

CHAPTER 2805
DEPARTMENT OF COMMERCE
REAL ESTATE BROKER PRACTICE

2805.0100	DEFINITIONS.	2805.1200	LISTING AGREEMENTS.
2805.0200	SCOPE OF APPLICATION.	2805.1300	GUARANTEED SALE PROGRAMS.
2805.0300	COMPUTATION OF TIME.	2805.1400	DISCLOSURE REQUIREMENTS.
2805.0400	NOTICE TO COMMISSIONER.	2805.1500	PROHIBITION ON GUARANTEERING FUTURE PROFITS.
2805.0500	TRUST FUNDS.	2805.1600	NEGOTIATIONS.
2805.0600	TRUST ACCOUNT RECORDS.	2805.1700	COMPENSATION.
2805.0700	NONDEPOSITABLE ITEMS.	2805.1800	ACCESS TO GOVERNING STATUTES AND RULES.
2805.0800	LOAN BROKERS; STANDARDS OF CONDUCT.	2805.1900	RENTAL SERVICES.
2805.0900	PENALTY FOR NONCOMPLIANCE WITH STANDARDS OF CONDUCT.	2805.2000	FRAUDULENT, DECEPTIVE, AND DISHONEST PRACTICES.
2805.1000	RESPONSIBILITIES OF BROKERS.		
2805.1100	DISCLOSURE OF LICENSEE AS AGENT OF BROKER.		

2805.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subp. 3. **Licensee.** "Licensee" means a person duly licensed under Minnesota Statutes, chapter 82.

Subp. 4. **Loan broker.** "Loan broker" means a licensed real estate broker or salesperson who, for another and for a 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, or represents himself or herself or otherwise holds himself or herself out as a licensed real estate broker or salesperson, either in connection with any transaction in which he or she directly or indirectly negotiates or offers or attempts to negotiate a loan, or in connection with the conduct of his or her ordinary business activities as a loan broker.

"Loan broker" does not include a licensed real estate broker or salesperson who, in the course of representing a purchaser or seller of real estate, incidentally assists the purchaser or seller in obtaining financing for the real property in question if the licensee does not receive a separate commission, fee, or other valuable consideration for this service.

Subp. 5. **Overpayment.** "Overpayment" means any payment of money in excess of a statutory fee or for a license for which a person does not qualify.

Subp. 6. **Override clause.** "Override clause" means a provision in a listing agreement or similar instrument allowing the broker to receive a commission when, after the listing agreement has expired, the property is sold to persons with whom a broker or salesperson had negotiated or exhibited the property prior to the expiration of the listing agreement.

Subp. 7. **Person.** "Person" means a natural person, firm, institution, partnership, corporation, or association.

Subp. 8. **Primary broker.** "Primary broker" means the broker on whose behalf salespersons are licensed to act pursuant to Minnesota Statutes, section 82.20, subdivision 6. 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 a broker for the corporation. In the case of a partnership, "primary broker" means each partner licensed to act as a broker for the partnership.

Subp. 9. **Property.** "Property" means real property or other property within

the scope of Minnesota Statutes, chapter 82, unless the context clearly indicates otherwise.

Subp. 10. Protective list. "Protective list" means the written list of names and addresses of prospective purchasers with whom a licensee has negotiated the sale or rental of the property or to whom a licensee has exhibited the property prior to the expiration of the listing agreement. For the purposes of this subpart, "property" means the property that is the subject of the listing agreement in question.

Subp. 11. Real estate broker or broker. "Real estate broker" or "broker" as set forth in Minnesota Statutes, section 82.17, subdivision 4, clause (b) shall not apply to the originating, making, processing, selling, or servicing of a loan in connection with ordinary business activities by a mortgagee, lender, or servicer 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.

Subp. 12. Rental service. "Rental service" means a person who gathers and catalogs information concerning apartments or other units of real estate available for rent, and who, for a fee, provides information intended to meet the individual needs of specifically identified lessors or prospective lessees. This term shall not apply to newspapers or other periodicals with a general circulation or individual listing contracts between an owner or lessor of property and a licensee.

Subp. 13. Sponsor. "Sponsor" means a person offering or providing real estate education.

Subp. 14. Business of financial planning. "Business of financial planning" means providing, or offering to provide, financial planning services or financial counseling or advice, on a group or individual basis. A person who, on advertisements, cards, signs, circulars, letterheads, or in any other manner, indicates that he or she is a "financial planner," "financial counselor," "financial adviser," "investment counselor," "estate planner," "investment adviser," "financial consultant," or any other similar designation or title or combination thereof, is considered to be representing himself or herself to be engaged in the business of financial planning.

Statutory Authority: *MS s 45.023; 61A.03*

History: *11 SR 394*

2805.0200 SCOPE OF APPLICATION.

Prior rules exclusively govern all suits, actions, prosecutions, or proceedings that are pending or may be initiated on the basis of facts or circumstances occurring before September 8, 1986. Judicial review of all administrative orders issued prior to September 8, 1986, as to which review proceedings have not been instituted by September 8, 1986, is governed by prior rules.

Statutory Authority: *MS s 45.023; 61A.03*

History: *11 SR 394*

2805.0300 COMPUTATION OF TIME.

Subpart 1. Days. Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, rule, or order, such time, except as otherwise provided in subpart 2, shall be computed so as to exclude the first and include the last day of any such prescribed or fixed period or duration of time. When the last day of such period falls on Sunday or on any day made a legal holiday, by the laws of this state or of the United States, such day shall be omitted from the computation.

Subp. 2. Months. When the lapse of a number of months before or after a certain day is required by law, rule, or order, the number of months shall be computed by counting the months from such day, excluding the calendar month in which such day occurs, and including the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

Statutory Authority: *MS s 45.023; 61A.03*

History: *11 SR 394*

2805.0400 NOTICE TO COMMISSIONER.

Subpart 1. Mandatory. Licensees shall notify the commissioner of the facts in subparts 2 to 4.

Subp. 2. Civil judgment. Licensees must notify the commissioner in writing within ten days of a final adverse decision or order of a court, whether or not the decision or order is appealed, regarding any proceeding in which the licensee was named as a defendant, and which alleged fraud, misrepresentation, or the conversion of funds, if the final adverse decision relates to the allegations of fraud, misrepresentation, or the conversion of funds.

Subp. 3. Disciplinary action. The licensee must notify the commissioner in writing within ten days of the suspension or revocation of the licensee's real estate or other occupational license issued by this state or another jurisdiction.

Subp. 4. Criminal offense. The licensee must notify the commissioner in writing within ten days if the licensee is charged with, adjudged guilty of, or enters a plea of guilty or nolo contendere to a charge of any felony, or of any gross misdemeanor alleging fraud, misrepresentation, conversion of funds, or a similar violation of any real estate licensing law.

Statutory Authority: *MS s 45.023; 61A.03*

History: *11 SR 394*

2805.0500 TRUST FUNDS.

Subpart 1. Listing broker. 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 Minnesota Statutes, section 82.24, subdivision 1 shall be the listing broker.

Subp. 2. Maintenance. Trust funds shall be maintained in a trust account until disbursement is made in accordance with the terms of the applicable agreements and proper accounting is made to the parties entitled to an accounting.

Disbursement shall be made within a reasonable time following the consummation or termination of a transaction if the applicable agreements are silent as to the time of disbursement.

Subp. 3. Consent to place in special account. Trust funds may be placed by the broker in a special account, which may be an interest-bearing account or certificate of deposit if the buyer and the seller consent in writing to the special account and to the disposition of the trust funds, including any interest thereon.

Subp. 4. Licensee as principal. Funds which would constitute trust funds if received by a licensee acting as an agent must, if received by a licensee acting as principal, be placed in a trust account unless a written agreement signed by all parties to the transaction specifies a different disposition of the funds. The written agreement shall state that the funds would otherwise be placed in a real estate trust account.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.0600 TRUST ACCOUNT RECORDS.

Trust account records:

A. Every broker shall keep a record of all trust funds received, including notes, savings certificates, uncashed or uncollected checks, or other similar instruments. Said records shall set forth:

- (1) date funds received;
- (2) from whom received;
- (3) amount received;
- (4) with respect to funds deposited in a trust account the date of said deposit;
- (5) with respect to funds previously deposited in a trust account, the check number or date of related disbursements; and
- (6) a monthly balance of the trust account.

Each broker shall maintain a formal trust cash receipts journal and a formal cash disbursement journal, or similar records, in accordance with generally accepted accounting principles. All records and funds shall be subject to inspection by the commissioner or his agent at any time.

B. Each broker shall keep a separate record for each beneficiary or transaction, accounting for all funds therein which have been deposited in the brokers trust bank account. These records shall set forth information sufficient to identify the transaction and the parties thereto. At a minimum, each such record shall set forth:

- (1) the date funds are deposited;
- (2) the amount deposited;
- (3) the date of each related disbursement;
- (4) the check number of each related disbursement;
- (5) the amount of each related disbursement; and
- (6) a description of each disbursement.

C. A check received from the potential buyer shall be deposited into the listing broker's trust account not later than the next business day after delivery of the check to the broker except that the check may be held by the listing broker until acceptance or rejection of the offer if:

- (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 him 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 next business day following acceptance of the offer unless said broker has received written authorization from all parties to the transaction to continue to hold the check. If the offer is rejected, the check shall be returned to the potential buyer not later than the next business day after rejection.

Statutory Authority: *MS s 45.023; 61A.03; 82.24 subd 5*

History: *11 SR 394*

2805.0700 NONDEPOSITABLE ITEMS.

In the event earnest money or other down payments are received by the broker or salesman in the form of a nondeposable item such as a note, bond, stock certificate, treasury bill or any other item of value taken in lieu of cash, a receipt shall be issued to the buyer for the value thereof and such items shall be deposited immediately with an authorized escrow agent.

In the event the broker acts as the escrow agent, he shall obtain written authority from the buyer and seller to hold such items in escrow. In all cases the parties shall be advised of the details relative to the nondepositable item, including the nature of the item, the amount, and in whose custody such item is being held. The fact that such an item is being held by the broker shall be duly recorded in the brokers trust account records.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.0800 LOAN BROKERS; STANDARDS OF CONDUCT.

Subpart 1. Compliance. Loan brokers shall comply with the requirements of subparts 2 to 7.

Subp. 2. Contract provisions. A loan broker shall enter into a written contract with each customer and shall provide a copy of the written contract to each customer at or before the time of receipt of any fee or valuable consideration paid for loan brokerage services. The written contract shall:

A. identify the escrow account into which the fees or consideration will be deposited;

B. set forth the circumstances under which the loan broker will be entitled to disbursement from the escrow account;

C. set forth the circumstances under which the customer will be entitled to a refund of all or part of the fee;

D. specifically describe the services to be provided by the loan broker and the dates by which the services will be performed;

E. state the maximum rate of interest to be charged on any loan obtained;

F. contain a statement which notifies the customer of his or her rights to cancel the contract pursuant to subpart 3;

G. disclose, with respect to the 12-month period ending ten business days prior to the date of the contract in question, the percentage of the loan broker's customers for whom loans have actually been funded as a result of the loan broker's services (this disclosure need not be made for any period prior to September 8, 1986); and

H. disclose the cancellation rights and procedures set forth in subpart 3.

Subp. 3. Cancellation. Any customer of a loan broker who pays a fee prior to the time a loan is actually funded shall have an unconditional right to rescind the contract for loan brokerage services at any time until midnight of the third business day after the day on which the contract is signed. Cancellation is evidenced by the customer giving written notice of cancellation to the loan broker at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox properly addressed to the loan broker with postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the customer not to be bound by the contract. No act of a customer of a loan broker shall be effective to waive the right to rescind as provided in this subpart.

Subp. 4. Escrow account. The loan broker shall deposit in an escrow account within 48 hours all fees received prior to the time a loan is actually funded. The escrow account shall be in a bank located within the state of Minnesota and shall be controlled by an unaffiliated accountant, lawyer, or bank officer or employee.

Subp. 5. Records. The loan broker shall maintain a separate record of all fees received for services performed or to be performed as a loan broker. Each record shall set forth the date funds are received; the person from whom the funds are received; the amount received; the date of deposit in the escrow account; the account number; the date the funds are disbursed and the check number of the

MINNESOTA RULES 1989

2805.0800 REAL ESTATE BROKER PRACTICE

2148

disbursement; and a description of each disbursement and the justification for the disbursement.

Subp. 6. Monthly statement. The loan broker shall provide to each customer at least monthly a detailed written accounting of all disbursements of the customer's funds from the trust account.

Subp. 7. Disclosure of lenders. The loan broker shall provide to each customer at the expiration of the contract a list of the lenders or loan sources to whom loan applications were submitted on behalf of the customer.

Statutory Authority: *MS s 45.023; 61A.03; 82.27 subd 2*

History: *11 SR 394*

2805.0900 PENALTY FOR NONCOMPLIANCE WITH STANDARDS OF CONDUCT.

The methods, acts, or practices set forth in parts 2800.1600, and 2805.1000 to 2805.1800 are standards of conduct governing the activities of real estate brokers and salespersons under Minnesota Statutes, chapter 82. Failure to comply with these standards shall constitute grounds for license denial, suspension, or revocation, or for censure of the licensee.

Statutory Authority: *MS s 45.023; 61A.03; 82.27 subd 2*

History: *11 SR 394*

2805.1000 RESPONSIBILITIES OF BROKERS.

Subpart 1. Supervision of personnel. Brokers shall adequately supervise the activities of their salespersons and employees. Supervision includes the ongoing monitoring of listing agreements, purchase agreements, other real estate-related documents which are prepared or drafted by the broker's salespersons or employees or which are otherwise received by the broker's office, and the review of all trust account books and records. If an individual broker maintains more than one place of business, each place of business shall be under the broker's direction and supervision. If a partnership or corporate broker maintains more than one place of business, each place of business shall be under the direction and supervision of an individual broker licensed to act on behalf of the partnership or corporation.

The primary broker shall maintain records specifying the name of each broker responsible for the direction and supervision of each place of business. If an individual broker, who may be the primary broker, is responsible for supervising more than one place of business, the primary broker shall, upon written request of the commissioner, file a written statement specifying the procedures which have been established to assure that all salespersons and employees are adequately supervised. Designation of another broker to supervise a place of business does not relieve the primary broker of the ultimate responsibility for the actions of licensees.

Subp. 2. Preparation and safekeeping of documents. Brokers shall be responsible for the preparation, custody, safety, and accuracy of all real estate contracts, documents and records, even though another person may be assigned these duties by the broker.

Subp. 3. Documentation and resolution of complaints. Brokers shall investigate and attempt to resolve complaints made regarding the practices of any individual licensed to them and shall maintain, with respect to each individual licensed to them, a complaint file containing all material relating to any complaints received in writing for a period of three years.

Subp. 4. Disclosure of listed property information. No broker shall allow any unlicensed person to disclose any information regarding a listed property except to state the address of the property and whether it is available for sale or lease.

Statutory Authority: *MS s 45.023; 61A.03; 82.27 subd 2*

History: *11 SR 394*

2805.1100 DISCLOSURE OF LICENSEE AS AGENT OF BROKER.

A salesperson shall only conduct business under the licensed name of and on behalf of the broker to whom he or she is licensed. An individual broker shall only conduct business under his or her licensed name. A broker licensed to a corporation or partnership shall only conduct business under the licensed corporate or partnership name. A licensee shall affirmatively disclose prior to the negotiation or consummation of any transaction the licensed name of the broker under whom he or she is authorized to conduct business in accordance with this part.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1200 LISTING AGREEMENTS.

Subpart 1. Requirement. Licensees shall obtain a signed listing agreement, or other written authorization, from the owner of real property or from another person authorized to offer the property for sale or lease prior to advertising to the general public that the real property is available for sale or lease.

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

Subp. 2. Contents. All listing agreements shall be in writing and shall include:

- A. a definite expiration date;
- B. a description of the real property involved;
- C. the list price and any terms required by the seller;
- D. the amount of any compensation or commission or the basis for computing the commission;
- E. a clear statement explaining the events or conditions that will entitle a broker to a commission;
- F. 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; and

G. 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."

Subp. 3. Prohibited provisions. 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.

Subp. 4. Override clauses. 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.

Subp. 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 part 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.

The protective list shall 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.”

The protective list need not contain this notice if the written listing agreement specifically states that after its expiration 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.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1300 GUARANTEED SALE PROGRAMS.

If a broker advertises or offers a guaranteed sale program, or other program whereby the broker undertakes to purchase real property in the event he or she is unable to effectuate a sale to a third party within a specified period of time, a written disclosure that sets forth clearly and completely the general terms and conditions under which the broker agrees to purchase the property and the disposition of any profit at the time of resale by the broker must be provided to the seller prior to the execution of a listing agreement.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1400 DISCLOSURE REQUIREMENTS.

Subpart 1. Advertising. Each licensee shall identify himself or herself as either a broker or an agent in any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other disposition of real property, whether the advertising pertains to his or her own property or the property of others.

Subp. 2. Financial interests of licensee. Prior to the negotiation or consummation of any transaction, a licensee shall affirmatively disclose to the owner of real property that the licensee is a real estate broker or agent, and in what capacity the licensee is acting, if the licensee directly, or indirectly through a third party, purchases for himself or herself or acquires, or intends to acquire, any interest in, or any option to purchase, the owner's property.

Subp. 3. Material facts. Licensees shall disclose to any prospective purchaser all material facts pertaining to the property, 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.

Subp. 4. Nonperformance of any party. If a licensee is put on notice by any party to a real estate transaction that the party will not perform in accordance with the terms of a purchase agreement or other similar written agreement to convey real estate, the licensee shall immediately disclose the fact of that party's intent not to perform to the other party or parties to the transaction. Whenever reasonably possible, the licensee shall inform the party who will not perform of the licensee's obligation to disclose this fact to the other party or parties to the transaction prior to making the disclosure. The obligation required by this part shall not apply to notice of a party's inability to keep or fulfill any contingency to which the real estate transaction has been made subject.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

MINNESOTA RULES 1989

2151

REAL ESTATE BROKER PRACTICE 2805.1700

2805.1500 PROHIBITION ON GUARANTEEING FUTURE PROFITS.

Licenseses shall not, with respect to the sale or lease of real property, guarantee or affirmatively encourage another person to guarantee future profits or earnings that may result from the purchase or lease of the real property in question unless the guarantee and the assumptions upon which it is based are fully disclosed and contained in the contract, purchase agreement, or other instrument of sale or lease.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1600 NEGOTIATIONS.

Subpart 1. Written offers. All written offers to purchase or lease shall be promptly submitted in writing to the seller or lessor.

Subp. 2. Nondisclosure of terms of offer. A licensee shall not disclose the terms of an offer to another prospective buyer or the buyer's agent prior to the presentation of the offer to the seller.

Subp. 3. Closing costs. Licensees shall disclose to a buyer or a seller at or before the time an offer is written or presented that the buyer or seller may be required to pay certain closing costs, which may effectively reduce the proceeds from the sale or increase the cash outlay at closing.

Subp. 4. Required documents. Licensees shall furnish to the parties to the transaction at the time the documents are signed or become available a true and accurate copy of listing agreements, earnest money receipts, purchase agreements, contracts for deed, option agreements, closing statements, truth-in-housing forms, energy audits, and any other record, instrument, or document that is material to the transaction and that is in the licensee's possession.

Subp. 5. Closing statement. The listing broker or his or her designee 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 shall also deliver to the buyer at the time of closing a complete and detailed statement setting forth the disposition of all moneys received in the transaction from the buyer.

Subp. 6. Exclusive agency agreements. A licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written contract granting exclusive agency in connection with the property to another real estate broker, buyer, or lessee nor shall a licensee negotiate the purchase, lease, or exchange knowing that the buyer or lessee has executed a written contract granting an exclusive agency for the purchase, lease, or exchange of real property to another real estate broker. The licensee must inquire of the owner, lessor, buyer, or lessee whether such a contract exists.

Subp. 7. Prohibition against interference with contractual relationships of others. Licensees shall not induce any party to a contract of sale, purchase, or lease, option, or exclusive listing agreement or buyer's agreement, to breach the contract, option, or agreement.

Subp. 8. Prohibition against discouraging use of attorney. Licensees shall not discourage prospective parties to a real estate transaction from seeking the services of an attorney.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1700 COMPENSATION.

Subpart 1. Licensee to receive only from broker. A licensee shall not accept a commission 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 he is licensed or to whom he was licensed at the time of the transaction.

Subp. 2. Undisclosed compensation. A licensee shall not accept, give, or charge any undisclosed commission or realize any direct or indirect remuneration that inures to the benefit of the licensee on an expenditure made for a principal.

Subp. 3. Limitation on broker when transaction not completed. When the owner fails or is unable to consummate a real estate transaction, through no fault of the purchaser, the listing broker may not claim any portion of any trust funds deposited with the broker by the purchaser, absent a separate agreement with the purchaser.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1800 ACCESS TO GOVERNING STATUTES AND RULES.

Every real estate office and branch office shall have a current copy of Minnesota Statutes, chapters 82 and 83 and the rules adopted thereunder, available for the use of licensees.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.1900 RENTAL SERVICES.

Subpart 1. License. A rental service shall obtain a real estate broker's license prior to engaging in business or holding itself out as being engaged in business. No person shall act as a real estate salesperson on behalf of a rental service without first obtaining a real estate salesperson's license on behalf of the rental service.

Subp. 2. Dissemination of unit information. A rental service shall not provide information regarding a rental unit without the express authority of the owner of the unit.

Subp. 3. Availability of unit. A rental service shall not represent a unit as currently available unless its availability has been verified within 72 hours preceding the representation.

Subp. 4. Advertising. A rental service shall not advertise in a manner that is misleading with regard to fees charged, services provided, the availability of rental units, or rental terms or conditions.

Statutory Authority: *MS s 45.023; 61A.03; 82.28*

History: *11 SR 394*

2805.2000 FRAUDULENT, DECEPTIVE, AND DISHONEST PRACTICES.

Subpart 1. Prohibitions. For the purposes of Minnesota Statutes, section 82.27, subdivision 1, clause (b), the following acts and practices constitute fraudulent, deceptive, or dishonest practices:

A. act on behalf of more than one party to a transaction without the knowledge and consent of all parties;

B. act in the dual capacity of licensee and undisclosed principal in any transaction;

C. receive funds while acting as principal which funds would constitute trust funds if received by a licensee acting as an agent, unless the funds are placed in a trust account. Funds need not be placed in a trust account if a written agreement signed by all parties to the transaction specifies a different disposition of the funds, in accordance with part 2805.0500, subpart 4;

D. violate any state or federal law concerning discrimination intended to protect the rights of purchasers or renters of real estate;

MINNESOTA RULES 1989

2153

REAL ESTATE BROKER PRACTICE 2805.2000

E. make a material misstatement in an application for a license or in any information furnished to the commissioner;

F. procure or attempt to procure a real estate license for himself or herself or any person by fraud, misrepresentation, or deceit;

G. represent membership in any real-estate related organization in which the licensee is not a member;

H. advertise in any manner that is misleading or inaccurate with respect to properties, terms, values, policies, or services conducted by the licensee;

I. make any material misrepresentation or permit or allow another to make any material misrepresentation;

J. make any false or misleading statements, or permit or allow another to make any false or misleading statements, of a character likely to influence, persuade, or induce the consummation of a transaction contemplated by Minnesota Statutes, chapter 82;

K. fail within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to another;

L. commingle with his or her own money or property trust funds or any other money or property of another held by the licensee;

M. demand from a seller a commission to which the licensee is not entitled, knowing that he or she is not entitled thereto;

N. pay or give money or goods of value to an unlicensed person for any assistance or information relating to the procurement by a licensee of a listing of a property or of a prospective buyer of a property (this item does not apply to money or goods paid or given to the parties to the transaction);

O. fail to maintain a trust account at all times, as provided by law;

P. engage, with respect to the offer, sale, or rental of real estate, in an anticompetitive activity.

Q. represent on advertisements, cards, signs, circulars, letterheads, or in any other manner, that he or she is engaged in the business of financial planning unless he or she provides a disclosure document to the client. The document must be signed by the client, and a copy must be left with the client. The disclosure document must contain the following:

(1) the basis of fees, commissions, or other compensation received by him or her in connection with rendering of financial planning services or financial counseling or advice in the following language:

"My compensation may be based on the following:

(a) ... commissions generated from the products I sell you,

(b) ... fees, or

(c) ... a combination of (a) and (b). [Comments]";

(2) the name and address of any company or firm that supplies the financial services or products offered or sold by him or her in the following language:

"I am authorized to offer or sell products and/or services issued by or through the following firm(s):

[List]

The products will be traded, distributed, or placed through the clearing/trading firm(s) of:

[List]";

(3) the license(s) held by the person under Minnesota Statutes, chapter 60A, 80A, or 82 in the following language:

"I am licensed in Minnesota as a(n):

(a) ... insurance agent

MINNESOTA RULES 1989

2805.2000 REAL ESTATE BROKER PRACTICE

2154

(b) ... securities agent or broker/dealer

(c) ... real estate broker or salesperson

(d) ... investment adviser"; and

(4) the specific identity of any financial products or services (by category, for example mutual funds, stocks, or limited partnerships) the person is authorized to offer or sell in the following language:

"The license(s) entitles me to offer and sell the following products and/or services:

(a) ... securities, specifically the following: [List]

(b) ... real property

(c) ... insurance

(d) ... other: [List]."

Subp. 2. Determining violation. A licensee shall be deemed to have violated this part if he has been found to have violated the Minnesota Antitrust Law of 1971, Minnesota Statutes, sections 325D.49 to 325D.66 by a final decision or order of a court of competent jurisdiction.

Subp. 3. Commissioner's authority. Nothing in this part limits the authority of the commissioner to take actions against a licensee for fraudulent, deceptive, or dishonest practices not specifically described in this part.

Statutory Authority: *MS s 45.023; 60A.17; 61A.03; 80A.25; 82.28*

History: *10 SR 274; 11 SR 394*