

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1783

(SENATE AUTHORS: CARLSON)

DATE	D-PG	OFFICIAL STATUS
03/16/2015	902	Introduction and first reading Referred to Commerce

A bill for an act

1.1 relating to commerce; regulating the real estate education, research and recovery
1.2 fund; amending Minnesota Statutes 2014, section 82.86, subdivisions 6, 7,
1.3 by adding subdivisions; repealing Minnesota Statutes 2014, section 82.86,
1.4 subdivisions 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19.
1.5

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

1.7 Section 1. Minnesota Statutes 2014, section 82.86, subdivision 6, is amended to read:

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

1.10 ~~(a) (1)~~ to promote the advancement of education and research in the field of real
1.11 estate for the benefit of those licensed under this chapter;

1.12 ~~(b) (2)~~ to underwrite educational seminars and other forms of educational projects
1.13 for the benefit of real estate licensees;

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

1.17 ~~(d) (3)~~ to contract for a particular educational or research project in the field of real
1.18 estate to further the purposes of this chapter;

1.19 ~~(e) to pay any reasonable costs and disbursements, excluding attorney's fees,~~
1.20 ~~incurred in defending actions against the real estate education, research and recovery fund~~
1.21 ~~including the cost of mailing or publication of notice pursuant to subdivision 14 (4) to~~
1.22 reimburse the department for all legal and administrative expenses, disbursements, and
1.23 costs, including staffing costs, incurred in administering and defending the fund; and

1.24 ~~(f) (5)~~ to provide information to the public on housing issues, including but not
1.25 limited to, environmental safety and housing affordability.

2.1 Sec. 2. Minnesota Statutes 2014, section 82.86, subdivision 7, is amended to read:

2.2 Subd. 7. **Application for recovery.** ~~When any (a) Before an aggrieved person~~
2.3 ~~obtains~~ files an application under paragraph (b), the person must obtain a final judgment:

2.4 (1) in any court of competent jurisdiction regardless of whether the judgment has
2.5 been discharged by a bankruptcy court;

2.6 (2) against an individual licensed as a real estate broker, real estate salesperson, or
2.7 closing agent under this chapter;

2.8 (3) on grounds of fraudulent, deceptive, or dishonest practices, ~~or conversion of trust~~
2.9 funds including those defined in section 82.81 or 325D.44, where 82.81, subdivision 12,
2.10 paragraph (b), may not apply; and

2.11 (4) arising directly out of any transaction when the judgment debtor was licensed, and

2.12 (i) performed acts for which a license is required under this chapter,

2.13 (ii) represented oneself as a registered or licensed real estate broker, real estate
2.14 salesperson, or closing agent in any real estate transaction, or

2.15 (iii) performed acts permitted by section 327B.04, subdivision 5;

2.16 (b) The aggrieved person may, upon the judgment becoming final, and upon
2.17 termination of all proceedings, including reviews and appeals, file a verified application in
2.18 the court in which the judgment was entered with the commissioner of commerce. The
2.19 application shall state with specificity the grounds upon which the application seeks to
2.20 recover from the fund, and request an order directing payment out of the fund of the
2.21 amount of actual and direct out of pocket loss in the transaction, but excluding any
2.22 attorney's fees, interest on the loss and on any judgment obtained as a result of the loss, up
2.23 to the sum of \$150,000 of the amount unpaid upon the judgment, provided that nothing in
2.24 this chapter shall be construed to obligate the fund for more than \$150,000 per claimant,
2.25 per transaction, subject to the limitations set forth in subdivision 14, regardless of the
2.26 number of persons aggrieved or parcels of real estate involved in the transaction, provided
2.27 that regardless of the number of claims against a licensee, nothing in this chapter may
2.28 obligate the fund for more than \$250,000 per licensee.

2.29 (c) An aggrieved person who has a cause of action under section 80A.76 shall first
2.30 seek recovery as provided in section 80A.66, paragraph (e), before the commissioner may
2.31 order payment from the recovery fund. For purposes of this section, persons who are joint
2.32 tenants or tenants in common are deemed to be a single claimant. A copy of the verified
2.33 application shall be served upon the commissioner and upon the judgment debtor, and
2.34 a certificate or affidavit of service filed with the court. For the purpose of this section,
2.35 "aggrieved person" does not include a government agency, financial institution, or other
2.36 entity that purchases, guarantees, or insures a loan secured by real estate, and does not

3.1 ~~include a licensee unless (1) the licensee is acting in the capacity of principal in the sale of~~
3.2 ~~interests in real property owned by the licensee; or (2) the licensee is acting in the capacity~~
3.3 ~~of principal in the purchase of interests in real property to be owned by the licensee.~~
3.4 ~~Under no circumstances shall a licensee be entitled to payment under this section for~~
3.5 ~~the loss of a commission or similar fee.~~

3.6 ~~For the purposes of this section, recovery is limited to transactions where the property~~
3.7 ~~involved is intended for the direct personal habitation or commercial use of the buyer.~~

3.8 ~~Except for securities permitted to be sold by a licensee pursuant to section 82.81,~~
3.9 ~~subdivision 7, for any action commenced after July 1, 1993, recovery under this section is~~
3.10 ~~not available where the buyer's participation is for investment purposes only, and is limited~~
3.11 ~~to providing capital to fund the transaction.~~

3.12 Sec. 3. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
3.13 read:

3.14 Subd. 8a. **Payment limitations.** (a) The claimant shall seek to recover from the fund
3.15 only the amount of actual and direct out-of-pocket loss in the transaction, but excluding
3.16 attorney fees, interest on the loss, and interest on judgment obtained as a result of the loss.

3.17 (b) The commissioner shall not pay compensation from the fund to a claimant in an
3.18 amount greater than \$150,000 per licensee. The commissioner shall not pay compensation
3.19 from the fund to claimants in an amount that totals more than \$250,000 per licensee.

3.20 Regardless of the number of persons aggrieved or parcels of real estate involved in the
3.21 transaction, and regardless of the number of claims against a licensee, nothing in this
3.22 chapter obligates the fund for more than \$250,000 per licensee.

3.23 (c) For the purposes of this section, recovery is limited to transactions where the
3.24 property involved is intended for the direct personal habitation or commercial use of
3.25 the buyer.

3.26 (d) Recovery under this section is not available where the buyer's participation is
3.27 for investment purposes only and is limited to providing capital to fund the transaction.
3.28 Recovery under this section is available for securities permitted to be sold by a licensee
3.29 pursuant to section 82.81, subdivision 7.

3.30 Sec. 4. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
3.31 read:

3.32 Subd. 9a. **Verified application.** To be eligible for compensation from the fund, a
3.33 claimant shall serve on the commissioner an application for compensation verified by

4.1 the claimant on a form approved by the commissioner. The application must include
4.2 the following:

4.3 (1) the name and address of the claimant;

4.4 (2) if the claimant is represented by an attorney, the name, business address, and
4.5 telephone number of the attorney;

4.6 (3) the amount of the final judgment, the amount paid in satisfaction of the final
4.7 judgment, if any, and the amount owing on the final judgment as of the date of the verified
4.8 application;

4.9 (4) documents evidencing the application amount and detailing the calculation
4.10 of the claimant's actual and direct out-of-pocket loss. The claimant's actual and direct
4.11 out-of-pocket loss do not include attorney fees, interest on the loss, and interest on the
4.12 final judgment. An amount paid in satisfaction of the final judgment must be applied to
4.13 the claimant's actual and direct out-of-pocket loss;

4.14 (5) a detailed narrative statement of the facts in explanation of the allegations of
4.15 the complaint upon which the underlying judgment is based, if the complaint is not part
4.16 of the court record;

4.17 (6) the name and last known address of the licensee;

4.18 (7) the following representations and information from the claimant:

4.19 (i) the claimant is not a spouse of the licensee nor a personal representative of the
4.20 spouse;

4.21 (ii) the claimant has complied with all the requirements of this section;

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

4.25 (iv) after conducting the searches and inquiries in item (iii), the claimant has
4.26 discovered no personal or real property or other assets liable to be sold or applied to
4.27 satisfy the judgment, or has discovered property or other assets that are described in the
4.28 application owned by the judgment debtor and liable to be sold or applied to satisfy the
4.29 judgment, and has taken all necessary action and proceedings to do so, and that the amount
4.30 collected was insufficient to satisfy the judgment, stating the amount so collected and the
4.31 balance remaining due on the judgment after application of the amount collected;

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

4.35 (vi) the claimant has obtained a judgment as set out in subdivision 7;

5.1 (vii) the application was served on the commissioner of commerce no later than
5.2 two years after the underlying judgment became final, including after the termination of
5.3 any review or appeal of the judgment; and

5.4 (viii) whether or not the underlying judgment and debt have been discharged in
5.5 bankruptcy;

5.6 (8) detailed instructions with respect to the documentary evidence to be appended
5.7 to the application, including but not limited to pleadings, court rulings, the products of
5.8 discovery in the underlying litigation, and documents evidencing the amount of actual and
5.9 direct out-of-pocket loss as set out in clause (4). Evidence is not limited to documents
5.10 filed with or otherwise submitted to the court; and

5.11 (9) copy of the clerk's notice of docketing the judgment.

5.12 Sec. 5. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
5.13 read:

5.14 Subd. 10a. **Commissioner's notice and review.** (a) The commissioner shall send
5.15 the licensee a copy of the verified application by first class mail to the licensee's address as
5.16 it appears in the records of the department with a notice that the claim may be paid after
5.17 review of the verified application.

5.18 (b) If the licensee wishes to contest payment of an application by the commissioner,
5.19 the licensee shall mail or deliver a written response to the commissioner and to the
5.20 claimant within 30 days after mailing of the notice in paragraph (d).

5.21 (c) As outlined in paragraph (b), if the licensee fails to mail or deliver a timely
5.22 response:

5.23 (1) the licensee waives the right to present objections to payment; and

5.24 (2) the commissioner may pay the claim at the end of the 30-day notice period.

5.25 (d) The notice mailed to the licensee must include the following statement:

5.26 "NOTICE: Based upon a judgment entered against you in favor of [name of
5.27 claimant], application for payment from the Real Estate Education, Research and
5.28 Recovery Fund is being made to the Minnesota Department of Commerce.

5.29 If payment is made from the fund, all licenses and license rights you have under the
5.30 Real Estate Law will be automatically suspended on the date of payment and cannot be
5.31 reinstated until the fund has been reimbursed in full, plus interest at the rate of 12 percent
5.32 a year, twice the amount paid from the fund on the person's account, and has obtained a
5.33 surety bond issued by an insurer authorized to transact business in this state in the amount
5.34 of \$40,000 pursuant to Minnesota Statutes, section 82.86, subdivision 15a.

6.1 If you wish to contest payment by the Commissioner of Commerce, you must file a
6.2 written response to the application addressed to the Department of Commerce, Real Estate
6.3 Education, Research and Recovery Fund at [address] within 30 days after mailing of this
6.4 notice. You must also mail or deliver a copy of that response to the claimant within 30
6.5 days after mailing of this notice. If you fail to do so, you will have waived your right
6.6 to present your objections to payment."

6.7 (e) The commissioner may within 90 days after receipt of the complete verified
6.8 application:

6.9 (1) enter into an agreement with the claimant that resolves the verified application
6.10 for compensation from the fund; or

6.11 (2) issue an order to the claimant approving, modifying, or denying the verified
6.12 application for compensation from the fund.

6.13 (f) For purposes of considering and investigating an application, the commissioner
6.14 has the investigation and discovery powers available to the commissioner under chapter 45.

6.15 (g) If the claimant objects to the order issued, the claimant has 30 days from the date
6.16 of the order to serve upon the commissioner a written request for an administrative hearing.
6.17 If the claimant does not serve upon the commissioner a timely written request for hearing,
6.18 the order issued under this subdivision becomes a final order of the commissioner that may
6.19 not be reviewed by any court or agency. The commissioner shall order compensation from
6.20 the fund only if the claimant has filed a verified application that complies with subdivisions
6.21 7 and 9a and if the commissioner determines based on review of the application that
6.22 compensation should be paid from the fund. The commissioner is not bound by any prior
6.23 settlement, compromise, or stipulation between the claimant and the licensee.

6.24 (h) If the decision of the commissioner is to make a payment to the claimant out
6.25 of the real estate education, research and recovery fund, the following notice must be
6.26 given to the licensee:

6.27 "The decision of the commissioner of the Minnesota Department of Commerce on
6.28 the application of [claimant] is to pay \$..... from the Real Estate Education, Research
6.29 and Recovery Fund.

6.30 As stated in the Notice dated [date], and pursuant to Minnesota Statutes, section
6.31 82.86, subdivision 15a, your license and license rights under the Real Estate Law will be
6.32 suspended and cannot be reinstated until the fund has been reimbursed in full, plus interest
6.33 at the rate of 12 percent a year, twice the amount paid from the fund on the person's
6.34 account, and has obtained a surety bond issued by an insurer authorized to transact
6.35 business in this state in the amount of \$40,000.

7.1 If you desire a judicial review of the suspension of your license(s) and license rights,
7.2 you must provide written notice to the commissioner within 30 days of mailing this notice."

7.3 Sec. 6. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
7.4 read:

7.5 Subd. 11a. **Accelerated claims payment.** (a) The commissioner may pay claims
7.6 from the recovery portion of the fund that do not exceed the jurisdiction limits for
7.7 conciliation court matters as specified in section 491A.01 on an accelerated basis if all of the
7.8 requirements in subdivisions 7 and 9a have been satisfied. The purpose of this subdivision
7.9 is solely to provide an expedited payment process in lieu of subdivision 13a when the
7.10 commissioner or administrative law judge orders an amount to be paid that does not
7.11 exceed the jurisdiction limits for conciliation court. All other subdivisions are applicable.
7.12 A distribution made by the commissioner in accordance with this subdivision is deemed to
7.13 satisfy and extinguish the claims of a claimant receiving a distribution against the fund.

7.14 (b) If an appeal is begun, payment of the claim is stayed until conclusion of the appeal.

7.15 Sec. 7. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
7.16 read:

7.17 Subd. 12a. **Administrative hearing.** If a claimant or licensee makes a timely
7.18 request for an administrative hearing under subdivision 10a, the commissioner shall
7.19 request an administrative law judge be assigned and a hearing conducted under the
7.20 contested case provisions of chapter 14 within 45 days after the commissioner received the
7.21 request for hearing, unless the parties agree to a later date. The commissioner must notify
7.22 the claimant or licensee of the time and place of the hearing at least 15 days before the
7.23 hearing. Upon petition of the commissioner, the administrative law judge shall continue
7.24 the hearing up to 60 days and, upon a showing of good cause, may continue the hearing
7.25 for such additional period as the administrative law judge deems appropriate.

7.26 Whenever an applicant's judgment is by default, stipulation, or consent, or
7.27 whenever the action against the licensee was defended by a trustee in bankruptcy, the
7.28 claimant shall have the burden of proving by substantial evidence the cause of action for
7.29 fraudulent, deceptive, or dishonest practices. Otherwise, the judgment creates a rebuttable
7.30 presumption of the fraudulent, deceptive, or dishonest practices. This presumption affects
7.31 the burden of producing evidence.

7.32 The judgment debtor may defend any action of the debtor's own behalf and shall
7.33 have recourse to all appropriate means of defense and review, including examination
7.34 of witnesses.

8.1 The commissioner may defend an action on behalf of the fund and may use all
8.2 appropriate means of defense and review, including examination of witnesses.

8.3 The judgment is prima facie evidence of the cause of action and for the purposes
8.4 of this section is not conclusive. The commissioner may move the court at any time to
8.5 dismiss the application when it appears there are no triable issues and the application
8.6 is without merit. The motion may be supported by affidavit of any person or persons
8.7 having knowledge of the facts, and may be made on the basis that the application, and the
8.8 judgment referred to in the application, does not form the basis for a meritorious recovery
8.9 claim within the purview of subdivision 7; provided, however, the commissioner shall
8.10 give written notice at least ten days before the motion.

8.11 The administrative law judge shall issue findings of fact, conclusions of law, and
8.12 order. If the administrative law judge finds that compensation should be paid to the
8.13 claimant, the administrative law judge shall order the commissioner to make payment from
8.14 the fund of the amount it finds to be payable pursuant to the provisions of and in accordance
8.15 with the limitations contained in this section. The order of the administrative law judge
8.16 constitutes the final decision of the agency in the contested case. The commissioner,
8.17 claimant, or licensee may seek judicial review of the administrative law judge's findings of
8.18 fact, conclusions of law, and order in accordance with sections 14.63 to 14.69.

8.19 Sec. 8. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
8.20 read:

8.21 Subd. 13a. **Satisfaction of claims.** The commissioner shall pay compensation from
8.22 the fund to a claimant by July 15 of the year after a final order was issued pursuant to
8.23 subdivision 10a or 12a, subject to the payment limitations of this section.

8.24 At the end of each calendar year the commissioner shall calculate the amount of
8.25 compensation to be paid from the fund pursuant to final orders issued under subdivisions
8.26 10a and 12a. If the calculated amount exceeds the amount available for payment, the
8.27 commissioner shall allocate the remaining amount available among the claimants in the
8.28 ratio that the amount agreed to or ordered to be paid to each claimant bears to the amount
8.29 calculated. The commissioner shall mail notice of the allocation to all claimants not
8.30 less than 45 days following the end of the calendar year. A claimant who objects to the
8.31 plan of allocation shall notify the commissioner within 20 days of the mailing of the
8.32 notice to make a request for administrative hearing. The commissioner shall request an
8.33 administrative law judge be assigned and a hearing conducted under the contested case
8.34 provisions of chapter 14 within 45 days after the commissioner received the request for
8.35 hearing, unless the parties agree to a later date. The commissioner must notify the claimant

9.1 or licensee of the time and place of the hearing at least 15 days before the hearing. Upon
9.2 petition of the commissioner, the administrative law judge shall continue the hearing up to
9.3 60 days and upon a showing of good cause may continue the hearing for an additional
9.4 period the administrative law judge considers appropriate.

9.5 Compensation paid by the commissioner in accordance with this subdivision
9.6 satisfies and extinguishes any right to compensation from the fund based upon the verified
9.7 application of the claimant.

9.8 Sec. 9. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
9.9 read:

9.10 Subd. 14a. **Right of subrogation.** The commissioner shall not pay compensation
9.11 from the fund to a claimant unless and until the claimant executes an assignment to the
9.12 commissioner of all rights, title, and interest in the final judgment in the amount of the
9.13 compensation to be paid to the claimant pursuant to the final order. The commissioner
9.14 shall deposit in the fund any amount and interest recovered by the commissioner on the
9.15 judgment under this subdivision.

9.16 Sec. 10. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision
9.17 to read:

9.18 Subd. 15a. **License suspension.** If the commissioner pays from the recovery portion
9.19 of the fund any amount in settlement of a claim or toward satisfaction of a judgment
9.20 against a licensee, the license is automatically suspended upon the effective date of a final
9.21 order authorizing payment from the recovery portion of the fund. A broker, salesperson,
9.22 or closing agent shall not be granted reinstatement until the person has repaid in full,
9.23 plus interest at the rate of 12 percent a year, twice the amount paid from the fund on
9.24 the person's account, and has obtained a surety bond issued by an insurer authorized to
9.25 transact business in this state in the amount of \$40,000. The bond must be filed with the
9.26 commissioner, with the state of Minnesota as obligee, conditioned for the prompt payment
9.27 to any aggrieved person entitled thereto, of any amounts received by the real estate broker,
9.28 salesperson, or closing agent or to protect an aggrieved person from loss resulting from
9.29 fraudulent, deceptive, or dishonest practices. The bond must remain operative for as long
9.30 as that real estate broker, salesperson, or closing agent is licensed. Payment must not be
9.31 made from the fund based upon claims against a broker, salesperson, or closing agent who
9.32 is granted reinstatement pursuant to this subdivision. A discharge in bankruptcy does not
9.33 relieve a person from the penalties and disabilities provided in this section.

10.1 Sec. 12. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision
10.2 to read:

10.3 Subd. 17a. **Criminal penalty.** It is unlawful for a person or the agent of a person to
10.4 knowingly file with the commissioner any notice, statement, or other document required
10.5 under this section which is false or untrue or contains a material misstatement of fact.
10.6 Conduct in violation of this subdivision constitutes a gross misdemeanor.

10.7 Sec. 13. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision
10.8 to read:

10.9 Subd. 20. **Additional applicable terms.** (a) For purposes of this section:

10.10 (1) "claimant" refers to the applicant for recovery from the recovery portion of the
10.11 real estate education, research and recovery fund;

10.12 (2) "licensee" is synonymous with the judgment debtor that is or was licensed under
10.13 this chapter as a real estate broker, real estate salesperson, or closing agent;

10.14 (3) persons who are joint tenants or tenants in common are considered to be a single
10.15 claimant; and

10.16 (4) "aggrieved person" does not include a government agency; financial institution;
10.17 insurance company; other entity that purchases, guarantees, or insures a loan secured by
10.18 real estate; or insurers or sureties under subrogation or similar theories, and does not
10.19 include a licensee unless (i) the licensee is acting in the capacity of principal in the sale
10.20 of interests in real property owned by the licensee; or (ii) the licensee is acting in the
10.21 capacity or principal in the purchase of interests in real property to be owned by the
10.22 licensee. Under no circumstances is a licensee entitled to payment under this section for
10.23 the loss of a commission or similar fee.

10.24 Sec. 11. Minnesota Statutes 2014, section 82.86, is amended by adding a subdivision to
10.25 read:

10.26 Subd. 16a. **Appropriation.** Any sums received by the commissioner pursuant to
10.27 any provisions of this section must be deposited in the state treasury, and credited to the
10.28 real estate education, research and recovery fund. All money in the fund is appropriated
10.29 annually to the commissioner for the purposes of this section.

10.30 Sec. 14. **REPEALER.**

10.31 Minnesota Statutes 2014, section 82.86, subdivisions 8, 9, 10, 11, 12, 13, 14, 15, 16,
10.32 17, and 19, are repealed.

82.86 REAL ESTATE EDUCATION, RESEARCH AND RECOVERY FUND.

Subd. 8. **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. 9. **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. 10. **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 9. 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

APPENDIX

Repealed Minnesota Statutes: 15-0114

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. 11. **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. 12. **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. 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 12 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

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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 (f). 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 (f), 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. 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.