

(p) Medicare select policies and certificates under this section shall be regulated and approved by the department of commerce.

(q) Medicare select policies and certificates must be either a basic plan or an extended basic plan. The basic plan may also include any of the optional benefit riders authorized by section 62A.316. Preventive care provided by Medicare select policies or certificates must be provided as set forth in section 62A.315 or 62A.316, except that the benefits are as defined in chapter 62D.

(r) Medicare select policies and certificates are exempt from the requirements of section 62A.31, subdivision 1, paragraph (d). This paragraph expires January 1, 1994.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective July 30, 1992, and applies to policies or certificates issued on or after that date.

Presented to the governor April 17, 1992

Signed by the governor April 29, 1992, 8:08 a.m.

CHAPTER 555—S.F.No. 2662

An act relating to commerce; regulating real estate brokers and salespersons and the real estate, education, research, and recovery fund; temporarily changing the interest rate required on a rental deposit; amending Minnesota Statutes 1990, sections 82.19, by adding a subdivision; and 82.34, subdivisions 3, 4, 7, 9, 11, 13, and 14; 504.20, subdivision 2; Minnesota Statutes 1991 Supplement, section 82.22, subdivision 13; proposing coding for new law in Minnesota Statutes, chapter 80A; repealing Minnesota Statutes 1990, section 82.34, subdivision 20.

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

ARTICLE 1

Section 1. [80A.041] EXEMPTION.

A real estate broker or agent licensed under chapter 82 who arranges for the sale of a contract for deed is exempt from the license requirement of section 80A.04 if the real estate broker or agent receives no compensation in addition to the brokerage commission or fee and represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of the subject property.

Sec. 2. Minnesota Statutes 1990, section 82.19, is amended by adding a subdivision to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 7. SECURITIES SOLD BY BUSINESSES OUTSIDE SCOPE OF LICENSING. A license issued under this chapter does not allow a licensee to engage in the business of buying, selling, negotiating, brokering, or otherwise dealing in contracts for deed, mortgages, or other evidence of indebtedness regarding real estate, except that a licensee may, if there is no compensation in addition to the brokerage commission or fee, and if the licensee represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of real estate, arrange for the sale of a contract, mortgage, or similar evidence of indebtedness for the subject property.

Sec. 3. Minnesota Statutes 1991 Supplement, section 82.22, subdivision 13, is amended to read:

Subd. 13. CONTINUING EDUCATION. (a) After July 1, 1987, all real estate salespersons and all real estate brokers shall be required to successfully complete 15 hours of real estate education, either as a student or a lecturer, in courses of study approved by the commissioner, each year after their initial annual renewal date or after the expiration of their currently assigned three year continuing education due date. All salespersons and brokers shall report continuing education on an annual basis no later than June 30, 1990. Hours in excess of 15 earned in any one year may be carried forward to the following year.

(b) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision.

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

(d) As part of the continuing education requirements of this section, the commissioner shall require that all real estate brokers and salespersons receive at least two hours of training every even-numbered year in courses in state and federal fair housing laws, regulations, and rules, or other anti-discrimination laws.

Sec. 4. Minnesota Statutes 1990, section 82.34, subdivision 3, is amended to read:

Subd. 3. Each real estate broker, real estate salesperson, and real estate closing agent entitled under this chapter to renew a license shall pay in addition to the appropriate renewal fee a further fee of ~~\$5~~ \$25 which shall be credited to the real estate education, research, and recovery fund. Any person who receives a license shall pay the fee of ~~\$40~~ \$50 in addition to all other fees payable.

Sec. 5. Minnesota Statutes 1990, section 82.34, subdivision 4, is amended to read:

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Subd. 4. No less than \$400,000 of the fund shall be available for recovery purposes to satisfy all claims authorized for payment each calendar year. This shall be designated as the recovery portion of the fund. If the amount remaining in the fund after payment of all amounts authorized during the preceding calendar year for payment to claimants is at any time less than \$400,000 plus the amount appropriated pursuant to subdivision 6; the commissioner believes is necessary to carry out the purposes of this section every licensee, when renewing a license, shall pay, in addition to the annual renewal fee and the \$5 fee set forth in subdivision 3, ~~a sum~~ an assessment not to exceed ~~\$50~~ \$100, said sum having been reasonably determined by the commissioner to be necessary to restore ~~the a~~ balance in the fund of an amount adequate to carry out the purposes of this section.

Sec. 6. Minnesota Statutes 1990, section 82.34, subdivision 7, is amended to read:

Subd. 7. When any aggrieved person obtains a final judgment in any court of competent jurisdiction regardless of whether the judgment has been discharged by a bankruptcy court against an individual licensed under this chapter, on grounds of fraudulent, deceptive, or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, or performed acts permitted by section 327B.04, subdivision 5, ~~and which cause of action occurred on or after July 1, 1973,~~ the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews and appeals, file a verified application in the court in which the judgment was entered for an order directing 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's fees, interest on the loss and on any judgment obtained as a result of the loss, up to the sum of \$150,000 of the amount unpaid upon the judgment, provided that nothing in this chapter shall be construed to obligate the fund for more than \$150,000 per claimant, per transaction, subject to the limitations set forth in subdivision 14, regardless of the number of persons aggrieved or parcels of real estate involved in the transaction, provided that regardless of the number of claims against a licensee, nothing in this chapter may obligate the fund for more than \$250,000 per licensee ~~per year~~. An aggrieved person who has a cause of action under section 80A.23 shall first seek recovery as provided in section 80A.05, subdivision 5, before the commissioner may order payment from the recovery fund. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant. A copy of the verified application shall be served upon the commissioner and upon the judgment debtor, and a certificate or affidavit of service filed with the court. For the purpose of this section, "aggrieved person" shall not include a licensee unless (1) the licensee is acting in the capacity of principal in the sale of interests in real property owned by the licensee; or (2) the licensee is acting in the capacity of principal in the purchase of interests in real property to be owned by the licensee. Under no circumstances shall a licensee be entitled to payment under this section for the loss of a commission or similar fee.

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Sec. 7. Minnesota Statutes 1990, section 82.34, subdivision 9, is amended to read:

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

Sec. 8. Minnesota Statutes 1990, section 82.34, subdivision 11, is amended to read:

Subd. 11. If the court finds after the hearing that said claim should be levied against ~~the recovery portion of the fund~~, the court shall enter an order directed to the commissioner requiring payment from ~~the recovery portion of 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.

Sec. 9. Minnesota Statutes 1990, section 82.34, subdivision 13, is amended to read:

Subd. 13. 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 recovery portion of 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,

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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 ~~recovery portion of 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.

Sec. 10. Minnesota Statutes 1990, section 82.34, subdivision 14, is amended to read:

Subd. 14. The commissioner shall satisfy all claims against licensees for which an order pursuant to subdivision 11 directing payment from the recovery portion of the fund has become final during the calendar year. Each claim shall be satisfied by the commissioner ~~in not less than 30 and not more than 90 days following the end by July 15 of the calendar year after the year in which the order directing payment of the claim becomes final, commencing with calendar year 1991~~ 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 recovery portion of the fund.~~

Sec. 11. TEMPORARY ASSESSMENT.

The commissioner may assess licensees pursuant to Minnesota Statutes, section 82.34, to pay those claims which are payable in 1992 but for which the money in the fund is insufficient to satisfy.

Sec. 12. PENDING CLAIMS.

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The change in the per year limit contained in section 6 does not apply to a cause of action that was commenced before August 1, 1992.

Sec. 13. **REPEALER.**

Minnesota Statutes 1990, section 82.34, subdivision 20, is repealed.

Sec. 14. **EFFECTIVE DATE.**

Sections 1 to 13 are effective the day following final enactment.

ARTICLE 2

Section 1. Minnesota Statutes 1990, section 504.20, subdivision 2, is amended to read:

Subd. 2. Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.17, subdivision 7, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple noncompounded interest at the rate of ~~5-1/2~~ four percent per annum ~~noncompounded until May 1, 1997, and 5-1/2 percent per annum thereafter,~~ computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than \$1 shall be excluded from the provisions of this section.

Sec. 2. **REVIEW.**

The reversion of the interest rate to 5-1/2 percent in section 1 is subject to review by the legislature in the 1996 session.

Sec. 3. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:04 p.m.

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