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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1112

02/14/2019 Authored by Sauke, O'Driscoll, Davids, Huot, Wolgamott and others
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to commerce; allowing for designated agency in real estate transactions;
1.3 amending Minnesota Statutes 2018, sections 82.55, by adding subdivisions; 82.66,
1.4 subdivisions 1, 2; 82.67, subdivisions 3, 4; 82.73, subdivision 3, by adding a
1.5 subdivision.

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

1.7 Section 1. Minnesota Statutes 2018, section 82.55, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 5a. Designated agency. "Designated agency" means the buyer and seller in a real
1.10 estate transaction are both represented by the same real estate brokerage, but (1) the buyer's
1.11 agent is designated in the buyer's broker agreement and exclusively represents only the
1.12 buyer's interest, and (2) the seller's agent is designated in the seller's broker agreement and
1.13 exclusively represents only the seller's interest.

1.14 Sec. 2. Minnesota Statutes 2018, section 82.55, is amended by adding a subdivision to
1.15 read:

1.16 Subd. 9a. Fiduciary duties. "Fiduciary duties" means the following duties, with the
1.17 associated meanings given them:

1.18 (1) "loyalty" means a broker or salesperson acts only in the client's best interest;

1.19 (2) "obedience" means a broker or salesperson carries out all the client's lawful
1.20 instructions;

2.1 (3) "disclosure" means a broker or salesperson discloses to the client all material facts
2.2 the broker or salesperson has knowledge of that might reasonably affect the client's use and
2.3 enjoyment of the property;

2.4 (4) "confidentiality" means a broker or salesperson keeps the client's confidences unless
2.5 required by law to disclose specific information, including disclosure of material facts to
2.6 buyers;

2.7 (5) "reasonable care" means a broker or salesperson uses reasonable care to perform
2.8 duties as an agent; and

2.9 (6) "accounting" means a broker or salesperson accounts to the client for all the client's
2.10 money and property received as their agent.

2.11 Sec. 3. Minnesota Statutes 2018, section 82.55, is amended by adding a subdivision to
2.12 read:

2.13 Subd. 24a. **Supervising broker.** A "supervising broker" is responsible for supervising
2.14 the activities of the broker's salespersons and employees in a transaction. In a dual or
2.15 designated agency transaction, a supervising broker is responsible for maintaining a neutral
2.16 position when advising and supervising the designated buyer's agent and the designated
2.17 listing agent on matters directly related to the represented clients.

2.18 Sec. 4. Minnesota Statutes 2018, section 82.66, subdivision 1, is amended to read:

2.19 Subdivision 1. **Listing agreements. (a) Requirement.** Licensees shall obtain a signed
2.20 listing agreement or other signed written authorization from the owner of real property or
2.21 from another person authorized to offer the property for sale or lease before advertising to
2.22 the general public that the real property is available for sale or lease.

2.23 For the purposes of this section "advertising" includes placing a sign on the owner's
2.24 property that indicates that the property is being offered for sale or lease.

2.25 (b) **Contents.** All listing agreements must be in writing and must include:

2.26 (1) a definite expiration date;

2.27 (2) a description of the real property involved;

2.28 (3) the list price and any terms required by the seller;

2.29 (4) the amount of any compensation or commission or the basis for computing the
2.30 commission;

3.1 (5) a clear statement explaining the events or conditions that will entitle a broker to a
3.2 commission;

3.3 (6) a clear statement explaining if the agreement may be canceled and the terms under
3.4 which the agreement may be canceled;

3.5 (7) information regarding an override clause, if applicable, including a statement to the
3.6 effect that the override clause will not be effective unless the licensee supplies the seller
3.7 with a protective list within 72 hours after the expiration of the listing agreement;

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

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

3.13 (9) for residential property listings, the following "~~dual agency~~" "single-brokerage
3.14 agency" representation disclosure statement:

3.15 ~~If a buyer represented by broker wishes to buy the seller's property, a dual agency will~~
3.16 ~~be created. This means that broker will represent both the seller(s) and the buyer(s), and~~
3.17 ~~owe the same duties to the buyer(s) that broker owes to the seller(s). This conflict of interest~~
3.18 ~~will prohibit broker from advocating exclusively on the seller's behalf. Dual agency will~~
3.19 ~~limit the level of representation broker can provide. If a dual agency should arise, the seller(s)~~
3.20 ~~will need to agree that confidential information about price, terms, and motivation will still~~
3.21 ~~be kept confidential unless the seller(s) instruct broker in writing to disclose specific~~
3.22 ~~information about the seller(s). All other information will be shared. Broker cannot act as~~
3.23 ~~a dual agent unless both the seller(s) and the buyer(s) agree to it. By agreeing to a possible~~
3.24 ~~dual agency, the seller(s) will be giving up the right to exclusive representation in an in-house~~
3.25 ~~transaction. However, if the seller(s) should decide not to agree to a possible dual agency,~~
3.26 ~~and the seller(s) want broker to represent the seller(s), the seller(s) may give up the~~
3.27 ~~opportunity to sell the property to buyers represented by broker. SINGLE-BROKERAGE~~
3.28 ~~AGENCY REPRESENTATION: If buyer(s) and seller(s) are both represented by the same~~
3.29 ~~brokerage, then both buyer(s) and seller(s) must consent and agree to a form of~~
3.30 ~~single-brokerage agency representation for the transaction to proceed. There are two options~~
3.31 ~~for single-brokerage agency representation, which are: dual agency and designated agency.~~

3.32 **What is Dual Agency?**

3.33 Dual agency occurs when the buyer(s) and
3.34 seller(s) in a real estate transaction are both
3.35 represented by the same real estate brokerage

What is Designated Agency?

Designated agency occurs when the buyer(s)
and seller(s) in a real estate transaction are
both represented by the same real estate

4.1 and all agents of that brokerage act in a dual
 4.2 agency capacity by representing each side
 4.3 equally. A dual agent cannot act exclusively
 4.4 on behalf of one party, or advocate for the
 4.5 detriment of the other party.
 4.6

brokerage and a buyer's agent is designated
in the buyer's broker agreement and
exclusively represents only the buyer's
interest, and a listing agent is designated in
the seller's broker agreement and exclusively
represents only the seller's interest.

4.7 **How does Dual Agency affect me?**
 4.8 In a dual agency, both the buyer(s) and the
 4.9 seller(s) are represented by the same
 4.10 brokerage, and every agent who is licensed
 4.11 to represent that brokerage owes an equal
 4.12 obligation of representation and fiduciary
 4.13 duties to both the buyer(s) and the seller(s).
 4.14 This means that all agents within that
 4.15 brokerage cannot advocate for, counsel, or
 4.16 represent one party in any way that would
 4.17 adversely affect the other party.

How does Designated Agency affect me?
In a designated agency, the buyer(s) and the
seller(s) are represented by the same
brokerage. The buyer is represented by a
designated buyer's agent of the buyer's
choosing, and the seller is represented by a
designated listing agent of the seller's
choosing. A designated buyer's agent may
advocate exclusively on behalf of the buyer,
and a designated listing agent may advocate
exclusively on behalf of the seller.

4.18 **What is the supervising broker's role in a**
 4.19 **dual agency?**
 4.20 The supervising broker's responsibility is to
 4.21 supervise the activities of the broker's
 4.22 salespersons and employees. In a dual agency
 4.23 transaction, a broker is responsible for
 4.24 maintaining a neutral position when advising
 4.25 and supervising each of the dual agents.
 4.26
 4.27
 4.28

What is the supervising broker's role in a
designated agency?
The supervising broker's responsibility is to
supervise the activities of the broker's
salespersons and employees. In a designated
agency transaction, a broker is responsible
for maintaining a neutral position when
advising and supervising the buyer's agent,
as designated in the buyer's broker agreement
and the listing agent, as designated in the
seller's broker agreement.

4.29 Seller's Instructions to Broker

4.30 Having read and understood this information about ~~dual agency~~ single-brokerage agency
 4.31 representation, seller(s) now instructs broker as follows (check only one of the three below):

4.32 I consent to designated agency (the same brokerage may represent me
 4.33 and the other party as long as the same agent is not representing us
 4.34 both).

4.35 ~~Seller(s) will agree to a dual agency representation and will consider~~
 4.36 ~~offers made by buyers represented by broker~~ I consent to dual agency
 4.37 (the same brokerage may represent me and the other party, but the
 4.38 brokerage and its agent must remain neutral regardless if one or more
 4.39 different agents are involved).

4.40 ~~Seller(s) will not agree to a dual agency representation and will not~~
 4.41 ~~consider offers made by buyers represented by broker~~ I do not consent
 4.42 to dual agency or designated agency (I reject any form of
 4.43 single-brokerage agency representation).

4.44 ;

4.45 Seller Real Estate Company Name

4.46 By:

4.47 Seller Salesperson

4.48 Date : ;

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

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

5.10 (c) **Prohibited provisions.** Except as otherwise provided in paragraph (d), clause (2),
5.11 licensees shall not include in a listing agreement a holdover clause, automatic extension,
5.12 or any similar provision, or an override clause the length of which is more than six months
5.13 after the expiration of the listing agreement.

5.14 (d) **Override clauses.** (1) Licensees shall not seek to enforce an override clause unless
5.15 a protective list has been furnished to the seller within 72 hours after the expiration of the
5.16 listing agreement.

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

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

5.31 For listings of nonresidential real property which do not contain the notice described in
5.32 paragraph (b), clause (11), the protective list must contain the following notice in boldface
5.33 type:

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

6.6 Sec. 5. Minnesota Statutes 2018, section 82.66, subdivision 2, is amended to read:

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

6.9 (b) **Contents.** All buyer's broker agreements must be in writing and must include:

6.10 (1) a definite expiration date;

6.11 (2) the amount of any compensation or commission, or the basis for computing the
 6.12 commission;

6.13 (3) a clear statement explaining the services to be provided to the buyer by the broker,
 6.14 and the events or conditions that will entitle a broker to a commission or other compensation;

6.15 (4) a clear statement explaining if the agreement may be canceled and the terms under
 6.16 which the agreement may be canceled;

6.17 (5) information regarding an override clause, if applicable, including a statement to the
 6.18 effect that the override clause will not be effective unless the licensee supplies the buyer
 6.19 with a protective list within 72 hours after the expiration of the buyer's broker agreement;

6.20 (6) the following notice in not less than ten-point boldface type immediately preceding
 6.21 any provision of the buyer's broker agreement relating to compensation of the licensee:

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

6.25 (7) the following "~~dual agency~~" "single-brokerage agency representation" disclosure
 6.26 statement:

6.27 ~~If the buyer(s) choose(s) to purchase a property listed by broker, a dual agency will be~~
 6.28 ~~created. This means that broker will represent both the buyer(s) and the seller(s), and owe~~
 6.29 ~~the same duties to the seller(s) that broker owes to the buyer(s). This conflict of interest will~~
 6.30 ~~prohibit broker from advocating exclusively on the buyer's behalf. Dual agency will limit~~
 6.31 ~~the level of representation broker can provide. If a dual agency should arise, the buyer(s)~~
 6.32 ~~will need to agree that confidential information about price, terms, and motivation will still~~

7.1 ~~be kept confidential unless the buyer(s) instruct broker in writing to disclose specific~~
 7.2 ~~information about the buyer(s). All other information will be shared. Broker cannot act as~~
 7.3 ~~a dual agent unless both the buyer(s) and the seller(s) agree to it. By agreeing to a possible~~
 7.4 ~~dual agency, the buyer(s) will be giving up the right to exclusive representation in an in-house~~
 7.5 ~~transaction. However, if the buyer(s) should decide not to agree to a possible dual agency,~~
 7.6 ~~and the buyer(s) want(s) broker to represent the buyer(s), the buyer(s) may give up the~~
 7.7 ~~opportunity to purchase the properties listed by broker. SINGLE-BROKERAGE AGENCY~~
 7.8 ~~REPRESENTATION: If buyer(s) and seller(s) are both represented by the same brokerage,~~
 7.9 ~~then both buyer(s) and seller(s) must consent and agree to a form of single-brokerage agency~~
 7.10 ~~representation for the transaction to proceed. There are two options for single-brokerage~~
 7.11 ~~agency representation, which are: dual agency and designated agency.~~

7.12 **What is Dual Agency?**
 7.13 Dual agency occurs when the buyer(s) and
 7.14 seller(s) in a real estate transaction are both
 7.15 represented by the same real estate brokerage
 7.16 and all agents of that brokerage act in a dual
 7.17 agency capacity by representing each side
 7.18 equally. A dual agent cannot act exclusively
 7.19 on behalf of one party, or advocate for the
 7.20 detriment of the other party.
 7.21

7.22 **How does Dual Agency affect me?**
 7.23 In a dual agency, both the buyer(s) and the
 7.24 seller(s) are represented by the same
 7.25 brokerage, and every agent who is licensed
 7.26 to represent that brokerage owes an equal
 7.27 obligation of representation and fiduciary
 7.28 duties to both the buyer(s) and the seller(s).
 7.29 This means that all agents within that
 7.30 brokerage cannot advocate for, counsel, or
 7.31 represent one party in any way that would
 7.32 adversely affect the other party.

7.33 **What is the supervising broker's role in a**
 7.34 **dual agency?**
 7.35 The supervising broker's responsibility is to
 7.36 supervise the activities of the broker's
 7.37 salespersons and employees. In a dual agency
 7.38 transaction, a broker is responsible for
 7.39 maintaining a neutral position when advising
 7.40 and supervising each of the dual agents.

What is Designated Agency?
Designated agency occurs when the buyer(s)
and seller(s) in a real estate transaction are
both represented by the same real estate
brokerage and a buyer's agent is designated
in the buyer's broker agreement and
exclusively represents only the buyer's
interest, and a listing agent is designated in
the seller's broker agreement and exclusively
represents only the seller's interest.

How does Designated Agency affect me?
In a designated agency, the buyer(s) and the
seller(s) are represented by the same
brokerage. The buyer is represented by a
designated buyer's agent of the buyer's
choosing, and the seller is represented by a
designated listing agent of the seller's
choosing. A designated buyer's agent may
advocate exclusively on behalf of the buyer,
and a designated listing agent may advocate
exclusively on behalf of the seller.

What is the supervising broker's role in a
designated agency?
The supervising broker's responsibility is to
supervise the activities of the broker's
salespersons and employees. In a designated
agency transaction, a broker is responsible
for maintaining a neutral position when
advising and supervising the buyer's agent,
as designated in the buyer's broker agreement
and the listing agent, as designated in the
seller's broker agreement.

7.44 Buyer's Instructions to Broker

8.1 Having read and understood this information about single-brokerage agency
 8.2 representation, the buyer(s) now instructs the broker as follows (check only one of the three
 8.3 below):

8.4 I consent to designated agency (the same brokerage may represent me
 8.5 and the other party as long as the same agent is not representing us
 8.6 both).

8.7 ~~Buyer(s) will agree to a dual agency representation and will consider~~
 8.8 ~~properties listed by broker~~ I consent to dual agency (the same brokerage
 8.9 may represent me and the other party, but the brokerage and its agent
 8.10 must remain neutral regardless if one or more different agents are
 8.11 involved).

8.12 ~~Buyer(s) will not agree to a dual agency representation and will not~~
 8.13 ~~consider properties listed by broker~~ I do not consent to dual agency
 8.14 or designated agency (I reject any form of single-brokerage agency
 8.15 representation).

8.16
 8.17 Buyer Real Estate Company Name
 8.18 By:
 8.19 Buyer Salesperson

8.20 Date: ; and

8.21 (8) for buyer's broker agreements which involve residential real property, a notice stating
 8.22 that after the expiration of the buyer's broker agreement, the buyer will not be obligated to
 8.23 pay the licensee a fee or commission if the buyer has executed another valid buyer's broker
 8.24 agreement pursuant to which the buyer is obligated to pay a fee or commission to another
 8.25 licensee for the purchase, lease, or exchange of real property.

8.26 (c) **Prohibited provisions.** Licensees shall not include in a buyer's broker agreement a
 8.27 holdover clause, automatic extension, or any other similar provision, or an override clause
 8.28 the length of which is more than six months after the expiration of the buyer's broker
 8.29 agreement.

8.30 (d) **Override clauses.** (1) Licensees shall not seek to enforce an override clause unless
 8.31 a protective list has been furnished to the buyer within 72 hours after the expiration of the
 8.32 buyer's broker agreement.

8.33 (2) A buyer's broker agreement may contain an override clause of up to two years in
 8.34 length when used in conjunction with the purchase or sale of a business. The length of the
 8.35 override clause must be negotiable between the licensee and the buyer of the business. The
 8.36 protective list provided in connection with the override clause must include the written
 8.37 ~~acknowledgement~~ acknowledgment of each party named on the protective list, that the

9.1 business that is the subject of the buyer's broker agreement was presented to that party by
9.2 the licensee.

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

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

9.7 Sec. 6. Minnesota Statutes 2018, section 82.67, subdivision 3, is amended to read:

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

9.10 **AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS**

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

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

9.25

9.26 Signature Date

9.27

9.28 Signature Date

9.29 I.

9.30 **Seller's Broker:** A broker who lists a property, or a salesperson who is licensed to the
9.31 listing broker, represents only the Seller and acts on behalf of only the Seller. A Seller's
9.32 broker owes to the Seller the fiduciary duties described below.(2) The broker must also

10.1 disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.68,
 10.2 subdivision 3, of which the broker is aware that could adversely and significantly affect
 10.3 the Buyer's use or enjoyment of the property. If a broker or salesperson working with a
 10.4 Buyer as a customer is representing the Seller, he or she must act in the Seller's best
 10.5 interest and must tell the Seller any information disclosed to him or her, except
 10.6 confidential information acquired in a facilitator relationship (see paragraph ~~IV~~ V below).
 10.7 In that case, the Buyer will not be represented and will not receive advice and counsel
 10.8 from the broker or salesperson.

10.9 II.

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

10.22 III.

10.23 ~~**Dual Agency-Broker Representing both Seller and Buyer Agency Representation:**~~
 10.24 Dual agency occurs when ~~one broker or salesperson represents both parties to a~~
 10.25 ~~transaction, or when two salespersons licensed to the same broker each represent a party~~
 10.26 ~~to the transaction.~~ the Buyer(s) and Seller(s) in a real estate transaction are both
 10.27 represented by the same real estate brokerage and all agents of that brokerage act in a
 10.28 dual agency capacity by representing each side equally. A dual agent cannot act
 10.29 exclusively on behalf of one party, or advocate for the detriment of the other party. Dual
 10.30 agency requires the informed consent of all parties, and means that the broker and
 10.31 salesperson owe the same duties to the Seller and the Buyer. This role limits the level
 10.32 of representation the broker and salespersons can provide, and prohibits them from acting
 10.33 exclusively for either party. In a dual agency, confidential information about price, terms,
 10.34 and motivation for pursuing a transaction will be kept confidential unless one party
 10.35 instructs the broker or salesperson in writing to disclose specific information about him

11.1 or her. Other information will be shared. Dual agents may not advocate for one party to
 11.2 the detriment of the other.(3)

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

11.8 **IV.**

11.9 **Designated Agency, Single-Brokerage Agency Representation:** Designated agency
 11.10 occurs when the Buyer(s) and Seller(s) in a real estate transaction are both represented
 11.11 by the same real estate brokerage, and a designated buyer's agent and a designated listing
 11.12 agent are designated by the buyer and seller, respectively, in a written agreement with
 11.13 the brokerage. During the course of a designated agency real estate transaction, the
 11.14 designated buyer's agent owes the fiduciary duties, as defined in Minnesota Statutes,
 11.15 section 82.55, subdivision 9a, to only the buyer, and the designated listing agent owes
 11.16 the fiduciary duties, as defined in Minnesota Statutes, section 82.55, subdivision 9a, to
 11.17 only the seller. Any other confidential information that either buyer or seller has identified
 11.18 as confidential must not be disclosed by either designated agent to any party or third
 11.19 party, unless disclosure of the information is otherwise required by statute or rule.

11.20 **V.**

11.21 **Facilitator:** A broker or salesperson who performs services for a Buyer, a Seller, or
 11.22 both but does not represent either in a fiduciary capacity as a Buyer's Broker, Seller's
 11.23 Broker, ~~or~~ Dual Agent, or Designated Agent. **THE FACILITATOR BROKER OR**
 11.24 **SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY**
 11.25 **DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE**
 11.26 **DUTIES ARE INCLUDED IN A WRITTEN FACILITATOR SERVICES**
 11.27 **AGREEMENT.** The facilitator broker or salesperson owes the duty of confidentiality
 11.28 to the party but owes no other duty to the party except those duties required by law or
 11.29 contained in a written facilitator services agreement, if any. In the event a facilitator
 11.30 broker or salesperson, working with a Buyer, shows a property listed by the facilitator
 11.31 broker or salesperson, then the facilitator broker or salesperson must act as a Seller's
 11.32 Broker (see paragraph I above). In the event a facilitator broker or salesperson, working
 11.33 with a Seller, accepts a showing of the property by a Buyer being represented by the

12.1 facilitator broker or salesperson, then the facilitator broker or salesperson must act as a
12.2 Buyer's Broker (see paragraph III above).

12.3 *****

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

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

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

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

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

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

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

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

12.19 (3) If Seller(s) elect(s) not to agree to a either a designated agency or dual agency
12.20 relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented
12.21 by the broker/salesperson. If Buyer(s) elect(s) not to agree to a either a designated or dual
12.22 agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by
12.23 the broker.

12.24 Sec. 7. Minnesota Statutes 2018, section 82.67, subdivision 4, is amended to read:

12.25 Subd. 4. **Creation of designated agency or dual agency.** If circumstances create a
12.26 designated agency or dual agency situation, the broker must make full disclosure to all
12.27 parties to the transaction as to the change in relationship of the parties to the broker due to
12.28 designated agency or dual agency. A broker, having made full disclosure, must obtain the
12.29 consent of all parties to these circumstances in residential real property transactions in the
12.30 purchase agreement in the form set forth below which shall be set off in a boxed format to
12.31 draw attention to it:

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

13.7 Seller(s) and buyer(s) acknowledge that:

13.8 (1) in a designated agency situation, the supervising broker who supervises the
 13.9 salespersons representing a party in the transaction must not represent the interests of either
 13.10 party to the detriment of the other. Each designated salesperson represents the salesperson's
 13.11 party, subject to the same duties required of a seller's broker and a buyer's broker,
 13.12 respectively;

13.13 (2) in a dual agency transaction, confidential information communicated to broker and
 13.14 broker's salespersons which regards price, terms, or motivation to buy or sell will remain
 13.15 confidential unless seller(s) or buyer(s) instruct(s) broker in writing to disclose this
 13.16 information. ~~Other information will be shared;~~

13.17 ~~(2)~~ (3) in a dual agency situation, broker and its salespersons will not represent the
 13.18 interests of either party to the detriment of the other; and

13.19 ~~(3)~~ (4) within the limits of dual agency, broker and its salespersons will work diligently
 13.20 to facilitate the mechanics of the sale.

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

13.24 Act as designated agents in this transaction.

13.25	.....	.....
13.26	Seller	Buyer
13.27	.....	.....
13.28	Seller	Buyer
13.29	.....	.....
13.30	Date	Date

13.31 OR

13.32 Act as dual agents in this transaction.

14.1	.....	.....
14.2	<u>Seller</u>	<u>Buyer</u>
14.3	.....	.....
14.4	<u>Seller</u>	<u>Buyer</u>
14.5	.....	.....
14.6	<u>Date</u>	<u>Date</u>

14.7 Sec. 8. Minnesota Statutes 2018, section 82.73, subdivision 3, is amended to read:

14.8 Subd. 3. **Responsibilities of brokers.** (a) **Supervision of personnel.** A primary broker
14.9 shall adequately supervise the activities of the broker's salespersons and employees.
14.10 Supervision includes the ongoing monitoring of listing agreements, purchase agreements,
14.11 other real estate-related documents which are prepared or drafted by the broker's salespersons
14.12 or employees or which are otherwise received by the broker's office, and the review of all
14.13 trust account books and records. If ~~an individual~~ a broker maintains more than one place of
14.14 business, each place of business shall be under the primary broker's direction and supervision.
14.15 If a brokerage or business entity maintains more than one place of business, each place of
14.16 business shall be under the direction and supervision of ~~an individual~~ a broker licensed to
14.17 act on behalf of the brokerage.

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

14.26 (b) **Preparation and safekeeping of documents.** A broker is responsible for the
14.27 preparation, custody, safety, and accuracy of all real estate contracts, documents, and records,
14.28 even though another person may be assigned these duties by the broker.

14.29 (c) **Documentation and resolution of complaints.** A broker shall investigate and attempt
14.30 to resolve complaints made regarding the practices of any individual licensed to the broker
14.31 and shall maintain, with respect to each individual licensed to the broker, a complaint file
14.32 containing all material relating to any complaints received in writing for a period of three
14.33 years.

15.1 (d) **Disclosure of listed property information.** A broker may allow any unlicensed
15.2 person, who is authorized by the broker, to disclose any factual information pertaining to
15.3 the properties listed with the broker, if the factual information is provided to the unlicensed
15.4 person in written form by the broker representing or assisting the seller(s).

15.5 (e) **Property management functions for individually owned or entity-owned real**
15.6 **estate.** A broker shall not be responsible for supervising, nor shall the licensee be responsible
15.7 for operating, within the scope of the brokerage or within the requirements of this chapter,
15.8 activities that would be considered property management, including leasing, maintenance,
15.9 and repair, so long as the real estate being managed is "individually owned" or "entity-owned"
15.10 as defined below:

15.11 (1) "individually owned" real estate is real property in which the licensee holds an
15.12 ownership interest; and

15.13 (2) "entity-owned" real estate is real property owned by a corporation, limited liability
15.14 company, partnership, or trust, within which entity the licensee holds an ownership interest
15.15 as an owner, trustee, partner, or officer, or in another beneficiary capacity.

15.16 Sec. 9. Minnesota Statutes 2018, section 82.73, is amended by adding a subdivision to
15.17 read:

15.18 Subd. 4. **Prohibition.** Any supervising broker engaged in the practice of real estate is
15.19 prohibited from acting as a designated agent on behalf of one party to a transaction if the
15.20 supervising broker is responsible for supervising the salesperson or broker representing the
15.21 other party in the single-brokerage transaction.

15.22 Sec. 10. **EFFECTIVE DATE.**

15.23 This act is effective January 1, 2020.