

CHAPTER 82

REAL ESTATE BROKERS AND SALESPERSONS

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82.195 LISTING AGREEMENTS.

[For text of subd 1, see M.S.2000]

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

- (1) a definite expiration date;
- (2) a description of the real property involved;
- (3) the list price and any terms required by the seller;
- (4) the amount of any compensation or commission or the basis for computing the commission;
- (5) a clear statement explaining the events or conditions that will entitle a broker to a commission;
- (6) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the expiration of the listing agreement;

(7) the following notice in not less than ten point boldface type immediately preceding any provision of the listing agreement relating to compensation of the licensee:

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

(8) for residential property listings, the following “dual agency” disclosure statement:

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

Seller’s Instructions to Broker

Having read and understood this information about dual agency, seller(s) now instructs broker as follows:

..... Seller(s) will agree to a dual agency representation and will consider offers made by buyers represented by broker.

..... Seller will not agree to a dual agency  
 representation and will not consider offers  
 made by buyers represented by broker.

..... Seller ..... Broker

..... Seller By: .....  
 Salesperson

Date: .....

(9) a notice requiring the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing; and

(10) for residential listings, a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question. This notice may be used in the listing agreement for any other type of real estate.

*[For text of subs 3 to 5, see M.S.2000]*

**History:** 2001 c 208 s 9

**82.196 BUYER'S BROKER AGREEMENTS.**

*[For text of subd 1, see M.S.2000]*

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

- (1) a definite expiration date;
- (2) the amount of any compensation or commission, or the basis for computing the commission;
- (3) a clear statement explaining the services to be provided to the buyer by the broker, and the events or conditions that will entitle a broker to a commission or other compensation;
- (4) a 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 bold face 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 you choose to purchase a property listed by broker, a dual agency will be created. This means that broker will represent both you and the seller(s), and owe the same duties to the seller(s) that broker owes to you. This conflict of interest will prohibit broker from advocating exclusively on your behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct broker in writing to disclose specific information

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

Buyer's Instructions to Broker

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

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

..... Buyer

..... Broker

..... 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.

[For text of subs 3 to 6, see M.S.2000]

History: 2001 c 208 s 10

82.197 DISCLOSURE REQUIREMENTS.

Subdivision 1. **Agency disclosure.** A real estate broker or salesperson shall provide to a consumer in the sale and purchase of a residential real property transaction at the first substantive contact with the consumer an agency disclosure form in substantially the form set forth in subdivision 4. The agency disclosure form shall be intended to provide a description of available options for agency and nonagency relationships, and a description of the role of a licensee under each option. The agency disclosure form shall provide a signature line for acknowledgment of receipt by the consumer.

[For text of subs 2 and 3, see M.S.2000]

Subd. 4. **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 and information given to the broker/salesperson may be disclosed. 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 82.197, subdivision 6, 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 82.197, subdivision 6, 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.

**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 82.197, subdivision 6, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property.

#### V.

**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 THE 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 rights and interests.

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 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 not to agree to a dual agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by the broker.

*[For text of subd 5, see M.S.2000]*

Subd. 6. **Material facts.** (a) Licensees shall disclose to any prospective purchaser all material facts of which the licensees are 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 licensees are aware.

(b) It is not a material fact relating to real property offered for sale and no regulatory action shall be brought against a licensee for failure to disclose in any real estate transaction 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; or

(2) was the site of an accidental death, natural death, or perceived paranormal activity.

(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 is not required to disclose, except as otherwise provided in paragraph (e), 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.

(e) 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, if a copy of the report is provided to the licensee, described in paragraph (d).

**History:** 2001 c 208 s 11-13

## 82.22 EXAMINATIONS.

*[For text of subs 1 to 12, see M.S.2000]*

Subd. 13. **Continuing education.** (a) After their first renewal date, 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 each 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. Salespersons and brokers whose initial license period extends more than 12 months are required to complete 15 hours of real estate continuing education during the initial license period. Those licensees who will receive a 12-month license on July 1, 1995, because of the staggered implementation schedule must complete 15 hours of real estate continuing education as a requirement for renewal on July 1, 1996. 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 shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision. 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. Courses in motivation, salesmanship, psychology, or time management shall not be approved by the commissioner for continuing education credit.

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

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

(1) at least 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).

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

(f) Approved 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 course offerings must be open to any interested individuals. Access may be restricted by the sponsor 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.

(g) No more than one-half of the credit hours per licensing period, including continuing education required under subdivision 6, may be credited to a person for attending any combination of courses either:

(1) sponsored by, offered by, or affiliated with a real estate company or its agents; or

(2) offered using new delivery technology, including interactive technology, and the Internet.

**History:** 2001 c 208 s 14

## 82.24 TRUST ACCOUNT REQUIREMENTS.

*[For text of subs 1 to 7, see M.S.2000]*

Subd. 8. **Accrued interest.** (a) Each broker shall maintain a pooled interest-bearing trust account for deposit of client funds. The interest accruing on the trust account, less reasonable transaction costs, must be paid to the state treasurer for deposit in the housing trust fund account created under section 462A.201 unless otherwise specified pursuant to an expressed written agreement between the parties to a transaction.

(b) For an account created under paragraph (a), each broker shall direct the financial institution to:

(1) pay the interest, less reasonable transaction costs, computed in accordance with the financial institution's standard accounting practice, at least quarterly, to the state treasurer; and

(2) send a statement to the state treasurer showing the name of the broker for whom the payment is made, the rate of interest applied, the amount of service charges deducted, and the account balance for the period in which the report is made.

The state treasurer shall credit the amount collected under this subdivision to the housing trust fund account established in section 462A.201.

(c) The financial institution must promptly notify the commissioner if a draft drawn on the account is dishonored. A draft is not dishonored if a stop payment order is requested by an issuer who has a good faith defense to payment on the draft.

**History:** 2001 c 208 s 15

**82.27 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.**

*[For text of subs 1 and 2, see M.S.2000]*

Subd. 3. **Order to show cause.** The commissioner shall issue an order requiring a licensee or applicant for a license to show cause why the license should not be revoked or suspended, or the licensee censured, or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the specific statute or rule that has been violated for the entry of the order. The commissioner may by order summarily suspend a license pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing after having been duly notified of it, such person shall be deemed in default, and the proceeding may be determined against the licensee or applicant upon consideration of the order to show cause, the allegations of which may be deemed to be true.

*[For text of subs 4 to 7, see M.S.2000]*

**History:** 2001 c 208 s 16

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

*[For text of subs 1 to 7, see M.S.2000]*

Subd. 7a. **Accelerated claims payment.** (a) The commissioner shall pay claims from the recovery portion of the fund that do not exceed the jurisdiction limits for conciliation court matters as specified in section 491A.01 on an accelerated basis if all of the requirements in subdivision 7 and paragraphs (b) to (f) have been satisfied.

(b) When any aggrieved person as defined in subdivision 7 obtains a judgment in any court of competent jurisdiction, regardless of whether the judgment has been discharged by a bankruptcy court against a licensee on grounds specified in subdivision 7, the aggrieved person may file a verified application with the commissioner for payment out of the recovery portion of the fund of the amount of actual and direct out-of-pocket loss in the transaction, but excluding any attorney fees, interest on the loss, and on any judgment obtained as a result of the loss, up to the conciliation court jurisdiction limits, of the amount unpaid upon the judgment. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant.

(c) The commissioner shall send the licensee a copy of the verified application by first-class mail to the licensee's address as it appears in the records of the department of commerce with a notice that the claim will be paid 15 days from the date of the notice unless the licensee notifies the commissioner before that date of the commencement of an appeal of the judgment, if the time for appeal has not expired, and that payment of the claim will result in automatic suspension of the licensee's license.

(d) If the licensee does not notify the commissioner of the commencement of an appeal, the commissioner shall pay the claim at the end of the 15-day period.

(e) If an appeal is commenced, the payment of the claim is stayed until the conclusion of the appeal.

(f) The commissioner may pay claims which total no more than \$50,000 against the licensee under this accelerated process. The commissioner may prorate the amount of claims paid under this subdivision if claims in excess of \$50,000 against the licensee are submitted. Any unpaid portions of these claims must be satisfied in the manner set forth in subdivision 7.



*[For text of subs 8 to 14, see M.S.2000]*

Subd. 15. Any sums received by the commissioner pursuant to any provisions of this section shall be deposited in the state treasury, and credited to the real estate education, research and recovery fund, and said sums shall be allocated exclusively for the purposes provided in this section. All moneys in the fund are appropriated annually to the commissioner for the purposes of this section.

All money credited to the fund under section 462A.201 may only be used for purposes under subdivision 6, clause (g). Beginning in 1990, the commissioner must, on February 1 of each year, review the amount of money spent or allocated for uses under subdivision 6, clause (g), for the previous calendar year. If the amount spent or allocated is less than the amount credited to the fund under section 462A.201 during the same calendar year, the difference must be transferred from the fund to the housing trust fund account established in section 462A.201. If the fund balance exceeds \$4,000,000, the commissioner may suspend the fee imposed under subdivision 3.

*[For text of subs 16 to 19, see M.S.2000]*

**History:** 2001 c 208 s 17,18