

## CHAPTER 82

## REAL ESTATE BROKERS AND SALESPERSONS

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**82.17 DEFINITIONS.**

*[For text of subs 1 to 3, see M.S.1994]*

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;

(e) 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, or savings 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 ur-

ban 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.

*[For text of subs 5 to 12, see M.S.1994]*

**History:** 1995 c 202 art 1 s 25

### **82.18 EXCEPTIONS.**

Unless a person is licensed or otherwise required to be licensed under this chapter, the term real estate broker does not include:

(a) a licensed practicing attorney if the attorney complies in all respects with the trust account provisions of this chapter;

(b) a receiver, trustee, administrator, guardian, executor, or other person appointed by or acting under the judgment or order of any court;

(c) any person owning and operating a cemetery and selling lots therein solely for use as burial plots;

(d) any custodian, janitor, or employee of the owner or manager of a residential building who leases residential units in the building;

(e) any bank, trust company, savings association, 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 business within the scope of its corporate powers as provided by law;

(f) public officers while performing their official duties;

(g) employees of persons enumerated in clauses (b), (e), and (f), when engaged in the specific performance of their duties;

(h) any person who acts as an auctioneer bonded in conformity with section 330.02, when that person is engaged in the specific performance of duties as an auctioneer, and when that person has been employed to auction real estate by a person licensed under this chapter or when the auctioneer has engaged a licensed attorney to supervise the real estate transaction;

(i) any person who acquires real estate for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial or industrial buildings for the purpose of resale if no more than 25 such transactions occur in any 12-month period and the person complies with section 82.24;

(j) any person who is licensed as a securities broker-dealer or is licensed as a securities agent representing a broker-dealer pursuant to chapter 80A and who offers to sell or sells an interest or estate in real estate which is a security as defined in section 80A.14, subdivision 18, and is registered or exempt from registration or part of a transaction exempt from registration pursuant to chapter 80A, when acting solely as an incident to the sale of these securities;

(k) any person who offers to sell or sells a business opportunity which is a franchise registered pursuant to chapter 80C, when acting solely to sell the franchise;

(l) any person who contracts with or solicits on behalf of a provider a contract with a resident or prospective resident to provide continuing care in a facility, pursuant to the Continuing Care Facility Disclosure and Rehabilitation Act (chapter 80D), when acting solely as incident to the contract;

(m) any broker-dealer or agent of a broker-dealer when participating in a transaction in which all or part of a business opportunity or business, including any interest therein, is conveyed or acquired pursuant to an asset purchase, merger, exchange of securities, or other business combination, if the agent or broker-dealer is licensed pursuant to chapter 80A;

(n) an accountant acting incident to the practice of the accounting profession if the accountant complies in all respects with the trust account provisions of this chapter;

(o) a person who negotiates mortgage loans as described in section 82.17, subdivision 4, clause (b), if the person is the actual lender on at least 80 percent of all mortgage lending and

brokering transactions conducted by the person and if the person is also a lender: (1) approved or certified by the secretary of housing and urban development; (2) approved or certified by the administrator of Veterans Affairs; (3) approved or certified by the Administrator of the Farmers Home Administration; (4) approved or certified by the Federal Home Loan Mortgage Corporation; or (5) approved or certified by the Federal National Mortgage Association.

**History:** 1995 c 68 s 1; 1995 c 202 art 1 s 25

## 82.19 PROHIBITIONS.

*[For text of subs 1 to 6, see M.S.1994]*

**Subd. 7. Securities sold by businesses outside scope of licensing.** A license issued under this chapter does not allow a licensee to engage in the business of buying, selling, negotiating, brokering, or otherwise dealing in vendor's interests in contracts for deed, mortgagee's interests in mortgages, or other evidence of indebtedness regarding real estate, except that a licensee may, if there is no compensation in addition to the brokerage commission or fee, and if the licensee represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of real estate, arrange for the sale of a contract, mortgage, or similar evidence of indebtedness for the subject property.

*[For text of subd 8, see M.S.1994]*

**History:** 1995 c 68 s 2

## 82.195 LISTING AGREEMENTS.

**Subdivision 1. Requirement.** Licensees shall obtain a signed listing agreement or other signed written authorization 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.

*[For text of subs 2 to 5, see M.S.1994]*

**History:** 1995 c 68 s 3

## 82.20 LICENSING REQUIREMENTS.

*[For text of subs 1 to 12, see M.S.1994]*

**Subd. 13. Limited broker's license.** The commissioner shall have the authority to issue a limited real estate broker's license authorizing the licensee to engage in transactions as principal only. Such license shall be issued only after receipt of the application described in subdivision 3 and payment of the fee prescribed by section 82.21, subdivision 1. No salesperson may be licensed to act on behalf of an individual holding a limited broker's license. An officer of a corporation or partner of a partnership licensed as a limited broker may act on behalf of that corporation or partnership without being subject to the licensing requirements. A limited broker's license shall also authorize the licensee to engage in negotiation of mortgage loans as described in section 82.17, subdivision 4, clause (b).

*[For text of subd 14, see M.S.1994]*

**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:

(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 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.

**History:** 1995 c 68 s 4; 1995 c 202 art 1 s 25

### 82.24 TRUST ACCOUNT REQUIREMENTS.

**Subdivision 1. Generally.** 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 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.

**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.

*[For text of subs 3 to 5, see M.S.1994]*

**Subd. 6. Notice of trust account status.** The names of the banks, savings associations, credit unions, and industrial loan and thrift companies and the trust account numbers used by a broker or closing agent shall be provided to the commissioner at the time of application for the broker's or closing agent's license. The broker shall immediately report to the commissioner any change of trust account status including changes in banks, savings associations, credit unions, and industrial loan and thrift companies, account numbers, or additional accounts in the same or other banks, savings associations, credit unions, and industrial loan and thrift companies. A broker or closing agent shall not close an existing trust account without giving ten days written notice to the commissioner.

*[For text of subs 7 and 8, see M.S.1994]*

**History:** 1995 c 202 art 1 s 25

### 82.34 REAL ESTATE EDUCATION, RESEARCH AND RECOVERY FUND.

*[For text of subs 1 to 5, see M.S.1994]*

**Subd. 6.** The commissioner may expend money as appropriated for the following purposes:

- (a) To promote the advancement of education and research in the field of real estate for the benefit of those licensed under this chapter;

(b) To underwrite educational seminars and other forms of educational projects for the benefit of real estate licensees;

(c) To establish a real estate chair or courses at Minnesota state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(d) To contract for a particular educational or research project in the field of real estate to further the purposes of this chapter;

(e) To pay any reasonable costs and disbursements, excluding attorney's fees, incurred in defending actions against the real estate education, research and recovery fund including the cost of mailing or publication of notice pursuant to subdivision 14; and

(f) To provide information to the public on housing issues, including but not limited to, environmental safety and housing affordability.

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. The application shall state with specificity the grounds upon which the application seeks to recover from the fund, and request 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.

*[For text of subs 8 to 19, see M.S.1994]*

**History:** 1995 c 68 s 5; 1995 c 186 s 20