

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 1020

(SENATE AUTHORS: DRAHEIM, Sparks, Ruud, Jasinski and Limmer)

DATE	D-PG	OFFICIAL STATUS
02/11/2019	319	Introduction and first reading
		Referred to Commerce and Consumer Protection Finance and Policy
03/07/2019	669a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy

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, subdivision 6, by adding

1.4 subdivisions; 82.66, subdivisions 1, 2; 82.67, subdivisions 3, 4; 82.73, subdivision

1.5 3, by adding a 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. The buyer's agent owes the buyer fiduciary

1.14 duties and the seller's agent owes the seller fiduciary duties.

1.15 Sec. 2. Minnesota Statutes 2018, section 82.55, subdivision 6, is amended to read:

1.16 Subd. 6. **Dual agency.** "Dual agency" means ~~a situation in which a licensee owes a duty~~

1.17 ~~to more than one party to the transaction.~~

1.18 Circumstances which establish dual agency the buyer and seller in a real estate transaction

1.19 are both represented by the same real estate brokerage and all salespersons of that brokerage

1.20 represent each side equally. A dual agent cannot act exclusively on behalf of one party, or

1.21 advocate to the detriment of the other party and must not disclose confidential information,

1.22 unless the disclosure of the information is otherwise required by statute or rule or one party

2.1 instructs the broker or salesperson in writing. Situations where dual agency could arise
2.2 include the following:

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

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

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

2.9 Subd. 9a. **Fiduciary duties.** "Fiduciary duties" means the following duties, with the
2.10 associated meanings given them:

2.11 (1) "accounting" means a broker or salesperson must account for all money and property
2.12 entrusted to them and not commingle client monies with their personal or business funds;

2.13 (2) "reasonable care" means a broker or salesperson must use reasonable care and
2.14 diligence to perform duties on behalf of the client;

2.15 (3) "confidentiality" means a broker or salesperson must keep confidential any
2.16 information given to them by the client, unless the disclosure of information is otherwise
2.17 required by law or the client instructs the broker or salesperson in writing to disclose specific
2.18 information;

2.19 (4) "disclosure" means a broker or salesperson must disclose to the client all material
2.20 facts the broker or salesperson has knowledge of that might reasonably affect the client's
2.21 use or enjoyment of the property;

2.22 (5) "loyalty" means a broker or salesperson acts solely in the client's best interests to the
2.23 exclusion of all other interests, including the broker's or salesperson's and avoids any conflicts
2.24 of interest; and

2.25 (6) "obedience" means a broker or salesperson carries out all the client's lawful
2.26 instructions.

2.27 Sec. 4. Minnesota Statutes 2018, section 82.55, is amended by adding a subdivision to
2.28 read:

2.29 Subd. 24a. **Supervising broker.** A "supervising broker" is the broker responsible for
2.30 supervising the activities of the broker's salespersons and employees in a dual or designated
2.31 agency transaction. In a dual or designated agency transaction, a supervising broker is

3.1 responsible for supervising both sides of the transaction. This conflict of interest requires
3.2 that the supervising broker not advocate for one party or the other when supervising and
3.3 advising all parties involved in the transaction.

3.4 Sec. 5. Minnesota Statutes 2018, section 82.66, subdivision 1, is amended to read:

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

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

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

3.12 (1) a definite expiration date;

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

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

3.15 (4) the amount of any compensation or commission or the basis for computing the
3.16 commission;

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

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

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

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

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

3.29 (9) for residential property listings, the following "dual agency or designated agency"
3.30 disclosure statement:

4.1 If a buyer represented by broker wishes to buy the seller's property, a dual agency will
 4.2 be created. This means that broker will represent both the seller(s) and the buyer(s), and
 4.3 owe the same duties to the buyer(s) that broker owes to the seller(s). This conflict of interest
 4.4 will prohibit broker from advocating exclusively on the seller's behalf. Dual agency will
 4.5 limit the level of representation broker can provide. If a dual agency should arise, the seller(s)
 4.6 will need to agree that confidential information about price, terms, and motivation will still
 4.7 be kept confidential unless the seller(s) instruct broker in writing to disclose specific
 4.8 information about the seller(s). All other information will be shared. Broker cannot act as
 4.9 a dual agent unless both the seller(s) and the buyer(s) agree to it. By agreeing to a possible
 4.10 dual agency, the seller(s) will be giving up the right to exclusive representation in an in-house
 4.11 transaction. However, if the seller(s) should decide not to agree to a possible dual agency,
 4.12 and the seller(s) want broker to represent the seller(s), the seller(s) may give up the
 4.13 opportunity to sell the property to buyers represented by broker. DUAL AGENCY OR
 4.14 DESIGNATED AGENCY REPRESENTATION: If buyer(s) and seller(s) are both
 4.15 represented by the same brokerage, then both buyer(s) and seller(s) must consent and agree
 4.16 to either dual agency or designated agency representation for the transaction to proceed.

4.17 **What is Dual Agency?**

4.18 Dual agency occurs when the buyer(s) and
 4.19 seller(s) in a real estate transaction are both
 4.20 represented by the same real estate brokerage
 4.21 and all salespersons of that brokerage act in
 4.22 a dual agency capacity by representing each
 4.23 side equally. A dual agent cannot act
 4.24 exclusively on behalf of one party, or
 4.25 advocate to the detriment of the other party.

4.28 **How does Dual Agency affect me?**

4.29 In a dual agency, both the buyer(s) and the
 4.30 seller(s) are represented by the same
 4.31 brokerage, and every salesperson who is
 4.32 licensed to that brokerage owes an equal
 4.33 obligation of representation and fiduciary
 4.34 duties to both the buyer(s) and the seller(s).
 4.35 This means that all salespersons within that
 4.36 brokerage cannot advocate for, counsel, or
 4.37 represent one party in any way that would
 4.38 adversely affect the other party.

4.39 **What is the supervising broker's role in a**
 4.40 **dual agency?**

4.41 The supervising broker's responsibility is to
 4.42 supervise the activities of the broker's
 4.43 salespersons and employees. In a dual agency
 4.44 transaction, a broker is responsible for
 4.45 maintaining a neutral position when advising
 4.46 and supervising each of the dual agents.

4.17 **What is Designated Agency?**

4.18 Designated agency occurs when the buyer(s)
 4.19 and seller(s) in a real estate transaction are
 4.20 both represented by the same real estate
 4.21 brokerage and a buyer's agent(s) is designated
 4.22 in the buyer's broker agreement and
 4.23 exclusively represents only the buyer's
 4.24 interest, and a listing agent(s) is designated
 4.25 in the seller's broker agreement and
 4.26 exclusively represents only the seller's
 4.27 interest.

4.28 **How does Designated Agency affect me?**

4.29 In a designated agency, the buyer(s) and the
 4.30 seller(s) are represented by the same
 4.31 brokerage. The buyer is represented by a
 4.32 designated buyer's agent(s) of the buyer's
 4.33 choosing, and the seller is represented by a
 4.34 designated listing agent(s) of the seller's
 4.35 choosing. A designated buyer's agent(s) must
 4.36 advocate exclusively on behalf of the buyer,
 4.37 and a designated listing agent(s) must
 4.38 advocate exclusively on behalf of the seller.

4.39 **What is the supervising broker's role in a**
 4.40 **designated agency?**

4.41 The supervising broker's responsibility is to
 4.42 supervise the activities of the broker's
 4.43 salespersons and employees. In a designated
 4.44 agency transaction, a broker is responsible
 4.45 for maintaining a neutral position when
 4.46 advising and supervising the buyer's agent(s),

5.1 as designated in the buyer's broker agreement
 5.2 and the listing agent(s), as designated in the
 5.3 seller's broker agreement.

5.4 The fiduciary duties mentioned above are listed below and have the following meanings:

5.5 Accounting: means a broker or salesperson must account for all money and property entrusted
 5.6 to them and not commingle client monies with their personal or business funds;

5.7 Reasonable Care: means a broker or salesperson must use reasonable care and diligence to
 5.8 perform duties on behalf of the client;

5.9 Confidentiality: means a broker or salesperson must keep confidential any information given
 5.10 to them by the client, unless the disclosure of information is otherwise required by law or
 5.11 the client instructs the broker or salesperson in writing to disclose specific information;

5.12 Disclosure: means a broker or salesperson must disclose to the client all material facts the
 5.13 broker or salesperson has knowledge of that might reasonably affect the client's use or
 5.14 enjoyment of the property;

5.15 Loyalty: means a broker or salesperson acts solely in the client's best interests to the exclusion
 5.16 of all other interests, including the broker's or salesperson's and avoids any conflicts of
 5.17 interest; and

5.18 Obedience: means a broker or salesperson carries out all the client's lawful instructions.

5.19 "NOTICE: IN A DUAL AGENCY OR DESIGNATED AGENCY TRANSACTION,
 5.20 THE SUPERVISING BROKER IS SUPERVISING BOTH SIDES OF THE
 5.21 TRANSACTION. THIS CONFLICT OF INTEREST REQUIRES THAT THE
 5.22 SUPERVISING BROKER NOT ADVOCATE FOR ONE PARTY OR THE OTHER
 5.23 WHEN SUPERVISING AND ADVISING ALL PARTIES INVOLVED IN THE
 5.24 TRANSACTION."

5.25 Seller's Instructions to Broker

5.26 Having read and understood this information about dual agency or designated agency
 5.27 representation, seller(s) now instructs broker as follows (check only one of the three below):

5.28 I (seller(s)) choose designated agency representation and consent that
 5.29 the same brokerage may represent both me and the buyer(s) in the
 5.30 transaction, with my designated agent(s) exclusively representing my
 5.31 interests and another designated agent(s) exclusively representing the
 5.32 interests of the buyer(s).

5.33 ~~Seller(s) will agree to a dual agency representation and will consider~~
 5.34 ~~offers made by buyers represented by broker~~ I (seller(s)) choose dual
 5.35 agency representation and consent that the same brokerage may
 5.36 represent both me and the buyers(s) in the transaction. In dual agency,
 5.37 the broker and its salespersons (including my agent(s)) must not
 5.38 advocate for one party or the other in a transaction involving buyer(s)
 5.39 and seller(s) represented by the same brokerage, regardless if one or

6.1 more different salespersons are involved. In a dual agency, all
 6.2 confidential information must not be disclosed by either designated
 6.3 agent(s) or the broker to any party or third party, unless disclosure of
 6.4 the information is otherwise required by statute or rule, or one party
 6.5 instructs the broker or salesperson in writing.

6.6 ~~Seller(s) will not agree to a dual agency representation and will not~~
 6.7 ~~consider offers made by buyers represented by broker I (seller(s)) reject~~
 6.8 ~~dual agency and designated agency representation and I will not~~
 6.9 ~~consider offers made by buyer(s) represented by the brokerage.~~

6.10 ;

6.11 Seller Real Estate Company Name

6.12 By:

6.13 Seller Salesperson

6.14 Date : ;

6.15 NOTE: A seller may modify this selection by written notice to the brokerage at any time.

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

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

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

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

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

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

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

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

7.17 Sec. 6. Minnesota Statutes 2018, section 82.66, subdivision 2, is amended to read:

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

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

7.21 (1) a definite expiration date;

7.22 (2) the amount of any compensation or commission, or the basis for computing the
7.23 commission;

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

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

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

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

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

8.4 (7) the following "dual agency or designated agency representation" disclosure statement:

8.5 ~~If the buyer(s) choose(s) to purchase a property listed by broker, a dual agency will be~~
 8.6 ~~created. This means that broker will represent both the buyer(s) and the seller(s), and owe~~
 8.7 ~~the same duties to the seller(s) that broker owes to the buyer(s). This conflict of interest will~~
 8.8 ~~prohibit broker from advocating exclusively on the buyer's behalf. Dual agency will limit~~
 8.9 ~~the level of representation broker can provide. If a dual agency should arise, the buyer(s)~~
 8.10 ~~will need to agree that confidential information about price, terms, and motivation will still~~
 8.11 ~~be kept confidential unless the buyer(s) instruct broker in writing to disclose specific~~
 8.12 ~~information about the buyer(s). All other information will be shared. Broker cannot act as~~
 8.13 ~~a dual agent unless both the buyer(s) and the seller(s) agree to it. By agreeing to a possible~~
 8.14 ~~dual agency, the buyer(s) will be giving up the right to exclusive representation in an in-house~~
 8.15 ~~transaction. However, if the buyer(s) should decide not to agree to a possible dual agency,~~
 8.16 ~~and the buyer(s) want(s) broker to represent the buyer(s), the buyer(s) may give up the~~
 8.17 ~~opportunity to purchase the properties listed by broker. DUAL AGENCY OR DESIGNATED~~
 8.18 ~~AGENCY REPRESENTATION: If buyer(s) and seller(s) are both represented by the same~~
 8.19 ~~brokerage, then both buyer(s) and seller(s) must consent and agree to either dual agency or~~
 8.20 ~~designated agency representation for the transaction to proceed.~~

8.21 **What is Dual Agency?**

8.22 Dual agency occurs when the buyer(s) and
 8.23 seller(s) in a real estate transaction are both
 8.24 represented by the same real estate brokerage
 8.25 and all salespersons of that brokerage act in
 8.26 a dual agency capacity by representing each
 8.27 side equally. A dual agent cannot act
 8.28 exclusively on behalf of one party, or
 8.29 advocate to the detriment of the other party.

8.32 **How does Dual Agency affect me?**

8.33 In a dual agency, both the buyer(s) and the
 8.34 seller(s) are represented by the same
 8.35 brokerage, and every salesperson who is
 8.36 licensed to that brokerage owes an equal
 8.37 obligation of representation and fiduciary
 8.38 duties to both the buyer(s) and the seller(s).
 8.39 This means that all salespersons within that
 8.40 brokerage cannot advocate for, counsel, or

8.21 **What is Designated Agency?**

8.22 Designated agency occurs when the buyer(s)
 8.23 and seller(s) in a real estate transaction are
 8.24 both represented by the same real estate
 8.25 brokerage and a buyer's agent(s) is designated
 8.26 in the buyer's broker agreement and
 8.27 exclusively represents only the buyer's
 8.28 interest, and a listing agent(s) is designated
 8.29 in the seller's broker agreement and
 8.30 exclusively represents only the seller's
 8.31 interest.

8.32 **How does Designated Agency affect me?**

8.33 In a designated agency, the buyer(s) and the
 8.34 seller(s) are represented by the same
 8.35 brokerage. The buyer is represented by a
 8.36 designated buyer's agent(s) of the buyer's
 8.37 choosing, and the seller is represented by a
 8.38 designated listing agent(s) of the seller's
 8.39 choosing. A designated buyer's agent(s) must
 8.40 advocate exclusively on behalf of the buyer,

9.1 represent one party in any way that would and a designated listing agent(s) must
 9.2 adversely affect the other party. advocate exclusively on behalf of the seller.

9.3 **What is the supervising broker's role in a** **What is the supervising broker's role in a**
 9.4 **dual agency?** **designated agency?**

9.5 The supervising broker's responsibility is to The supervising broker's responsibility is to
 9.6 supervise the activities of the broker's supervise the activities of the broker's
 9.7 salespersons and employees. In a dual agency salespersons and employees. In a designated
 9.8 transaction, a broker is responsible for agency transaction, a broker is responsible
 9.9 maintaining a neutral position when advising for maintaining a neutral position when
 9.10 and supervising each of the dual agents. advising and supervising the buyer's agent(s),
 9.11 as designated in the buyer's broker agreement
 9.12 and the listing agent(s), as designated in the
 9.13 seller's broker agreement.

9.14 The fiduciary duties mentioned above are listed below and have the following meanings:

9.15 Accounting: means a broker or salesperson must account for all money and property entrusted
 9.16 to them and not commingle client monies with their personal or business funds;

9.17 Reasonable Care: means a broker or salesperson must use reasonable care and diligence to
 9.18 perform duties on behalf of the client;

9.19 Confidentiality: means a broker or salesperson must keep confidential any information given
 9.20 to them by the client, unless the disclosure of information is otherwise required by law or
 9.21 the client instructs the broker or salesperson in writing to disclose specific information;

9.22 Disclosure: means a broker or salesperson must disclose to the client all material facts the
 9.23 broker or salesperson has knowledge of that might reasonably affect the client's use or
 9.24 enjoyment of the property;

9.25 Loyalty: means a broker or salesperson acts solely in the client's best interests to the exclusion
 9.26 of all other interests, including the broker's or salesperson's and avoids any conflicts of
 9.27 interest; and

9.28 Obedience: means a broker or salesperson carries out all the client's lawful instructions.

9.29 "NOTICE: IN A DUAL AGENCY OR DESIGNATED AGENCY TRANSACTION,
 9.30 THE SUPERVISING BROKER IS SUPERVISING BOTH SIDES OF THE
 9.31 TRANSACTION. THIS CONFLICT OF INTEREST REQUIRES THAT THE
 9.32 SUPERVISING BROKER NOT ADVOCATE FOR ONE PARTY OR THE OTHER
 9.33 WHEN SUPERVISING AND ADVISING ALL PARTIES INVOLVED IN THE
 9.34 TRANSACTION."

9.35 Buyer's Instructions to Broker

9.36 Having read and understood this information about dual agency or designated agency
 9.37 representation, the buyer(s) now instructs the broker as follows (check only one of the three
 9.38 below):

10.1 I (buyer(s)) choose designated agency representation and consent that
 10.2 the same brokerage may represent both me and the seller(s) in the
 10.3 transaction, with my designated agent(s) exclusively representing my
 10.4 interests and another designated agent(s) exclusively representing the
 10.5 interests of the seller(s).

10.6 ~~Buyer(s) will agree to a dual agency representation and will consider~~
 10.7 ~~properties listed by broker~~ I (buyer(s)) choose dual agency
 10.8 representation and consent that the same brokerage may represent both
 10.9 me and the seller(s) in the transaction. In dual agency, the broker and
 10.10 its salespersons (including my agent(s)) must not advocate for one
 10.11 party or the other in a transaction involving buyer(s) and seller(s)
 10.12 represented by the same brokerage, regardless if one or more different
 10.13 salespersons are involved. In a dual agency, all confidential information
 10.14 must not be disclosed by either designated agent(s) or the broker to
 10.15 any party or third party, unless disclosure of the information is
 10.16 otherwise required by statute or rule, or one party instructs the broker
 10.17 or salesperson in writing.

10.18 ~~Buyer(s) will not agree to a dual agency representation and will not~~
 10.19 ~~consider properties listed by broker~~ I (buyer(s)) reject dual agency and
 10.20 designated agency representation and I will not consider properties
 10.21 listed by the brokerage.

10.22

10.23 Buyer Real Estate Company Name

10.24 By:

10.25 Buyer Salesperson

10.26 Date: ; and

10.27 NOTE: A buyer may modify this selection by written notice to the brokerage at any
 10.28 time.

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

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

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

11.1 (2) A buyer's broker agreement may contain an override clause of up to two years in
 11.2 length when used in conjunction with the purchase or sale of a business. The length of the
 11.3 override clause must be negotiable between the licensee and the buyer of the business. The
 11.4 protective list provided in connection with the override clause must include the written
 11.5 ~~acknowledgement~~ acknowledgment of each party named on the protective list, that the
 11.6 business that is the subject of the buyer's broker agreement was presented to that party by
 11.7 the licensee.

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

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

11.12 Sec. 7. Minnesota Statutes 2018, section 82.67, subdivision 3, is amended to read:

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

11.15 **AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS**

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

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

11.30
 11.31 Signature Date
 11.32
 11.33 Signature Date

12.1 I.

12.2 **Seller's Broker:** A broker who lists a property, or a salesperson who is licensed to the
 12.3 listing broker, represents only the Seller and acts on behalf of only the Seller. A Seller's
 12.4 broker owes to the Seller the fiduciary duties described below.(2) The broker must also
 12.5 disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.68,
 12.6 subdivision 3, of which the broker is aware that could adversely and significantly affect
 12.7 the Buyer's use or enjoyment of the property. If a broker or salesperson working with a
 12.8 Buyer as a customer is representing the Seller, he or she must act in the Seller's best
 12.9 interest and must tell the Seller any information disclosed to him or her, except
 12.10 confidential information acquired in a facilitator relationship (see paragraph ~~IV~~ V below).
 12.11 In that case, the Buyer will not be represented and will not receive advice and counsel
 12.12 from the broker or salesperson.

12.13 II.

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

12.26 III.

12.27 **Dual Agency—Broker Representing both Seller and Buyer Agency Representation:**
 12.28 Dual agency occurs when ~~one broker or salesperson represents both parties to a~~
 12.29 ~~transaction, or when two salespersons licensed to the same broker each represent a party~~
 12.30 ~~to the transaction.~~ the Buyer(s) and Seller(s) in a real estate transaction are both
 12.31 represented by the same real estate brokerage and all salespersons of that brokerage act
 12.32 in a dual agency capacity by representing each side equally. A dual agent cannot act
 12.33 exclusively on behalf of one party, or advocate to the detriment of the other party. Dual
 12.34 agency requires the informed consent of all parties, and means that the broker and

13.1 salesperson owe the same duties to the Seller and the Buyer. This role limits the level
 13.2 of representation the broker and salespersons can provide, and prohibits them from acting
 13.3 exclusively for either party. In a dual agency, ~~confidential information about price, terms,
 13.4 and motivation for pursuing a transaction will be kept confidential unless one party
 13.5 instructs the broker or salesperson in writing to disclose specific information about him
 13.6 or her. Other information will be shared~~ all confidential information must not be disclosed
 13.7 by either dual agents or the broker to any party or third party, unless the disclosure of
 13.8 the information is otherwise required by statute or rule, or one party instructs the broker
 13.9 or salesperson in writing. Dual agents may not advocate for one party to the detriment
 13.10 of the other.(3)

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

13.16 **IV.**

13.17 **Designated Agency Representation:** Designated agency occurs when the Buyer(s) and
 13.18 Seller(s) in a real estate transaction are both represented by the same real estate brokerage,
 13.19 and a designated buyer's agent(s) and a designated listing agent(s) are designated by the
 13.20 Buyer(s) and Seller(s), respectively, in a written agreement with the brokerage. During
 13.21 the course of a designated agency real estate transaction, the designated buyer's agent(s)
 13.22 owes the fiduciary duties, as defined in Minnesota Statutes, section 82.55, subdivision
 13.23 9a, to only the Buyer(s), and the designated listing agent(s) owes the fiduciary duties,
 13.24 as defined in Minnesota Statutes, section 82.55, subdivision 9a, to only the seller. All
 13.25 confidential information must not be disclosed by either designated agents or the broker
 13.26 to any party or third party, unless disclosure of the information is otherwise required by
 13.27 statute or rule, or one party instructs the broker or salesperson in writing.

13.28 **V.**

13.29 **Facilitator:** A broker or salesperson who performs services for a Buyer, a Seller, or
 13.30 both but does not represent either in a fiduciary capacity as a Buyer's Broker, Seller's
 13.31 Broker, ~~or~~ Dual Agent, or Designated Agent. **THE FACILITATOR BROKER OR**
 13.32 **SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY**
 13.33 **DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE**
 13.34 **DUTIES ARE INCLUDED IN A WRITTEN FACILITATOR SERVICES**

14.1 **AGREEMENT.** The facilitator broker or salesperson owes the duty of confidentiality
 14.2 to the party but owes no other duty to the party except those duties required by law or
 14.3 contained in a written facilitator services agreement, if any. In the event a facilitator
 14.4 broker or salesperson, working with a Buyer, shows a property listed by the facilitator
 14.5 broker or salesperson, then the facilitator broker or salesperson must act as a Seller's
 14.6 Broker (see paragraph I above). In the event a facilitator broker or salesperson, working
 14.7 with a Seller, accepts a showing of the property by a Buyer being represented by the
 14.8 facilitator broker or salesperson, then the facilitator broker or salesperson must act as a
 14.9 Buyer's Broker (see paragraph III above).

14.10 *****

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

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

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

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

14.17 ~~Disclosure broker/salesperson will disclose to client(s) all material facts of which~~
 14.18 ~~broker/salesperson has knowledge which might reasonably affect the client's use and~~
 14.19 ~~enjoyment of the property.~~

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

14.22 ~~Reasonable Care broker/salesperson will use reasonable care in performing duties as an~~
 14.23 ~~agent.~~

14.24 ~~Accounting broker/salesperson will account to client(s) for all client(s)' money and~~
 14.25 ~~property received as agent. Accounting: means a broker or salesperson must account for all~~
 14.26 ~~money and property entrusted to them and not commingle client monies with their personal~~
 14.27 ~~or business funds;~~

14.28 Reasonable Care: means a broker or salesperson must use reasonable care and diligence
 14.29 to perform duties on behalf of the client;

14.30 Confidentiality: means a broker or salesperson must keep confidential any information
 14.31 given to them by the client, unless the disclosure of information is otherwise required by
 14.32 law or the client instructs the broker or salesperson in writing to disclose specific information;

15.1 Disclosure: means a broker or salesperson must disclose to the client all material facts
 15.2 the broker or salesperson has knowledge of that might reasonably affect the client's use or
 15.3 enjoyment of the property;

15.4 Loyalty: means a broker or salesperson acts solely in the client's best interests to the
 15.5 exclusion of all other interests, including the broker's or salesperson's and avoids any conflicts
 15.6 of interest; and

15.7 Obedience: means a broker or salesperson carries out all the client's lawful instructions.

15.8 (3) If Seller(s) elect(s) not to agree to a either a designated agency or dual agency
 15.9 relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented
 15.10 by the broker/salesperson. If Buyer(s) elect(s) not to agree to a either a designated agency
 15.11 or dual agency relationship, Buyer(s) may give up the opportunity to purchase properties
 15.12 listed by the broker.

15.13 Sec. 8. Minnesota Statutes 2018, section 82.67, subdivision 4, is amended to read:

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

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

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

15.28 (1) ~~confidential information communicated to broker which regards price, terms, or~~
 15.29 ~~motivation to buy or sell will remain confidential unless seller(s) or buyer(s) instruct(s)~~
 15.30 ~~broker in writing to disclose this information. Other information will be shared; in a~~
 15.31 designated agency situation, the supervising broker who supervises the salespersons
 15.32 representing a party in the transaction must not represent the interests of either party to the

16.1 detriment of the other. Each designated salesperson represents the salesperson's party, subject
 16.2 to the same duties required of a seller's broker and a buyer's broker, respectively;

16.3 (2) in a dual agency transaction, all confidential information must not be disclosed by
 16.4 either dual agents or the broker to any party or third party, unless disclosure of the
 16.5 information is otherwise required by statute or rule, or one party instructs the broker or
 16.6 salesperson in writing;

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

16.9 ~~(3)~~ (4) within the limits of dual agency, broker and its salespersons will work diligently
 16.10 to facilitate the mechanics of the sale.

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

16.14 Act as designated agents in this transaction.

16.15	.....	.....
16.16	Seller	Buyer
16.17	.....	.....
16.18	Seller	Buyer
16.19	.....	.....
16.20	Date	Date

16.21 OR

16.22 Act as dual agents in this transaction.

16.23	.....	.....
16.24	<u>Seller</u>	<u>Buyer</u>
16.25	.....	.....
16.26	<u>Seller</u>	<u>Buyer</u>
16.27	.....	.....
16.28	<u>Date</u>	<u>Date</u>

16.29 Sec. 9. Minnesota Statutes 2018, section 82.73, subdivision 3, is amended to read:

16.30 Subd. 3. **Responsibilities of brokers.** (a) **Supervision of personnel.** A primary broker
 16.31 shall adequately supervise the activities of the broker's salespersons and employees. In the
 16.32 case of a transaction involving designated agency, in addition to the primary broker, the

17.1 supervising broker shall adequately supervise the activities of the designated agents and
17.2 employees involved in the transaction. Supervision includes the ongoing monitoring of
17.3 listing agreements, purchase agreements, other real estate-related documents which are
17.4 prepared or drafted by the broker's salespersons or employees or which are otherwise received
17.5 by the broker's office, and the review of all trust account books and records. If an individual
17.6 broker maintains more than one place of business, each place of business shall be under the
17.7 broker's direction and supervision. If a brokerage maintains more than one place of business,
17.8 each place of business shall be under the direction and supervision of an individual broker
17.9 licensed to act on behalf of the brokerage.

17.10 The primary broker shall maintain records specifying the name of each broker responsible
17.11 for the direction and supervision of each place of business. If an individual broker, who
17.12 may be the primary broker, is responsible for supervising more than one place of business,
17.13 the primary broker shall, upon written request of the commissioner, file a written statement
17.14 specifying the procedures which have been established to ensure that all salespersons and
17.15 employees are adequately supervised. Designation of another broker to supervise a place
17.16 of business does not relieve the primary broker of the ultimate responsibility for the actions
17.17 of licensees.

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

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

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

17.30 **(e) Property management functions for individually owned or entity-owned real**
17.31 **estate.** A broker shall not be responsible for supervising, nor shall the licensee be responsible
17.32 for operating, within the scope of the brokerage or within the requirements of this chapter,
17.33 activities that would be considered property management, including leasing, maintenance,

18.1 and repair, so long as the real estate being managed is "individually owned" or "entity-owned"
18.2 as defined below:

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

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

18.8 Sec. 10. Minnesota Statutes 2018, section 82.73, is amended by adding a subdivision to
18.9 read:

18.10 Subd. 4. **Prohibition.** Any supervising broker engaged in the practice of real estate is
18.11 prohibited from acting as a designated agent on behalf of one party to a transaction if the
18.12 supervising broker is responsible for supervising the salesperson or broker representing the
18.13 other party in the transaction.

18.14 Sec. 11. **EFFECTIVE DATE.**

18.15 This act is effective January 1, 2020.