The real estate education course completion certificate must be in the form set forth by the commissioner. Students are responsible for maintaining copies of course completion certificates.~~

~~(h) An approved prelicense 30-hour broker course may be used for continuing education credit by a real estate salesperson or broker if the course is completed during the appropriate licensing period.~~

~~(i)~~ (h) As part of the continuing education requirements of this section and section 82.64, the commissioner shall require that all real estate brokers and salespersons receive either 3.75 or 7.5 hours of module training every license year within the 30 hours of continuing education required during each two-year license period. For each license year, the commissioner shall determine what modules are required. The modules must cover topics in real estate that are significant and are of current interest in the real estate market and profession. The commissioner shall determine the specific topics to be covered by modules for each license year and the number of credit hours allocated to each module. In determining the topics and number of credit hours, the commissioner shall consult with a statewide real estate trade association and a statewide private continuing education provider. When the commissioner has created a module, the commissioner must publicize to licensees and to real estate continuing education providers an outline of the topics covered by the module, and the credits associated with it, no later than April 1 of each year. The commissioner may delegate the module and test development, subject to the commissioner's approval, to a statewide real estate trade association. Credit for each module must be contingent upon the licensee's successful completion of it, established by testing of the licensee's knowledge of the content covered by the module, based upon written test questions approved by the commissioner as described in paragraph (k). Modules determined under this paragraph may be offered by any person permitted to offer real estate continuing education in this state. Notwithstanding paragraph (c), the commissioner has discretion to determine that the requirements of the module satisfy, in whole or in part, the requirements of paragraph (c) for a licensing period in which the module will be offered.

~~(j)~~ (i) The 30 hours of continuing education per license period for real estate brokers must include a module, designed under the procedure provided in paragraph (i), of at least one hour each license year specifically designed to address issues relevant to brokers.

~~(k)~~ (j) The written test for successful completion of a module offered by a continuing education provider must be comprised of questions selected by that provider from a pool of test questions designed and approved by the commissioner. The test must be a written test, in paper or electronic form, taken by the licensee at the conclusion of the module as a part of the credit hours devoted to the module, but the test must not be allocated credit of more than one-sixth of the time allocated to the module. The provider must prepare, administer, score, and pay any costs related to the tests. The commissioner shall determine the number of

questions that must be included in a test and the percentage of questions that must be answered correctly. The provider may contract with a third party for scoring of the test. A licensee must be allowed to remain as long as reasonably necessary to complete the test.

~~(k)~~ Paragraphs ~~(i), (j), and (k)~~ (h), (i), and (j) do not apply to commercial salespersons and commercial brokers engaged solely in the commercial real estate business and who file with the commissioner a verification of this status.

~~(m)~~ (l) Determinations made by the commissioner under paragraphs ~~(i), (j), and (k)~~ (h), (i), and (j) are not rules for purposes of chapter 14.

Sec. 13. Minnesota Statutes 2012, section 82.62, subdivision 1, is amended to read:

Subdivision 1. **Duration.** The renewal of a salesperson's license is not effective beyond a date two years after the granting of the salesperson's license unless the salesperson has furnished evidence of compliance with ~~section 82.59, subdivision 8~~ 82.61. The commissioner shall cancel the license of a salesperson who fails to comply with ~~section 82.59, subdivision 8~~ 82.61.

Sec. 14. Minnesota Statutes 2012, section 82.62, subdivision 3, is amended to read:

Subd. 3. **Timely renewals.** A person whose application for a license renewal has not been timely ~~filed~~ submitted and who has not received notice of approval of renewal may not continue to transact business either as a real estate broker, salesperson, or closing agent after June 30 of the renewal year until approval of renewal is received. Application for renewal of a license is timely ~~filed~~ submitted if:

(1) all requirements for renewal, including continuing education requirements, have been completed by June 15 of the renewal year; and

(2) the application is submitted before the renewal deadline in the manner prescribed by the commissioner ~~upon forms~~, duly executed and sworn to, accompanied by fees prescribed by this chapter, and containing any information the commissioner requires.

Sec. 15. Minnesota Statutes 2013 Supplement, section 82.62, subdivision 7, is amended to read:

Subd. 7. **Reinstatement of canceled salesperson's or broker's license.** A salesperson's or broker's license that has been canceled for failure of a licensee to complete postlicensing education requirements shall be reinstated without reexamination by completing the required instruction, ~~filing~~ submitting an application, and paying the fee for a salesperson's or broker's license within two years of the cancellation date.

Sec. 16. Minnesota Statutes 2012, section 82.63, subdivision 1, is amended to read:

Subdivision 1. **Generally.** ~~(a)~~ The commissioner shall issue a license as a real estate broker or real estate salesperson to any person who qualifies for the license under the terms of this chapter.

~~(b) The commissioner is authorized to establish by rule a special license for real estate brokers and real estate salespeople engaged solely in the rental or management of an interest or estate in real estate, to prescribe qualifications for the license, and to issue the license consistent with the terms of this chapter. This clause shall not be construed to require those owners or managers or their agents or employees who are excluded by section 82.56, clause (d), from the definition of real estate broker, to obtain the special license.~~

Sec. 17. Minnesota Statutes 2012, section 82.63, subdivision 3, is amended to read:

Subd. 3. **Responsibility.** Each broker shall be responsible for the acts of any and all of the broker's sales people and closing agents while acting as agents on the broker's behalf. Each officer of a limited liability company or corporation or partner in a partnership or limited liability partnership licensed as a broker shall have the same responsibility under this chapter as a corporate or partnership broker with regard to the acts of the salespeople and closing agents acting on behalf of the limited liability company, corporation, partnership, or limited liability partnership.

Sec. 18. Minnesota Statutes 2012, section 82.63, subdivision 6, is amended to read:

Subd. 6. **Terminations; transfers.** (a) Except as provided in paragraph (b), when a salesperson terminates activity on behalf of a broker, the salesperson's license shall be ineffective. Within ten days of the termination the broker shall notify the commissioner in writing the manner prescribed by the commissioner, and shall return to the commissioner the license of the salesperson. The salesperson may apply for transfer of the license to another broker at any time during the remainder of the license period, ~~on forms provided in the manner prescribed~~ by the commissioner. If the application for transfer qualifies, the commissioner shall grant the application. Upon receipt of a transfer application and payment of the transfer fee, the commissioner may issue a 45-day temporary license. If an application for transfer is not made within the license period, the commissioner shall require that an application for a new license be ~~filed~~ submitted.

(b) When a salesperson terminates activity on behalf of a broker in order to begin association immediately with another broker, the commissioner shall permit the automatic transfer of the salesperson's license. The transfer shall be effective either upon the mailing submission of the required fee and the executed documents by certified mail or upon personal delivery of the fee and documents to the commissioner's office in the manner prescribed by the commissioner. The commissioner may adopt rules and prescribe forms as necessary to implement this paragraph.

Sec. 19. Minnesota Statutes 2013 Supplement, section 82.63, subdivision 8, is amended to read:

Subd. 8. **Procedure.** An application for automatic transfer shall be made only on the form in the manner prescribed by the commissioner. The transfer is ineffective if the form is not completed in its entirety.

The form shall be accompanied by a \$20 transfer fee, and the license renewal fee, if applicable. Cash will not be accepted.

The signature of the broker from whom the salesperson is transferring must predate the signature of the broker to whom the salesperson is transferring. The salesperson is unlicensed for the period of time between the times and dates of both signatures. The broker from whom the salesperson is transferring shall sign and date the transfer application upon the request of the salesperson and shall destroy the salesperson's license immediately.

Sec. 20. Minnesota Statutes 2012, section 82.63, subdivision 10, is amended to read:

Subd. 10. **Automatic transfer of broker's license.** When a broker terminates activity in order to begin association with another broker, the commissioner shall permit the automatic transfer of the broker's license to a salesperson's license. If there are licensed salespeople working for the broker, the broker shall certify that a broker will remain in the company that the broker is leaving prior to issuance of the transfer. The transfer shall be effective ~~either upon the mailing of the required fee and the executed documents by certified~~

mail ~~or~~, upon personal delivery of the fee and documents to the commissioner's office, or by electronic means if permitted by the commissioner.

Sec. 21. Minnesota Statutes 2012, section 82.63, subdivision 12, is amended to read:

Subd. 12. **Temporary broker's permit.** In the event of death ~~or~~, incapacity, or loss of license of a broker, the commissioner may issue a 45-day temporary permit to an individual who has had a minimum of ~~two~~ three years actual experience as a licensed real estate salesperson and who is otherwise reasonably qualified to act as a broker. Upon application prior to its expiration, the 45-day temporary permit shall be renewed once by the commissioner if the applicant demonstrates that he or she has made a good faith effort to obtain a broker's license within the preceding 45 days and an extension of time will not harm the public interest.

Only those salespersons licensed to the deceased or incapacitated broker at the time of death or incapacity may conduct business for or on behalf of the person to whom the temporary broker's license was issued.

Sec. 22. Minnesota Statutes 2012, section 82.64, is amended to read:

82.64 RECIPROACITY.

The requirements of sections 82.59, subdivision 8, and 82.61 may be waived for individuals of other jurisdictions, provided: (1) a written reciprocal licensing agreement is in effect between the commissioner and the licensing officials of that jurisdiction, (2) the individual is licensed in good standing in that jurisdiction, and (3) the licensing requirements of that jurisdiction are substantially similar to the provisions of this chapter.

Sec. 23. Minnesota Statutes 2012, section 82.66, subdivision 2, is amended to read:

Subd. 2. **Buyer's broker agreements. (a) Requirements.** Licensees shall obtain a signed buyer's broker agreement from a buyer before performing any acts as a buyer's representative ~~and before a purchase agreement is signed.~~

(b) **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 clear statement explaining if the agreement may be canceled and the terms under which the agreement may be canceled;
- (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;
- (6) the following notice in not less than ten-point boldface type immediately preceding any provision of the buyer's broker agreement relating to compensation of the licensee:

"NOTICE: THE COMPENSATION FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT.";

(7) the following "dual agency" disclosure statement:

If the buyer(s) choose(s) to purchase a property listed by broker, a dual agency will be created. This means that broker will represent both the buyer(s) and the seller(s), and owe the same duties to the seller(s) that broker owes to the buyer(s). This conflict of interest will prohibit broker from advocating exclusively on the buyer's behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, the buyer(s) will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless the buyer(s) instruct broker in writing to disclose specific information about the buyer(s). All other information will be shared. Broker cannot act as a dual agent unless both the buyer(s) and the seller(s) agree to it. By agreeing to a possible dual agency, the buyer(s) will be giving up the right to exclusive representation in an in-house transaction. However, if the buyer(s) should decide not to agree to a possible dual agency, and the buyer(s) want(s) broker to represent the buyer(s), the buyer(s) may give up the opportunity to purchase the properties listed by broker.

Buyer's Instructions to Broker

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

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

.....
Buyer Real Estate Company Name

.....
Buyer By:
Salesperson

Date: ; 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.

(c) **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.

(d) **Override clauses.** (1) 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.

(2) A buyer's broker 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 buyer of the business. The protective list provided in connection with the override clause must include the written acknowledgement of each party named on the protective list, that the business that is the subject of the buyer's broker agreement was presented to that party by the licensee.

(e) **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.

(f) **Application.** This section applies only to residential real property transactions.

Sec. 24. Minnesota Statutes 2012, section 82.67, subdivision 3, is amended to read:

Subd. 3. **Agency disclosure form.** The agency disclosure form shall be in substantially the form set forth below:

AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

Minnesota law requires that early in any relationship, real estate brokers or salespersons discuss with consumers what type of agency representation or relationship they desire.(1) The available options are listed below. This is **not** a contract. **This is an agency disclosure form only. If you desire representation, you must enter into a written contract according to state law** (a listing contract or a buyer representation contract). Until such time as you choose to enter into a written contract for representation, you will be treated as a customer and will not receive any representation from the broker or salesperson. The broker or salesperson will be acting as a Facilitator (see paragraph V below), unless the broker or salesperson is representing another party as described below.

ACKNOWLEDGMENT: I/We acknowledge that I/We have been presented with the below-described options. I/We understand that until I/We have signed a representation contract, I/We are not represented by the broker/salesperson. I/We understand that written consent is required for a dual agency relationship. THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.

.....
Signature Date

.....
Signature Date

I.

Seller's Broker: A broker who lists a property, or a salesperson who is licensed to the listing broker, represents the Seller and acts on behalf of the Seller. A Seller's broker owes to the Seller the fiduciary duties described below.(2) The broker must also disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.68, subdivision 3, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller's best interest and must tell the Seller any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

II.

~~**Subagent:** A broker or salesperson who is working with a Buyer but represents the Seller. In this case, the Buyer is the broker's customer and is not represented by that broker. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller's best interest and must tell the Seller any information that is disclosed to him or her. In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.~~

III.

Buyer's Broker: A Buyer may enter into an agreement for the broker or salesperson to represent and act on behalf of the Buyer. The broker may represent the Buyer only, and not the Seller, even if he or she is being paid in whole or in part by the Seller. A Buyer's broker owes to the Buyer the fiduciary duties described below.(2) The broker must disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.68, subdivision 3, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Seller as a customer is representing the Buyer, he or she must act in the Buyer's best interest and must tell the Buyer any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Seller will not be represented and will not receive advice and counsel from the broker or salesperson.

IV. III.

Dual Agency-Broker Representing both Seller and Buyer: Dual agency occurs when one broker or salesperson represents both parties to a transaction, or when two salespersons licensed to the same broker each represent a party to the transaction. Dual agency requires the informed consent of all parties, and means that the broker and salesperson owe the same duties to the Seller and the Buyer. This role limits the level of representation the broker and salespersons can provide, and prohibits them from acting exclusively for either party. In a dual agency, confidential information about price, terms, and motivation for pursuing a transaction will be kept confidential unless one party instructs the broker or salesperson in writing to disclose specific information about him or her. Other information will be shared. Dual agents may not advocate for one party to the detriment of the other.(3)

Within the limitations described above, dual agents owe to both Seller and Buyer the fiduciary duties described below.(2) Dual agents must disclose to Buyers material facts as defined in Minnesota Statutes, section 82.68, subdivision 3, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property.

V. IV.

Facilitator: A broker or salesperson who performs services for a Buyer, a Seller, or both but does not represent either in a fiduciary capacity as a Buyer's Broker, Seller's Broker, or Dual Agent. **THE FACILITATOR BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE DUTIES ARE INCLUDED IN A WRITTEN FACILITATOR SERVICES AGREEMENT.** The facilitator broker or salesperson owes the duty of confidentiality to the party but owes no other duty to the party except those duties required by law or contained in a written facilitator services agreement, if any. In the event a facilitator broker or salesperson, working with

a Buyer, shows a property listed by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Seller's Broker (see paragraph I above). In the event a facilitator broker or salesperson, working with a Seller, accepts a showing of the property by a Buyer being represented by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Buyer's Broker (see paragraph III above).

....

(1) This disclosure is required by law in any transaction involving property occupied or intended to be occupied by one to four families as their residence.

(2) The fiduciary duties mentioned above are listed below and have the following meanings:

Loyalty-broker/salesperson will act only in client(s)' best interest.

Obedience-broker/salesperson will carry out all client(s)' lawful instructions.

Disclosure-broker/salesperson will disclose to client(s) all material facts of which broker/salesperson has knowledge which might reasonably affect the client's use and enjoyment of the property.

Confidentiality-broker/salesperson will keep client(s)' confidences unless required by law to disclose specific information (such as disclosure of material facts to Buyers).

Reasonable Care-broker/salesperson will use reasonable care in performing duties as an agent.

Accounting-broker/salesperson will account to client(s) for all client(s)' money and property received as agent.

(3) If Seller(s) ~~decides~~ elect(s) not to agree to a dual agency relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented by the broker/salesperson. If Buyer(s) ~~decides~~ elect(s) not to agree to a dual agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by the broker.

Sec. 25. Minnesota Statutes 2012, section 82.68, subdivision 3, is amended to read:

Subd. 3. **Material facts.** (a) A licensee shall disclose to a prospective purchaser all material facts of which the licensee is aware, which could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the property of which the licensee is aware.

(b) It is not a material fact relating to real property offered for sale the fact or suspicion that the property:

(1) is or was occupied by an owner or occupant who is or was suspected to be infected with human immunodeficiency virus or diagnosed with acquired immunodeficiency syndrome;

(2) was the site of a suicide, accidental death, natural death, or perceived paranormal activity; or

(3) is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.

(c) A licensee or employee of the licensee has no duty to disclose information regarding an offender who is required to register under section 243.166, or about whom notification is made under that section, if the broker or salesperson, in a timely manner, provides a written notice that information about the predatory

offender registry and persons registered with the registry may be obtained by contacting local law enforcement where the property is located or the Department of Corrections.

(d) A licensee or employee of the licensee has no duty to disclose information regarding airport zoning regulations if the broker or salesperson, in a timely manner, provides a written notice that a copy of the airport zoning regulations as adopted can be reviewed or obtained at the office of the county recorder where the zoned area is located.

(e) A licensee is not required to disclose, except as otherwise provided in paragraph (f), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified third party and provided to the person. For the purposes of this paragraph, "qualified third party" means a federal, state, or local governmental agency, or any person whom the broker, salesperson, or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report and who is acceptable to the person to whom the disclosure is being made.

(f) A licensee shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described in paragraph (e), if a copy of the report is provided to the licensee.

(g) The limitation on disclosures in ~~paragraphs (b) and (e)~~ this subdivision shall modify any common law duties with respect to disclosure of material facts.

Sec. 26. Minnesota Statutes 2012, section 82.69, is amended to read:

82.69 ADVERTISING REQUIREMENTS.

~~A licensee shall identify himself or herself as either a broker or an agent salesperson in Any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other disposition of real property, whether the advertising pertains to the licensee's own property or the property of others by a licensee must include the real estate brokerage name more prominently displayed than the licensee's name.~~

If a salesperson or broker is part of a team or group within the brokerage, the licensee may include the team or group name in the advertising only under the following conditions:

(1) the inclusion of the team or group name is authorized by the primary broker of the brokerage to which the salesperson or broker is licensed; and

(2) the real estate brokerage name is included and more prominently displayed than the team or group name in the advertising.

Sec. 27. Minnesota Statutes 2012, section 82.70, subdivision 1, is amended to read:

Subdivision 1. **Licensee to receive only from, or authorized by, broker.** Unless authorized in writing by the real estate broker to whom the licensee is licensed or to whom the licensee was licensed at the time of the transaction, a licensee shall not pay and a licensee shall not accept a commission, compensation, referral fee, BPO fee, or other valuable consideration for the performance of any acts requiring a real estate license from any person except the real estate broker to whom the licensee is licensed or to whom the licensee was licensed at the time of the transaction.

Sec. 28. Minnesota Statutes 2012, section 82.70, subdivision 5, is amended to read:

Subd. 5. **Directing payment of compensation.** A licensed real estate broker or salesperson may assign or direct that commissions or other compensation earned in connection with a real estate or business opportunity transaction be paid to a corporation, limited liability company, or sole proprietorship of which the licensed real estate broker or salesperson is the sole owner. "Sole owner" in this subdivision means the licensed real estate broker or salesperson and may include the licensed real estate broker's or salesperson's spouse.

Sec. 29. Minnesota Statutes 2012, section 82.71, subdivision 5, is amended to read:

Subd. 5. **Closing statement.** The listing broker or his or her designee if acting as the transaction closing agent shall deliver to the seller, at the time of closing, a complete and detailed closing statement setting forth all of the receipts and disbursements handled by the broker for the seller. The listing broker if acting as the transaction closing agent shall also deliver to the buyer, at the time of closing, a complete and detailed statement setting forth the disposition of all money received in the transaction from the buyer.

Sec. 30. Minnesota Statutes 2012, section 82.72, subdivision 2, is amended to read:

Subd. 2. **Examination of records.** The commissioner may make examinations within or ~~without~~ outside of this state of each broker's or closing agent's records at such reasonable time and in such scope as is necessary to enforce the provisions of this chapter.

Sec. 31. Minnesota Statutes 2012, section 82.72, subdivision 3, is amended to read:

Subd. 3. **Retention.** A licensed real estate broker shall retain for six years copies of all listings, buyer representation and facilitator services contracts, deposit receipts, purchase money contracts, canceled checks, trust account records, and such other documents as may reasonably be related to carrying on a real estate brokerage business. The retention period shall run from the date of the closing of the transaction, or from the date of the closing document if the ~~document~~ transaction is not consummated. The following documents need not be retained:

(1) agency disclosure forms provided to prospective buyers or sellers, where no contractual relationship is subsequently created and no services are provided by the licensee; and

(2) facilitator services contracts or buyer representation contracts entered into with prospective buyers, where the prospective buyer abandons the contractual relationship before any services have been provided by the licensee.

Sec. 32. Minnesota Statutes 2012, section 82.735, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** A person licensed under this chapter or chapter 82B may prepare and provide a broker price opinion and a broker may charge and collect a fee for it if the license of that licensee is active and in good standing.

Sec. 33. Minnesota Statutes 2012, section 82.75, subdivision 1, is amended to read:

Subdivision 1. **Generally.** All trust funds received by a broker or the broker's salespeople or closing agents shall be deposited ~~forthwith upon receipt,~~ as provided in subdivision 5, in a trust account, maintained by the broker for such purpose in a bank, savings 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 association or credit union shall be organized under the laws of any state or the United States.

Sec. 34. Minnesota Statutes 2012, section 82.75, subdivision 2, is amended to read:

Subd. 2. **Licensee acting as principal.** A licensee acting in the capacity of principal in a real estate transaction where the seller retains any liability, contingent or otherwise, for the payment of an obligation on the property shall deposit in a Minnesota bank or trust company, any foreign bank which authorizes the commissioner to examine its records of the deposits, a savings association, credit union, or an industrial loan and thrift company organized under chapter 53 with deposit liabilities, in a trust account, those parts of all payments received on contracts that are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserve for taxes and insurance or any other encumbrance on the receipts. The deposits must be maintained until disbursement is made under the terms of the encumbrance and proper accounting on the property made to the parties entitled to an accounting. The provisions of this subdivision relating to rental of interests in real estate apply only to residential property, except as provided in section 82.73, subdivision 3, paragraph (e).

Sec. 35. Minnesota Statutes 2012, section 82.75, subdivision 5, is amended to read:

Subd. 5. **Trust accounts.** (a) Each broker or closing agent shall maintain and retain records of all trust funds and trust accounts. The commissioner may prescribe information to be included in the records by appropriate rules.

(b) Unless otherwise agreed upon in writing by the parties to a transaction, the broker with whom trust funds are to be deposited ~~in satisfaction of subdivision 4~~ shall be the listing broker.

(c) ~~A check~~ Earnest money received from a potential buyer shall be deposited into the listing broker's trust account ~~not later than the third~~ pursuant to the terms of a written agreement between the parties. If the written agreement between the parties is silent as to the timing of the deposit of earnest money, the listing broker shall deposit the earnest money within three business day after delivery of the check to the broker, except that the check may be held by the listing broker until days of either receipt of the earnest money or final acceptance or rejection of the offer if: of the purchase agreement, whichever is later.

~~(1) the check by its terms is not negotiable by the broker or if the potential buyer has given written instructions that the check shall not be deposited nor cashed until acceptance or shall be immediately returned if the offer is rejected; and~~

~~(2) the potential seller is informed that the check is being so held before or at the time the offer is presented to that person for acceptance.~~

~~If the offer is accepted, the check shall be deposited in a neutral escrow depository or the trust fund account of the listing broker not later than the third business day following acceptance of the offer unless the broker has received written authorization from all parties to the transaction to continue to hold the check. If the offer is rejected, the check~~ earnest money shall be returned to the potential buyer not later than the next business day after rejection.

(d) Trust funds must be maintained in a trust account until disbursement is made in accordance with ~~the terms of the applicable agreements~~ this section and proper accounting is made to the parties entitled to an accounting.

Trust funds may only be disbursed upon the occurrence of one of the following:

- (1) a closing of the transaction;
- (2) written agreement between the parties;
- (3) pursuant to an affidavit as required in section 559.217; or
- (4) a court order.

Disbursement must be made within ~~a reasonable time~~ ten business days following the consummation or termination of a transaction if the applicable agreements are silent as to the time of disbursement.

Sec. 36. Minnesota Statutes 2012, section 82.81, subdivision 6, is amended to read:

Subd. 6. **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 fail to provide at the first substantive contact with a consumer in a residential real property transaction an agency disclosure form as set forth in section 82.67.

(b) 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, as authorized in section 82.70, subdivision 4.

Sec. 37. **REPEALER.**

Minnesota Statutes 2012, section 82.55, subdivision 17, is repealed.

Presented to the governor May 1, 2014

Signed by the governor May 5, 2014, 4:23 p.m.