

CHAPTER 82

REAL ESTATE BROKERS AND SALESPERSONS

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82.09 [Repealed, 1973 c 410 s 19]

82.10 [Repealed, 1973 c 410 s 19]

82.11 [Repealed, 1973 c 410 s 19]

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82.125 [Repealed, 1973 c 410 s 19]

82.13 [Repealed, 1973 c 410 s 19]

82.14 [Repealed, 1973 c 410 s 19]

82.15 [Repealed, 1973 c 410 s 19]

82.16 [Repealed, 1973 c 410 s 19]

82.17 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter the terms defined in this section have the meanings given to them.

Subd. 2. **Person.** "Person" means a natural person, firm, partnership, corporation or association, and the officers, directors, employees and agents thereof.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce or a designee.

Subd. 4. **Real estate broker; broker.** "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, which is not a residential mortgage loan as defined by section 58.02, subdivision 18;

(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.

Subd. 5. Real estate salesperson. "Real estate salesperson" means one who acts on behalf of a real estate broker in performing any act authorized by this chapter to be performed by the broker.

Subd. 6. Trust account. "Trust account" means, for purposes of this chapter, a savings account, negotiable order of withdrawal account, demand deposit or checking account maintained for the purpose of segregating trust funds from other funds. A trust account must be an interest-bearing account paying the highest current passbook savings account rate of interest and must not allow the financial institution a right of set off against money owed it by the licensee.

Subd. 7. Trust funds. "Trust funds" means funds received by a broker, salesperson, or closing agent in a fiduciary capacity as a part of a real estate or business opportunity transaction, pending the consummation or termination of a transaction, and includes all down payments, earnest money deposits, rents for clients, tax and insurance escrow payments, damage deposits, and any funds received on behalf of any person.

Subd. 8. Real estate. For purposes of sections 82.17 to 82.34, "real estate" shall also include a manufactured home, when such manufactured home is affixed to land. Manufactured home means any factory built structure or structures equipped with the

necessary service connections and made so as to be readily movable as a unit or units and designed to be used as a dwelling unit or units.

Subd. 9. **Public member.** "Public member" means a person who is not, or never was, a real estate broker, real estate salesperson, or a closing agent or the spouse of such person, or a person who has no, or never has had a material financial interest in acting as a real estate broker, real estate salesperson, or a closing agent or a directly related activity.

Subd. 10. **Closing agent; real estate closing agent.** "Closing agent" or "real estate closing agent" means any person whether or not acting as an agent for a title company, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration or with or without the intention or expectation of receiving a commission, fee, or other valuable consideration, directly or indirectly provides closing services incident to the sale, trade, lease, or loan of residential real estate, including drawing or assisting in drawing papers incident to the sale, trade, lease, or loan, or advertises or claims to be engaged in these activities.

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

Circumstances which establish dual agency include the following:

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

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

Subd. 12. **Residential real property or residential real estate.** "Residential real property" or "residential real estate" means property occupied by, or intended to be occupied by, one to four families as their residence.

History: 1973 c 410 s 1; 1980 c 516 s 2; 1981 c 365 s 9; 1983 c 284 s 11,12; 1984 c 552 s 7; 1986 c 358 s 7; 1986 c 444; 1987 c 105 s 3; 1987 c 336 s 20; 1988 c 654 s 1; 1988 c 695 s 2; 1989 c 347 s 1-3; 1993 c 309 s 1-3; 1995 c 202 art 1 s 25; 1998 c 343 art 2 s 2

82.175 [Repealed, 1998 c 343 art 1 s 18]

82.176 TABLE FUNDING.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this subdivision have the meanings given them.

(b) "Closing agent" has the meaning given in section 82.17, subdivision 10.

(c) "Collected funds" means funds deposited, finally settled, and credited to the closing agent's escrow account.

(d) "Established business relationship" means that the closing agent has performed at least 25 residential closings on behalf of the lender.

(e) "Federally insured financial institution" means an institution in which monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(f) "Lender" means a person who makes residential mortgage loans including a person who engages in table funding. "Lender" does not include any organization described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, if the organization is exempt from tax under section 501(a) of the Internal Revenue Code of 1986, as amended. "Lender" does not include a state or any political subdivision of a state.

(g) "Qualified loan funds" means funds in one of the following forms:

(1) lawful money of the United States;

(2) wired funds when unconditionally held by the closing agent;

(3) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the closing agent; and

(4) United States treasury checks, Federal Reserve Bank checks, federal home loan bank checks, and state of Minnesota warrants.

(h) "Table funding" means a closing or settlement at which a mortgage loan is funded by a lender by a contemporaneous advance of mortgage loan funds and an assignment of the mortgage loan to the lender advancing the funds.

Subd. 2. **Requirements.** (a) A closing agent shall not make disbursements out of an escrow, security deposit, settlement, or closing account unless the funds received from the lender are collected funds or qualified loan funds. This subdivision does not prohibit a closing agent from electing to disburse out of an escrow, security deposit, settlement, or closing account, other than with collected funds or qualified loan funds, if the closing agent has an established business relationship with the lender on whose behalf the closing is being conducted.

(b) A lender, using the closing services of a closing agent, shall at or before the time of the closing deliver loan funds to the closing agent either in the form of collected funds or qualified loan funds.

History: 1998 c 344 s 1

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.

History: 1973 c 410 s 2; 1975 c 38 s 1; 1976 c 2 s 37; 1976 c 197 s 1; 1976 c 230 s 1; 1976 c 239 s 19; 1980 c 516 s 20; 1981 c 135 s 13; 1983 c 252 s 15; 1983 c 284 s 13; 1984 c 653 s 1; 1986 c 444; 1989 c 347 s 4; 1991 c 311 s 1; 1995 c 68 s 1; 1995 c 202 art 1 s 25; 1998 c 343 art 2 s 3

82.19 PROHIBITIONS.

Subdivision 1. **License required.** No person shall act as a real estate broker, salesperson, or real estate closing agent unless licensed as herein provided.

Subd. 2. **Misrepresenting status as licensee.** No persons shall advertise or represent themselves to be real estate brokers, salespeople, or closing agents unless licensed as herein provided.

Subd. 3. **Commission-splitting, rebates, and fees.** No real estate broker, salesperson, or closing agents shall offer, pay, or give, and no person shall accept, any compensation or other thing of value from any real estate broker, salesperson, or closing agents by way of commission-splitting, rebate, finder's fees, or otherwise, in connection with any real estate or business opportunity transaction. This subdivision does not apply to transactions (1) between a licensed real estate broker or salesperson and the person by whom the broker or salesperson is engaged to purchase or sell real estate or business opportunity, (2) among persons licensed as provided herein, (3) between a licensed real estate broker or salesperson and persons from other jurisdictions similarly licensed in that jurisdiction, (4) involving timeshare or other recreational lands where the amount offered or paid does not exceed \$150, and payment is not conditioned upon any sale but is made merely for providing the referral and the person paying the fee is bound by any representations the person receiving the fee makes, and (5) involving a person who receives a referral fee from a person or an agent of a person licensed under this section, provided that in any 12-month period, no recipient may earn more than the value of one month's rent, that the recipient is a resident of the property or has lived there within 60 days of the payment of the fee, and that the person paying the fee is bound by any representations made by the recipient of the fee. A licensed real estate broker or salesperson may assign or direct that commissions or other compensation earned in connection with any real estate or business opportunity transaction be paid to a corporation of which the licensed real estate broker or salesperson is the sole owner.

Subd. 4. **Authorizing or engaging unlicensed person to act on licensee's behalf.** No real estate broker, salesperson, or closing agent shall engage or authorize any person, except one licensed as provided herein, to act as a real estate broker, salesperson, or closing agent on the engager's or authorizer's behalf.

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

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

Subd. 5. **Disclosure regarding representation of parties.** (a) No person licensed pursuant to this chapter or who otherwise acts as a real estate broker or salesperson shall 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 82.197.

(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. A broker representing a buyer shall make known to the seller or the seller's agent the fact of the agency relationship before any showing or negotiations are initiated.

Subd. 6. **Closing agents.** A real estate closing agent may not charge a fee for closing services to a borrower, and a borrower may not be required to pay such a fee at settlement, if the fee was not previously disclosed in writing at least one business day before the settlement. This disclosure requirement will be considered satisfied if a disclosure is made or an estimate given under section 507.45.

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.

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

Subd. 9. MS 1993 Supp [Repealed, 1994 c 587 art 5 s 31]

Subd. 9. **Exclusive agreements.** (a) Except as provided in paragraph (c), 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 representation or assistance in connection with the property to another real estate broker, buyer, or lessee, nor shall a licensee negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has executed a written contract granting exclusive representation or assistance for the purchase, lease, or exchange of the real property with another real estate broker.

(b) Licensees shall not induce any party to a contract of sale, purchase, lease, or option, or to an exclusive listing agreement or buyer's agreement, or facilitator services agreement, to breach the contract, option, or agreement.

(c) A licensee may discuss the terms upon which a listing or buyer representation contract or a contract for facilitator services may be entered into after expiration of any existing exclusive contract when the inquiry or discussion is initiated by the owner, lessor, buyer, or lessee. The licensee must inquire of the owner, lessor, buyer, or lessee whether such an exclusive contract exists.

History: 1973 c 410 s 3; 1975 c 38 s 2; 1985 c 148 s 1; 1985 c 251 s 6,7; 1986 c 358 s 8; 1986 c 444; 1989 c 347 s 5-9; 1992 c 555 art 1 s 2; 1993 c 309 s 4-6; 1993 c 375 art 5 s 1; 1995 c 68 s 2; 1996 c 439 art 3 s 1; 1997 c 73 s 1; 1997 c 222 s 33; 2002 c 286 s 1

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.

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.

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

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

(b) A listing agreement may contain an override clause of up to two years in length when used in conjunction with the purchase or sale of a business. The length of the override clause must be negotiable between the licensee and the seller of the business. The protective list provided in connection with the override clause must include the written acknowledgment of each party named on the protective list, that the business which is the subject of the listing agreement was presented to that party by the licensee.

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

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

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

History: 1993 c 309 s 7; 1994 c 465 art 1 s 4; 1995 c 68 s 3; 1996 c 439 art 3 s 2; 2001 c 208 s 9

82.196 BUYER'S BROKER AGREEMENTS.

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

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;

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(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 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.

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

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

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

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

History: 1993 c 309 s 8; 1996 c 439 art 3 s 3,4; 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 facilitator 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.

Subd. 2. **Creation of dual agency.** If circumstances create a dual agency situation, the broker must make full disclosure to all parties to the transaction as to the change in relationship of the parties to the broker due to dual agency. A broker, having made full disclosure, must obtain the consent of all parties to these circumstances in residential real property transactions in the purchase agreement in the form set forth below which shall be set off in a boxed format to draw attention to it:

Broker represents both the seller(s) and the buyer(s) of the property involved in this transaction, which creates a dual agency. This means that broker and its salespersons owe fiduciary duties to both seller(s) and buyer(s). Because the parties may have conflicting interests, broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both seller(s) and buyer(s). Seller(s) and buyer(s) acknowledge that:

- (1) confidential information communicated to broker which regards price, terms, or motivation to buy or sell will remain confidential unless seller(s) or buyer(s) instructs broker in writing to disclose this information. Other information will be shared;
- (2) broker and its salespersons will not represent the interests of either party to the detriment of the other; and
- (3) within the limits of dual agency, broker and its salespersons will work diligently to facilitate the mechanics of the sale.

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

..... Seller Buyer
..... Seller Buyer
..... Date Date

Subd. 3. **Scope and effect.** Disclosures made in accordance with the requirements for disclosure of agency relationships set forth in this chapter are sufficient to satisfy common law disclosure requirements. In addition, when a principal in the transaction is a licensee or a relative or business associate of the licensee, that fact must be disclosed in writing in addition to any other required disclosures.

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. I/We understand that written consent is required for a dual agency relationship. THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.

..... Date
Signature

..... Date
Signature

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 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 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.

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

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;

(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 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: 1986 c 444; 1993 c 309 s 9; 1994 c 461 s 1; 1996 c 439 art 3 s 5-8; 2001 c 208 s 11-13; 2002 c 286 s 2-4

82.20 LICENSING REQUIREMENTS.

Subdivision 1. **Generally.** (a) The commissioner shall issue a license as a real estate broker, real estate salesperson, or closing agent to any person who qualifies for such 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 82.18, clause (d) from the definition of real estate broker, to obtain the special license.

Subd. 2. **Qualification of applicants.** Every applicant for a real estate broker, real estate salesperson, or real estate closing agent license shall be at least 18 years of age at the time of making application for said license.

Subd. 3. **Application for license; contents.** (a) Every applicant for a license as a real estate broker, real estate salesperson, or closing agent shall make an application in writing upon forms prepared and furnished by the commissioner. Each application shall be signed and sworn to by the applicant and shall be accompanied by the license fee required by this chapter.

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

(c) Each application for a real estate salesperson license shall give the applicant's 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) Each application for a real estate closing agent license shall give the applicant's name, age, residence address, and the name and place of business of the closing agent.

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

Subd. 4. **Corporate and partnership licenses.** (a) A corporation applying for a license shall have at least one officer individually licensed to act as broker for the corporation. The corporation broker's license shall extend no authority to act as broker to any person other than the corporate entity. Each officer who intends to act as a broker shall obtain a license.

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

(c) Applications for a license made by a corporation shall be verified by the president and one other officer. Applications made by a partnership shall be verified by at least two partners.

(d) Any partner or officer who ceases to act as broker for a partnership or corporation shall notify the commissioner upon said termination. The individual licenses of all salespersons acting on behalf of a corporation or partnership, are automatically ineffective upon the revocation or suspension of the license of the partnership or corporation. The commissioner may suspend or revoke the license of an officer or partner without suspending or revoking the license of the corporation or partnership.

(e) The application of all officers of a corporation or partners in a partnership who intend to act as a broker on behalf of a corporation or partnership shall accompany the initial license application of the corporation or partnership. Officers or partners intending to act as brokers subsequent to the licensing of the corporation or partnership shall procure an individual real estate broker's license prior to acting in the capacity of a broker. No corporate officer 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 corporation or partnership applicant shall make available upon request, such records and data required by the commissioner for enforcement of this chapter.

Subd. 5. **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 corporation or partner in a 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 corporation or partnership.

Subd. 6. **Issuance of license; salesperson.** A salesperson must be licensed to act on behalf of a licensed broker and may not be licensed to act on behalf of more than one broker in this state during the same period of time. The license of each real estate salesperson shall be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until canceled or until such licensee leaves such broker.

Subd. 7. **Effective date of license.** Licenses renewed pursuant to this chapter are valid for a period of 24 months. New licenses issued during a 24-month licensing period will expire on June 30 of the expiration year assigned to the license. Implementation of the 24-month licensing program must be staggered so that approximately one-half of the licenses will expire on June 30 of each even-numbered year and the other one-half on June 30 of each odd-numbered year. Those licensees who will receive a 12-month license on July 1, 1995, because of the staggered implementation schedule will pay for the license a fee reduced by an amount equal to one-half the fee for renewal of the license.

Subd. 8. **Renewals.** (a) Persons whose applications have been properly and timely filed who have not received notice of denial of renewal are deemed to have been approved for renewal and may continue to transact business either as a real estate broker, salesperson, or closing agent whether or not the renewed license has been received on or before July 1 of the renewal year. Application for renewal of a license shall be deemed to have been timely filed if received by the commissioner by, or mailed with proper postage and postmarked by, June 15 of the renewal year. Applications for renewal shall be deemed properly filed if made upon forms duly executed and sworn to, accompanied by fees prescribed by this chapter and contain any information which the commissioner may require.

(b) Persons who have failed to make a timely application for renewal of a license and who have not received the renewal license as of July 1 of the renewal year, shall be unlicensed until such time as the license has been issued by the commissioner and is received.

Subd. 9. **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, 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 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.

(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 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. The commissioner may adopt rules and prescribe forms as necessary to implement this paragraph.

(c) 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.

Subd. 10. **Effect of suspension or revocation.** The license of a salesperson is not effective during any period for which the license of the broker on whose behalf the

salesperson is acting is suspended or revoked. The salesperson may apply for transfer to some other licensed broker by complying with subdivision 9.

Subd. 11. **Notice.** Notice in writing shall be given to the commissioner by each licensee of any change in personal name, trade name, address or business location not later than ten days after such change. The commissioner shall issue a new license if required for the unexpired period.

Subd. 12. **Nonresidents.** A nonresident of Minnesota may be licensed as a real estate broker, real estate salesperson, or a real estate closing agent upon compliance with all provisions of this chapter.

Subd. 13. **Limited broker's license.** (a) 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.

(b) A limited broker's license shall also authorize the licensee to engage in negotiation of mortgage loans, other than residential mortgage loans, as described in section 82.17, subdivision 4, clause (b).

Subd. 14. **Licenses; extending duration.** Notwithstanding the provisions of subdivisions 7 and 8, the commissioner may institute a system by rule pursuant to chapter 14 to provide three year licenses from the date of issuance for any license prescribed by this section.

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

(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;

(6) a title insurance company authorized to do business in this state; and

(7) a title company that has a contractual agency relationship with a title insurance company authorized to do business in this state, where the title insurance company assumes responsibility for the actions of the title company and its employees or agents as if they were the employees or agents of the title insurance company.

History: 1973 c 410 s 4; 1976 c 197 s 2,3; 1977 c 215 s 1; 1982 c 424 s 130; 1982 c 478 s 1; 1984 c 552 s 8,9; 1985 c 251 s 8; 1986 c 444; 1989 c 347 s 10-16; 1990 c 364 s 1; 1991 c 20 s 1; 1993 c 309 s 10; 1994 c 632 art 4 s 32,33; 1995 c 68 s 4; 1995 c 202 art 1 s 25; 1996 c 439 art 1 s 10; 1997 c 222 s 34; 2002 c 387 s 7

82.21 FEES.

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 82.34;

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

(g) a fee of \$50 for license reinstatement; and

(h) a fee of \$20 for reactivating a corporate, limited liability company, or partnership license without land.

Subd. 2. **Forfeiture.** All fees shall be retained by the commissioner and shall be nonreturnable, except that an overpayment of any fee shall be the subject of a refund upon proper application.

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

Subd. 3. **Deposit of fees.** Unless otherwise provided by this chapter, all fees collected under this chapter shall be deposited in the state treasury.

Subd. 4. **Initial license expiration; fee reduction.** If an initial license issued under subdivision 1, paragraph (a), (b), (c), or (d) expires less than 12 months after issuance, the license fee shall be reduced by an amount equal to one-half the fee for a renewal of the license.

History: 1973 c 410 s 5; 1979 c 144 s 2; 1980 c 614 s 75; 1984 c 552 s 10; 1987 c 336 s 22; 1989 c 347 s 17; 1992 c 513 art 3 s 28; 1993 c 309 s 11,12; 1993 c 369 s 45; 1994 c 632 art 4 s 34,35; 1997 c 200 art 1 s 48

82.22 EXAMINATIONS.

Subdivision 1. **Generally.** Each applicant for a license must pass an examination conducted by the commissioner. The examinations shall be of sufficient scope to establish the competency of the applicant to act as a real estate broker or a real estate salesperson.

Subd. 2. **Broker's examination.** (a) The examination for a real estate broker's license shall be more exacting than that for a real estate salesperson, and shall require a higher degree of knowledge of the fundamentals of real estate practice and law.

(b) Every application for a broker's examination shall be accompanied by proof that the applicant has had a minimum of two years of actual experience within the previous five-year period prior to application as a licensed real estate salesperson in this or in another state having comparable requirements or is, in the opinion of the commissioner, otherwise or similarly qualified by reason of education or practical experience. The applicant shall have completed educational requirements in accordance with subdivision 6. An applicant for a limited broker's license pursuant to section 82.20, subdivision 13, shall not be required to have a minimum of two years of actual experience as a real estate person in order to obtain a limited broker's license to act as principal only.

Subd. 3. **Reexaminations.** An examination may be required before the renewal 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 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, and no reexamination shall be required of an individual whose license has not been renewed under section 82.27, subdivision 7.

Subd. 4. **Examination frequency.** The commissioner shall hold examinations at such times and places as the commissioner may determine, except that said examinations will be held at least every 45 days.

Subd. 5. **Period for application.** An applicant who obtains an acceptable score on a salesperson's examination must file an application and obtain the license within one year of the date of successful completion of the examination or a second examination must be taken to qualify for the license. If a new examination is required, prelicense education must be completed in accordance with subdivision 6.

Subd. 6. **Instruction; new licenses.** (a) Every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. Every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 60 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules, and of which two hours must consist of training in laws and regulations on agency representation and disclosure, before filing an application for the license.

(b) 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. The commissioner shall not approve any course offered by, sponsored by, or affiliated with any person or company licensed to engage in the real estate business. The commissioner may by rule prescribe the curriculum and qualification of those employed as instructors.

(c) An applicant for a broker's license must successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules. The course must have been completed within 12 months prior to the date of application for the broker's license.

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

Subd. 7. [Repealed, 1993 c 309 s 32]

Subd. 8. **Duration.** No renewal of a salesperson's license shall be effective beyond a date two years after the granting of such salesperson's license unless the salesperson has furnished evidence of compliance with either subdivisions 6 or 7. The commissioner shall cancel the license of any salesperson who fails to comply with subdivisions 6 or 7.

Subd. 9. **Application.** Subdivisions 6 to 8 shall not apply to salespeople licensed in Minnesota prior to July 1, 1969.

Subd. 10. **Renewal; examination.** Except as provided in subdivisions 3 and 7, no examination shall be required for the renewal of any license, provided, however, any licensee having been licensed as a broker or salesperson in the state of Minnesota and who shall fail to renew the license for a period of two years shall be required by the commissioner to again take an examination.

Subd. 11. **Examination eligibility; revocation.** No applicant shall be eligible to take any examination if a license as a real estate broker or salesperson has been revoked in this or any other state within two years of the date of the application.

Subd. 12. **Reciprocity.** The requirements of this section 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 that jurisdiction, and (3) the licensing requirements of that jurisdiction are substantially similar to the provisions of this chapter.

Subd. 13. **Continuing education.** (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 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: 1973 c 410 s 6; 1975 c 38 s 3,4; 1976 c 197 s 4; 1977 c 215 s 2,3; 1979 c 144 s 3; 1983 c 284 s 14; 1983 c 328 s 9; 1984 c 552 s 11-14; 1985 c 251 s 9; 1986 c 358 s 9-11; 1986 c 444; 1Sp1986 c 1 art 7 s 5; 1987 c 336 s 23; 1989 c 347 s 18-22; 1991 c 75 s 1,2; 1991 c 233 s 48-51; 1992 c 555 art 1 s 3; 1993 c 309 s 13,14; 1994 c 632 art 4 s 36,37; 1996 c 439 art 3 s 9; 1997 c 222 s 35; 2000 c 483 s 44; 2001 c 208 s 14; 2002 c 387 s 8,9

82.23 BROKER'S RECORDS.

Subdivision 1. **Retention.** A licensed real estate broker shall retain for three 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 document if the document 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.

Subd. 2. **Delivery.** Each real estate broker, real estate salesperson, or closing agent shall furnish parties to a transaction a true and accurate copy of any document pertaining to their interests as the commissioner through appropriate rules may require.

Subd. 3. **Examination of records.** The commissioner may make examinations within or without 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.

History: 1973 c 410 s 7; 1989 c 347 s 23,24; 2002 c 286 s 5

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.

Subd. 3. **Nondeposable items.** Any instrument or equity or thing of value received by a broker, salesperson, or closing agent in lieu of cash as earnest money or down payment in a real estate transaction shall be held by an authorized escrow agent, whose authority is evidenced by a written agreement executed by the offeror and the escrow agent.

Subd. 4. **Commingling funds.** A broker, salesperson, or closing agent shall deposit only trust funds in a trust account and shall not commingle personal funds or other funds in a trust account, except that a broker, salesperson, or closing agent may deposit and maintain a sum in a trust account from personal funds, which sum shall be

specifically identified and used to pay service charges or satisfy the minimum balance requirements relating to the trust account.

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) A check received from a potential buyer shall be deposited into the listing broker's trust account not later than the third 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 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 shall be returned to the potential buyer not later than the next business day after rejection.

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.

Subd. 7. **Interest bearing accounts.** Notwithstanding the provisions of sections 82.17 to 82.31, a real estate broker may establish and maintain interest bearing accounts for the purpose of receiving deposits in accordance with the provisions of section 504B.178.

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: 1973 c 410 s 8; 1975 c 38 s 5; 1984 c 473 s 8-10; 1985 c 248 s 70; 1985 c 251 s 10; 1986 c 358 s 12; 1986 c 444; 1Sp1986 c 3 art 2 s 48; 1987 c 105 s 4-6; 1987 c 336 s 24; 1988 c 654 s 2; 1989 c 347 s 25-30; 1993 c 309 s 15; 1994 c 461 s 2; 1995 c 202 art 1 s 25; 1997 c 222 s 36; 1999 c 199 art 2 s 2; 2001 c 208 s 15

82.25 [Repealed, 1987 c 336 s 47]

82.26 [Repealed, 1987 c 336 s 47]

82.27 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

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

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

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

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

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

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

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

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

(h) has, while performing residential mortgage activities regulated under chapter 58 violated any provision of chapter 58.

Subd. 2. **Regulation of practice; rulemaking.** The commissioner may promulgate rules further specifying and defining those actions and omissions which constitute fraudulent, deceptive, or dishonest practices, and establishing standards of conduct for real estate brokers, salespeople, or closing agents.

Subd. 2a. **Monetary settlements.** The commissioner shall not coerce or attempt to coerce a licensee to enter into any monetary settlement with a consumer in connection with any complaint investigation. The commissioner may consider the totality of the circumstances, including any efforts by the licensee to mitigate any losses by a consumer, in determining the appropriateness or severity of administrative sanction.

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.

Subd. 4. **ALJ hearing.** The commissioner may delegate to an administrative law judge the authority to conduct a hearing. The examiner shall make proposed findings of

fact and submit them to the commissioner. The examiner shall have the same power as the commissioner to compel the attendance of witnesses, to examine them under oath, to require the production of books, papers and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state.

Subd. 5. Judicial review of orders. Orders of the commissioner shall be subject to judicial review pursuant to chapter 14.

Subd. 6. Hearing procedures; rulemaking. The commissioner may promulgate rules of procedure concerning all hearings and other proceedings conducted pursuant to this chapter.

Subd. 7. Tax clearance certificate. (a) In addition to the provisions of subdivision 1, the commissioner may not issue or renew a license if the commissioner of revenue notifies the commissioner and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The commissioner may issue or renew the license only if (1) the commissioner of revenue issues a tax clearance certificate and (2) the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the commissioner. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Taxes" are all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes.

(2) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

(c) In lieu of the notice and hearing requirements of subdivisions 3, 4, 5, and 6, when a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice provided in paragraph (a). The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

(d) The commissioner shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the commissioner must provide to the commissioner of revenue a list of all licensees and applicants, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

History: 1973 c 410 s 11; 1982 c 424 s 130; 1983 c 284 s 15; 1984 c 640 s 32; 1985 c 248 s 70; 1986 c 358 s 14; 1986 c 444; 1Sp1986 c 1 art 7 s 6; 1989 c 184 art 2 s 2; 1989 c 347 s 31,32; 1993 c 309 s 16; 1998 c 343 art 2 s 4; 2001 c 208 s 16; 2002 c 286 s 6

82.28 RULEMAKING POWERS.

The commissioner may promulgate such rules as are reasonably necessary to carry out and make effective the provisions and purposes of this chapter.

History: 1973 c 410 s 12; 1985 c 248 s 70

82.29 PUBLICATION OF INFORMATION.

The commissioner may publish by newspaper, newsletter or otherwise information to assist in the administration of sections 82.17 to 82.34, or to educate and protect the

public regarding fraudulent, deceptive or dishonest practices. The commissioner may also publish materials for the benefit of license applicants.

History: 1973 c 410 s 13

82.30 Subdivision 1. [Repealed, 1993 c 337 s 20]

Subd. 2. [Repealed, 1975 c 315 s 26]

Subd. 3. [Repealed, 1975 c 315 s 26]

82.31 NONRESIDENT SERVICE OF PROCESS.

Subdivision 1. Every nonresident, before being licensed as a real estate broker, real estate salesperson, or real estate closing agent shall appoint the commissioner and a successor or successors in office as true and lawful attorney, upon whom may be served all legal process in any action or proceedings against such person, or in which such person may be a party, in relation to or involving any transaction covered by this chapter or any rule or order hereunder, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Any such appointment shall be effective upon the issuance of the license in connection with which the appointment was filed.

Subd. 2. The commission of any act which constitutes a violation of this chapter or rule or order hereunder by any nonresident person who has not theretofore appointed the commissioner as attorney in compliance with subdivision 1 shall be conclusively deemed an irrevocable appointment by such person of the commissioner and a successor or successors in any action or proceedings against the nonresident or in which the nonresident may be a party in relation to or involving such violation; and such violation shall be a signification of agreement that all such legal process which is so served shall be as valid and binding upon the nonresident as if due and personal service thereof had been made.

Subd. 3. Service of process under this section shall be made in compliance with section 45.028, subdivision 2.

History: 1973 c 410 s 15; 1978 c 674 s 60; 1980 c 420 s 1; 1984 c 640 s 32; 1986 c 444; 1989 c 347 s 34; 1992 c 564 art 2 s 13

82.32 PENALTY.

Any person who violates any provision of this chapter, or any rule or order of the commissioner, shall be guilty of a gross misdemeanor.

History: 1973 c 410 s 16

82.33 CIVIL ACTIONS.

Subdivision 1. No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts for which a license is required under this chapter without alleging and proving that the person was a duly licensed real estate broker, salesperson, or closing agent at the time the alleged cause of action arose.

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

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

relationships have been disclosed to the parties to the transaction in accordance with the requirements of this chapter.

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

History: 1973 c 410 s 17; 1986 c 358 s 15; 1986 c 444; 1989 c 347 s 35; 1993 c 309 s 17-19

82.34 REAL ESTATE EDUCATION, RESEARCH AND RECOVERY FUND.

Subdivision 1. **Administration.** There is established a "real estate education, research and recovery fund" to be administered by the commissioner of commerce. The state treasurer shall be the custodian of the fund and shall operate under the direction of the commissioner.

Subd. 2. **Creation.** There is hereby created in the state treasury a real estate education, research and recovery fund which shall be administered by the commissioner in the manner and for the purposes prescribed in this section.

Subd. 3. **Fee for real estate fund.** Each real estate broker, real estate salesperson, and real estate closing agent entitled under this chapter to renew a license shall pay in addition to the appropriate renewal fee a further fee of \$20 per licensing period which shall be credited to the real estate education, research, and recovery fund. Any person who receives an initial license shall pay, in addition to all other fees payable, a fee of \$30.

Subd. 4. **Additional assessment.** If the amount in the fund is at any time less than the commissioner believes is necessary to carry out the purposes of this section every licensee, when renewing a license, shall pay, in addition to the annual renewal fee and the fee set forth in subdivision 3, an assessment not to exceed \$100, said sum having been reasonably determined by the commissioner to be necessary to restore a balance in the fund of an amount adequate to carry out the purposes of this section.

Subd. 5. **Investment of funds.** Any funds shall, upon request of the commissioner, be invested by the state board of investment in the class of securities specified in section 11A.24 and acts amendatory thereto. All interest and profits from such investments shall be credited to the real estate education, research and recovery fund. The state treasurer shall be the custodian of securities purchased under the provisions of this section.

Subd. 6. **Authorized expenditures.** 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. **Application for recovery.** 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" does not include a government agency, financial institution, or other entity that purchases, guarantees, or insures a loan secured by real estate, and does 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.

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.

Subd. 8. Application hearing. The court shall conduct a hearing upon such application 30 days after service of the application upon the commissioner. Upon petition of the commissioner, the court shall continue the hearing up to 60 days further; and upon a showing of good cause may continue the hearing for such further period as the court deems appropriate. At the hearing the aggrieved person shall be required to show that the person:

(a) is not a spouse of debtor, or the personal representative of such spouse;

(b) has complied with all the requirements of this section;

(c) has obtained a judgment as set out in subdivision 7, stating the amount thereof and the amount owing thereon at the date of the application;

(d) has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment;

(e) by such search has discovered no personal or real property or other assets liable to be sold or applied, or has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;

(f) has diligently pursued remedies against all the judgment debtors and all other persons liable to that person in the transaction for which that person seeks recovery from the real estate education, research and recovery fund;

(g) is making said application no more than one year after the judgment becomes final, or no more than one year after the termination of any review or appeal of the judgment.

Subd. 9. Effect of judgment. Whenever the court proceeds upon an application as set forth in subdivision 7, it shall order payment out of the fund only upon a determination that the aggrieved party has a valid cause of action within the purview of subdivision 7 and has complied with the provisions of subdivision 8. The judgment shall be only prima facie evidence of such cause of action and for the purposes of this section shall not be conclusive. The commissioner may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review including examination of witnesses. The commissioner may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of subdivision 7; provided, however, the commissioner shall give written notice at least ten days before such motion. The commissioner may, subject to court approval, compromise a claim based upon the application of an aggrieved party but shall not be bound by any prior compromise or stipulation of the judgment debtor.

Subd. 10. Commissioner's duties. The commissioner may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses. The judgment debtor may defend any such action on the debtor's own behalf and shall have recourse to all appropriate means of

defense and review, including examination of witnesses. Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving the cause of action for fraudulent, deceptive or dishonest practices, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraudulent, deceptive or dishonest practices, or conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

Subd. 11. **Payment order.** If the court finds after the hearing that said claim should be levied against the fund, the court shall enter an order directed to the commissioner requiring payment from the fund of whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this section.

Subd. 12. [Repealed, 1989 c 347 s 43]

Subd. 13. **License suspension.** Should the commissioner pay from the recovery portion of the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license shall be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the recovery portion of the fund. No broker, salesperson, or closing agent shall be granted reinstatement until the person has repaid in full, plus interest at the rate of 12 percent a year, twice the amount paid from the fund on the person's account, and has obtained a surety bond issued by an insurer authorized to transact business in this state in the amount of \$40,000. The bond shall be filed with the commissioner, with the state of Minnesota as obligee, conditioned for the prompt payment to any aggrieved person entitled thereto, of any amounts received by the real estate broker, salesperson, or closing agent or to protect any aggrieved person from loss resulting from fraudulent, deceptive, or dishonest practices or conversion of trust funds arising out of any transaction when the real estate broker or salesperson was licensed and performed acts for which a license is required under this chapter. The bond shall remain operative for as long as that real estate broker, salesperson, or closing agent is licensed. No payment shall be made from the fund based upon claims against any broker, salesperson, or closing agent who is granted reinstatement pursuant to this subdivision. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

Subd. 14. **Satisfaction of claims.** The commissioner shall satisfy all claims against licensees for which an order pursuant to subdivision 11 directing payment from the recovery portion of the fund has become final during the calendar year. Each claim shall be satisfied by the commissioner by July 15 of the calendar year after the year in which the order directing payment of the claim becomes final, subject to the limitations of this section. If, at the end of any calendar year, the commissioner determines that the courts have issued orders that have become final during the year directing payment out of the recovery portion of the fund in a total amount in excess of the funds available for recovery purposes, the commissioner shall allocate the funds available for recovery purposes among all claimants in the ratio that the amount ordered paid to each claimant bears to the aggregate of all amounts ordered paid. The commissioner shall mail notice of the allocation to all claimants not less than 45 days following the end of the calendar year. Any claimant who objects to the plan of allocation shall file a petition in the district court of Ramsey or Hennepin county within 20 days of the mailing of notice setting forth the grounds for objection. Upon motion of the commissioner, the court shall summarily dismiss the petition and order distribution in accordance with the proposed plan of allocation unless it finds substantial reason to believe that the distribution would be in violation of the provisions of this section. If a petition is filed, no distribution shall be made except in accordance with a final order of the court. In the event no petition is filed within 20 days of the mailing of notice, the commissioner shall make a distribution in accordance with the plan of allocation. Any distribution made by the commissioner in accordance with this subdivision shall be deemed to satisfy and extinguish the claims of any claimant receiving a distribution against the fund.

Subd. 15. **Appropriation.** 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.

Subd. 16. **Criminal penalty.** It shall be unlawful for any person or the agent of any person to knowingly file with the commissioner any notice, statement, or other document required under the provisions of this section which is false or untrue or contains any material misstatement of fact. Such conduct shall constitute a gross misdemeanor.

Subd. 17. **Right of subrogation.** When, upon the order of the court, the commissioner has paid from the recovery portion of the fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all right, title and interest in the judgment to the extent of the amount so paid to the commissioner and any amount and interest so recovered by the commissioner on the judgment shall be deposited to the fund.

Subd. 18. **Effect of section on commissioner's authority.** Nothing contained in this section shall limit the authority of the commissioner to take disciplinary action against any licensee under other provisions of this chapter; nor shall the repayment in full of all obligations to the recovery portion of the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter.

Subd. 19. **Periodic report of fund activities.** The commissioner shall, on or before October 1 in each even-numbered year, prepare and file in the office of the governor for the preceding two fiscal years ending June 30 a report on the activities of the real estate education, research and recovery fund; noting the amount of money received by the fund, the amount of money expended and the purposes therefor.

Subd. 20. [Repealed, 1992 c 555 art 1 s 13]

History: 1973 c 410 s 18; 1974 c 355 s 5; 1977 c 215 s 5; 1980 c 516 s 2; 1980 c 607 art 14 s 46; 1980 c 614 s 76; 1981 c 280 s 1; 1983 c 284 s 16; 1983 c 289 s 114 subd 1; 1984 c 552 s 15; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 336 s 25; 1987 c 384 art 2 s 1; 1988 c 654 s 3,4; 1989 c 347 s 36-41; 1992 c 555 art 1 s 4-10; 1993 c 309 s 20,21; 1994 c 632 art 4 s 38; 1995 c 68 s 5; 1995 c 186 s 20; 1996 c 439 art 1 s 11; 2001 c 208 s 17,18; 2002 c 220 art 12 s 11