

CHAPTER 208—S.F.No. 1541

An act relating to commerce; regulating currency exchanges, real estate brokers, real property appraisers, subdivided land sales licenses, residential contractors, notaries public, and collection agencies; modifying certain continuing education requirements; regulating certain fees, costs, duties, rights, and penalties; regulating nonprofit corporations; requiring a study; appropriating money; amending Minnesota Statutes 2000, sections 45.0295; 53A.081, subdivision 2; 58.10, subdivision 1, by adding a subdivision; 60K.19, subdivision 8; 72B.04, subdivisions 6, 7; 80B.03, subdivision 4a; 82.195, subdivision 2; 82.196, subdivision 2; 82.197, subdivisions 1, 4, by adding a subdivision; 82.22, subdivision 13; 82.24, subdivision 8; 82.27, subdivision 3; 82.34, subdivision 15, by adding a subdivision; 82B.14; 83.25, subdivision 1; 317A.203; 326.91, subdivision 1; 326.975, subdivision 1; 332.41; 359.02; 507.45, subdivision 3.

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

Section 1. Minnesota Statutes 2000, section 45.0295, is amended to read:

45.0295 FEES.

(a) The following fees shall be paid to the commissioner:

(1) for each hour or fraction of one hour of education course approval for continuing education sought, \$10; and

(2) for each ~~continuing education~~ course coordinator approval, \$100.

(b) All fees paid to the commissioner under this section are nonrefundable, except that an overpayment of a fee shall be returned upon proper application.

Sec. 2. Minnesota Statutes 2000, section 53A.081, subdivision 2, is amended to read:

Subd. 2. **INVESTIGATION.** The commissioner may at any time and shall at least once in each year investigate the currency exchange business of any licensee and of every person, partnership, association, and corporation engaged in the business of operating a currency exchange in the manner provided under section 45.027.

Sec. 3. Minnesota Statutes 2000, section 58.10, subdivision 1, is amended to read:

Subdivision 1. **AMOUNTS.** The following fees must be paid to the commissioner:

(1) for an initial residential mortgage originator license, ~~\$800~~ \$850, \$50 of which is credited to the consumer education account in the special revenue fund;

(2) for a renewal license, ~~\$400~~ \$450, \$50 of which is credited to the consumer education account in the special revenue fund;

(3) for an initial residential mortgage servicer's license, \$1,000;

(4) for a renewal license, \$500; and

(5) for a certificate of exemption, \$100.

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Sec. 4. Minnesota Statutes 2000, section 58.10, is amended by adding a subdivision to read:

Subd. 3. CONSUMER EDUCATION ACCOUNT; MONEY CREDITED AND APPROPRIATED. (a) The consumer education account is created in the special revenue fund. Money credited to this account may be appropriated to the commissioner for the purpose of making grants to programs and campaigns designed to help consumers avoid being victimized by unscrupulous lenders and mortgage brokers. Preference shall be given to programs and campaigns designed by coalitions of public sector, private sector, and nonprofit agencies, institutions, companies, and organizations.

(b) A sum sufficient is appropriated annually from the consumer education account to the commissioner to make the grants described in paragraph (a).

Sec. 5. Minnesota Statutes 2000, section 60K.19, subdivision 8, is amended to read:

Subd. 8. MINIMUM EDUCATION REQUIREMENT. Each person subject to this section shall complete a minimum of 30 credit hours of courses accredited by the commissioner during each 24-month licensing period. Any person whose initial licensing period extends more than six months shall complete 15 hours of courses accredited by the commissioner during the initial license period. Any person teaching or lecturing at an accredited course qualifies for ~~1-1/2~~ three times the number of credit hours that would be granted to a person completing the accredited course. No more than 15 credit hours per licensing period may be credited to a person for courses sponsored by, offered by, or affiliated with an insurance company or its agents. Courses sponsored by, offered by, or affiliated with an insurance company or agent may restrict its students to agents of the company or agency.

Sec. 6. Minnesota Statutes 2000, section 72B.04, subdivision 6, is amended to read:

Subd. 6. EXCEPTIONS. A person who on January 1, 1972, meets all of the qualifications specified in subdivision 2 with regard to the class of license applied for and, if experience is one of the requisites, has gained the experience within the three years next preceding January 1, 1972, shall be eligible for the issuance of a license without taking an examination.

A person who has held a license of any given class or in any field or fields within three years prior to the application shall be entitled to a renewal of the license in the same class or in the same fields without taking an examination.

A person applying for a license as a crop hail adjuster shall not be required to comply with the requirements of subdivision 5.

The commissioner may issue a license under sections 72B.01 to 72B.14 without an examination, if the applicant presents sufficient and satisfactory evidence of having passed a similar examination in another state and if the commissioner, with the advice of the advisory board, has determined that the standards of such other state are

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equivalent to those in Minnesota for the class of license applied for. Any applicant who presents sufficient and satisfactory evidence of having successfully completed all six parts of the insurance institute of America program in adjusting or other programs approved by the commissioner shall be entitled to an adjuster's license without taking the examination prescribed in subdivision 5.

Sec. 7. Minnesota Statutes 2000, section 72B.04, subdivision 7, is amended to read:

Subd. 7. **LICENSE TERM.** ~~Every adjuster's and public adjuster solicitor's license shall be for a term expiring on October 31 next following the date of its issuance, and may be renewed for the ensuing calendar year upon the timely filing of an application for renewal.~~ (a) Initial licenses issued under this section are valid for a period not to exceed two years. Each initial license must expire on October 31 of the expiration year assigned by the commissioner.

(b) Licenses issued under this section may be renewed upon the timely filing of an application for renewal. Every renewal license is valid for a period of 24 months.

Sec. 8. Minnesota Statutes 2000, section 80B.03, subdivision 4a, is amended to read:

Subd. 4a. Within three ~~calendar~~ business days of the date of filing of the registration statement, the commissioner may by order summarily suspend the effectiveness of the takeover offer if the commissioner determines that the registration statement does not contain all of the information specified in subdivisions 2 and 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subdivision 5.

Sec. 9. Minnesota Statutes 2000, section 82.195, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** All listing agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) a description of the real property involved;
- (3) the list price and any terms required by the seller;
- (4) the amount of any compensation or commission or the basis for computing the commission;
- (5) a clear statement explaining the events or conditions that will entitle a broker to a commission;
- (6) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies

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the seller with a protective list within 72 hours after the expiration of the listing agreement;

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

“NOTICE: THE COMMISSION RATE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS THE BROKER’S CLIENT.”;

(8) for residential property listings, the following “dual agency” disclosure statement:

If a buyer represented by broker wishes to buy your property, a dual agency will be created. This means that broker will represent both you and the buyer(s), and owe the same duties to the buyer(s) that broker owes to you. This conflict of interest will prohibit broker from advocating exclusively on your behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct broker in writing to disclose specific information about you. All other information will be shared. Broker cannot act as a dual agent unless both you and the buyer(s) agree to it. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want broker to represent you, you may give up the opportunity to sell your property to buyers represented by broker.

Seller’s Instructions to Broker

Having read and understood this information about dual agency, seller(s) now instructs broker as follows:

..... Seller(s) will agree to a dual agency representation and will consider offers made by buyers represented by broker.

..... Seller will not agree to a dual agency representation and will not consider offers made by buyers represented by broker.

.....
Seller

.....
Broker

.....
Seller

By:
Salesperson

Date:

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(9) a notice requiring the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. ~~The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 2602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services; and~~

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

Sec. 10. Minnesota Statutes 2000, section 82.196, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** All buyer's broker agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) the amount of any compensation or commission, or the basis for computing the commission;
- (3) a clear statement explaining the services to be provided to the buyer by the broker, and the events or conditions that will entitle a broker to a commission or other compensation;
- (4) a provision for cancellation of the agreement by either party upon terms agreed upon by the parties; a clear statement explaining if the agreement may be canceled and the terms under which the agreement may be canceled;
- (5) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the buyer with a protective list within 72 hours after the expiration of the buyer's broker agreement;
- (6) the following notice in not less than ten point bold face type immediately preceding any provision of the buyer's broker agreement relating to compensation of the licensee:

"NOTICE: THE ~~COMMISSION RATE~~ COMPENSATION FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY IS ~~NEGOTIABLE~~ AND SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS THE BROKER'S CLIENT.";

- (7) the following "dual agency" disclosure statement:

If you choose to purchase a property listed by broker, a dual agency will be created. This means that broker will represent both you and the seller(s), and owe the same duties to the seller(s) that broker owes to you. This conflict of interest will

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prohibit broker from advocating exclusively on your behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct broker in writing to disclose specific information about you. All other information will be shared. Broker cannot act as a dual agent unless both you and the seller(s) agree to it. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want broker to represent you, you may give up the opportunity to purchase the properties listed by broker.

Buyer's Instructions to Broker

..... Buyer(s) will agree to a dual agency representation and will consider properties listed by broker.

..... Buyer will not agree to a dual agency representation and will not consider properties listed by broker.

.....
Buyer

.....
Broker

.....
Buyer

By:
Salesperson

Date:; and

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

Sec. 11. Minnesota Statutes 2000, section 82.197, subdivision 1, is amended to read:

Subdivision 1. **AGENCY DISCLOSURE.** A real estate broker or salesperson shall provide to a consumer in the sale and purchase of a residential real property transaction at the first substantive contact with the consumer an agency disclosure form in substantially the form set forth in subdivision 4. The agency disclosure form shall be intended to provide a description of available options for agency and nonagency relationships, and a description of the role of a licensee under each option. The agency disclosure form shall provide a signature line for acknowledgment of receipt by the consumer.

Sec. 12. Minnesota Statutes 2000, section 82.197, subdivision 4, is amended to read:

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Subd. 4. **AGENCY DISCLOSURE FORM.** The agency disclosure form shall be in substantially the form set forth below:

AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

Minnesota law requires that early in any relationship, real estate brokers or salespersons discuss with consumers what type of agency representation or relationship they desire.(1) The available options are listed below. This is **not** a contract. **This is an agency disclosure form only. If you desire representation, you must enter into a written contract according to state law** (a listing contract or a buyer representation contract). Until such time as you choose to enter into a written contract for representation or assistance, you will be treated as a customer of the broker or salesperson and not represented by the brokerage and will not receive any representation from the broker or salesperson. The broker or salesperson would then will be acting as a Seller's broker Facilitator (see paragraph I V below), or as a nonagent (see paragraph IV below) unless the broker or salesperson is representing another party as described below.

ACKNOWLEDGMENT: I/We acknowledge that I/We have been presented with the below-described options. I/We understand that until I/We have signed a representation contract, I/We are not represented by the broker/salesperson and information given to the broker/salesperson may be disclosed. I/We understand that written consent is required for a dual agency relationship. THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.

.....
Signature

.....
Date

.....
Signature

.....
Date

I.

Seller's Broker: A broker who lists a property, or a salesperson who is licensed to the listing broker, represents the Seller and acts on behalf of the Seller. A broker or salesperson working with a Buyer may also act as a subagent of the Seller, in which case the Buyer is the broker's customer and is not represented by that broker. A Seller's broker owes to the Seller the fiduciary duties described below.(2) The broker must also disclose to the Buyer any material facts as defined in Minnesota Statutes, section 82.197, subdivision 6, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson who is working with a Buyer as a customer and is representing the Seller and to whom any information is disclosed, he or she must act in the Seller's interests best interest and must tell the Seller the any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

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II.

Subagent: A broker or salesperson who is working with a Buyer but represents the Seller. In this case, the Buyer is the broker's customer and is not represented by that broker. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller's best interest and must tell the Seller any information that is disclosed to him or her. In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

III.

Buyer's Broker: A Buyer may enter into an agreement for the broker or salesperson to represent and act on behalf of the Buyer. The broker may represent the Buyer only, and not the Seller, even if the broker he or she is being paid in whole or in part by the Seller. A Buyer's broker owes to the Buyer the fiduciary duties described below.(2) The broker must disclose to the Buyer any material facts as defined in Minnesota Statutes, section 82.197, subdivision 6, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Seller as a customer is representing the Buyer, he or she must act in the Buyer's best interest and must tell the Buyer any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Seller will not be represented and will not receive advice and counsel from the broker or salesperson.

III. IV.

Dual Agency-Broker Representing both Seller and Buyer: Dual agency occurs when one broker or salesperson represents both parties to a transaction, or when two salespersons licensed to the same broker each represent a party to the transaction. Dual agency requires the informed consent of all parties; and means that the broker and salesperson owe the same duties to the Seller and the Buyer. This role limits the level of representation the broker and salespersons can provide, and prohibits them from acting exclusively for either party. In a dual agency, confidential information about price, terms, and motivation for pursuing a transaction will be kept confidential unless one party instructs the broker or salesperson in writing to disclose specific information about the party writing him or her. Other information will be shared. Dual agents may not advocate for one party to the detriment of the other.(3)

Within the limitations described above, dual agents owe to both Seller and Buyer the fiduciary duties described below.(2) Dual agents must disclose to Buyers any material facts as defined in Minnesota Statutes, section 82.197, subdivision 6, of which the broker is aware that could

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adversely and significantly affect the Buyer's use or enjoyment of the property.

IV. V.

Nonagent Facilitator: A broker or salesperson may perform who performs services for either party as a nonagent, if that party signs a nonagency services agreement a Buyer, a Seller, or both but does not represent either in a fiduciary capacity as a Buyer's Broker, Seller's Broker, or Dual Agent. As a nonagent the broker or salesperson facilitates the transaction, but does not act on behalf of either party. **THE NONAGENT FACILITATOR BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE DUTIES ARE INCLUDED IN THE WRITTEN NONAGENCY FACILITATOR SERVICES AGREEMENT.** The nonagent facilitator broker or salesperson owes only the duty of confidentiality to the party but owes no other duty to the party except those duties required by law or contained in the a written nonagency facilitator services agreement, if any. In the event a facilitator broker or salesperson, working with a Buyer, shows a property listed by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Seller's Broker (see paragraph I above). In the event a facilitator broker or salesperson, working with a Seller, accepts a showing of the property by a Buyer being represented by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Buyer's Broker (see paragraph III above).

ACKNOWLEDGMENT: I/We acknowledge that I/We have been presented with the above-described options. I/We understand that Buyers who have not signed a Buyer representation contract or nonagency services agreement are not represented by the broker/salesperson and information given to the broker/salesperson will be disclosed to the Seller. I/We understand that written consent is required for a dual agency relationship. This is a disclosure only, NOT a contract for representation.

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

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

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

- Loyalty-broker/salesperson will act only in client(s)' best interest.
- Obedience-broker/salesperson will carry out all client(s)' lawful instructions.

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Disclosure-broker/salesperson will disclose to client(s) all material facts of which broker/salesperson has knowledge which might reasonably affect the client's rights and interests.

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

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

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

(3) If Seller(s) decides not to agree to a dual agency relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented by the broker/salesperson. If Buyer(s) decides not to agree to a dual agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by the broker.

Sec. 13. Minnesota Statutes 2000, section 82.197, is amended by adding a subdivision to read:

Subd. 6. MATERIAL FACTS. (a) Licensees shall disclose to any prospective purchaser all material facts of which the licensees are aware, which could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the property of which the licensees are aware.

(b) It is not a material fact relating to real property offered for sale and no regulatory action shall be brought against a licensee for failure to disclose in any real estate transaction the fact or suspicion that the property:

(1) is or was occupied by an owner or occupant who is or was suspected to be infected with human immunodeficiency virus or diagnosed with acquired immunodeficiency syndrome; or

(2) was the site of an accidental death, natural death, or perceived paranormal activity.

(c) A licensee or employee of the licensee has no duty to disclose information regarding an offender who is required to register under section 243.166, or about whom notification is made under that section, if the broker or salesperson, in a timely manner, provides a written notice that information about the predatory offender registry and persons registered with the registry may be obtained by contacting local law enforcement where the property is located or the department of corrections.

(d) A licensee is not required to disclose, except as otherwise provided in paragraph (e), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified third party and provided to the person. For the purposes of this paragraph, "qualified third party" means a federal, state, or local governmental agency, or any person whom the broker, salesperson, or a party to

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the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report and who is acceptable to the person to whom the disclosure is being made.

(e) A licensee shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report, if a copy of the report is provided to the licensee, described in paragraph (d).

Sec. 14. Minnesota Statutes 2000, section 82.22, subdivision 13, is amended to read:

Subd. 13. **CONTINUING EDUCATION.** (a) After their first renewal date, all real estate salespersons and all real estate brokers shall be required to successfully complete 30 hours of real estate continuing education, either as a student or a lecturer, in courses of study approved by the commissioner, during each 24-month license period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Salespersons and brokers whose initial license period extends more than 12 months are required to complete 15 hours of real estate continuing education during the initial license period. Those licensees who will receive a 12-month license on July 1, 1995, because of the staggered implementation schedule must complete 15 hours of real estate continuing education as a requirement for renewal on July 1, 1996. Licensees may not claim credit for continuing education not actually completed as of the date their report of continuing education compliance is filed.

(b) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision. The commissioner may not approve a course which can be completed by the student at home or outside the classroom without the supervision of an instructor approved by the department of commerce. ~~The commissioner has discretion to establish a pilot program to explore delivery of~~ except accredited courses using new delivery technology, including interactive technology, and the Internet. This pilot program expires on August 1, 2001. Courses in motivation, salesmanship, psychology, or time management shall not be approved by the commissioner for continuing education credit.

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

(d) As part of the continuing education requirements of this section, the commissioner shall require that all real estate brokers and salespersons receive:

(1) ~~at least two hours~~ one hour of training during each license period in courses in laws or regulations on agency representation and disclosure; and

(2) ~~at least two hours~~ one hour of training during each license period in courses in state and federal fair housing laws, regulations, and rules, or other antidiscrimination

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laws, or courses designed to help licensees to meet the housing needs of immigrant and other underserved populations.

Clause Clases (1) does and (2) do not apply to real estate salespersons and real estate brokers engaged solely in the commercial real estate business who file with the commissioner a verification of this status along with the continuing education report required under paragraph (a).

(e) The commissioner is authorized to establish a procedure for renewal of course accreditation.

(f) Approved courses may be sponsored or offered by a broker of a real estate company and may be held on the premises of a company licensed under this chapter. All course offerings must be open to any interested individuals. Access may be restricted by the sponsor based on class size only. Courses must not be approved if attendance is restricted to any particular group of people. A broker must comply with all continuing education rules prescribed by the commissioner.

(g) No more than one-half of the credit hours per licensing period, including continuing education required under subdivision 6, may be credited to a person for attending any combination of courses either:

(1) sponsored by, offered by, or affiliated with a real estate company or its agents;
or

(2) offered using new delivery technology, including interactive technology, and the Internet.

Sec. 15. Minnesota Statutes 2000, section 82.24, subdivision 8, is amended to read:

Subd. 8. **ACCRUED INTEREST.** (a) Each broker shall maintain a pooled interest-bearing trust account for deposit of client funds. The interest accruing on the trust account, less reasonable transaction costs, must be paid to the state treasurer for deposit in the housing trust fund account created under section 462A.201 unless otherwise specified pursuant to an expressed written agreement between the parties to a transaction.

(b) For an account created under paragraph (a), each broker shall direct the financial institution to:

(1) pay the interest, less reasonable transaction costs, computed in accordance with the financial institution's standard accounting practice, at least quarterly, to the state treasurer; and

(2) send a statement to the state treasurer showing the name of the broker for whom the payment is made, the rate of interest applied, the amount of service charges deducted, and the account balance for the period in which the report is made.

The state treasurer shall credit the amount collected under this subdivision to the housing trust fund account established in section 462A.201.

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(c) The financial institution must promptly notify the commissioner if a draft drawn on the account is dishonored. A draft is not dishonored if a stop payment order is requested by an issuer who has a good faith defense to payment on the draft.

Sec. 16. Minnesota Statutes 2000, section 82.27, subdivision 3, is amended to read:

Subd. 3. **ORDER TO SHOW CAUSE.** The commissioner shall issue an order requiring a licensee or applicant for a license to show cause why the license should not be revoked or suspended, or the licensee censured, or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons specific statute or rule that has been violated for the entry of the order. The commissioner may by order summarily suspend a license pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing after having been duly notified of it, such person shall be deemed in default, and the proceeding may be determined against the licensee or applicant upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Sec. 17. Minnesota Statutes 2000, section 82.34, is amended by adding a subdivision to read:

Subd. 7a. **ACCELERATED CLAIMS PAYMENT.** (a) The commissioner shall pay claims from the recovery portion of the fund that do not exceed the jurisdiction limits for conciliation court matters as specified in section 491A.01 on an accelerated basis if all of the requirements in subdivision 7 and paragraphs (b) to (f) have been satisfied.

(b) When any aggrieved person as defined in subdivision 7 obtains a judgment in any court of competent jurisdiction, regardless of whether the judgment has been discharged by a bankruptcy court against a licensee on grounds specified in subdivision 7, the aggrieved person may file a verified application with the commissioner for payment out of the recovery portion of the fund of the amount of actual and direct out-of-pocket loss in the transaction, but excluding any attorney fees, interest on the loss, and on any judgment obtained as a result of the loss, up to the conciliation court jurisdiction limits, of the amount unpaid upon the judgment. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant.

(c) The commissioner shall send the licensee a copy of the verified application by first-class mail to the licensee's address as it appears in the records of the department of commerce with a notice that the claim will be paid 15 days from the date of the notice unless the licensee notifies the commissioner before that date of the commencement of an appeal of the judgment, if the time for appeal has not expired, and that payment of the claim will result in automatic suspension of the licensee's license.

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(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.

Sec. 18. Minnesota Statutes 2000, section 82.34, subdivision 15, is amended to read:

Subd. 15. Any sums received by the commissioner pursuant to any provisions of this section shall be deposited in the state treasury, and credited to the real estate education, research and recovery fund, and said sums shall be allocated exclusively for the purposes provided in this section. All moneys in the fund are appropriated annually to the commissioner for the purposes of this section.

All money credited to the fund under section 462A.201 may only be used for purposes under subdivision 6, clause (g). Beginning in 1990, the commissioner must, on February 1 of each year, review the amount of money spent or allocated for uses under subdivision 6, clause (g), for the previous calendar year. If the amount spent or allocated is less than the amount credited to the fund under section 462A.201 during the same calendar year, the difference must be transferred from the fund to the housing trust fund account established in section 462A.201. If the fund balance exceeds \$4,000,000, the commissioner may suspend the fee imposed under subdivision 3.

Sec. 19. Minnesota Statutes 2000, section 82B.14, is amended to read:

82B.14 EXPERIENCE REQUIREMENT.

(a) As a prerequisite for licensing as a registered real property appraiser or licensed real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 2,000 hours of experience in real property appraisal.

As a prerequisite for licensing as a certified residential real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 2,500 hours of experience in real property appraisal.

As a prerequisite for licensing as a certified general real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 3,000 hours of experience in real property appraisal. At least 50 percent, or 1,500 hours, must be in nonresidential appraisal work.

(b) Each applicant for license under section 82B.11, subdivision 3, 4, or 5, shall give under oath a detailed listing of the real estate appraisal reports or file memoranda for which experience is claimed by the applicant. Upon request, the applicant shall

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make available to the commissioner for examination, a sample of appraisal reports that the applicant has prepared in the course of appraisal practice.

(c) Applicants may not receive credit for experience accumulated while unlicensed, if the experience is based on activities which required a license under this section.

Sec. 20. Minnesota Statutes 2000, section 83.25, subdivision 1, is amended to read:

Subdivision 1. No person shall offer or sell in this state any interest in subdivided lands without having obtained:

(1) a license under chapter 82; and

(2) an additional license to offer or dispose of subdivided lands. This license may be obtained by submitting an application in writing to the commissioner upon forms prepared and furnished by the commissioner. Each application shall be signed and sworn to by the applicant and accompanied by a license fee of \$10 per year. The commissioner may also require an additional examination for this license. This clause expires July 1, 2003.

Sec. 21. Minnesota Statutes 2000, section 317A.203, is amended to read:

317A.203 NUMBER.

A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws, ~~except that if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with voting rights.~~

Sec. 22. Minnesota Statutes 2000, section 326.91, subdivision 1, is amended to read:

Subdivision 1. **CAUSE.** The commissioner may by order deny, suspend, or revoke any license or may censure a licensee, and may impose a civil penalty as provided for in section 45.027, subdivision 6, if the commissioner finds that the order is in the public interest, and that the applicant, licensee, or affiliate of an applicant or licensee, or other agent, owner, partner, director, governor, shareholder, member, officer, qualifying person, or managing employee of the applicant or licensee or any person occupying a similar status or performing similar functions:

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

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

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

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(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

(5) has violated or failed to comply with any provision of sections 326.83 to 326.98 or any rule or order under sections 326.83 to 326.98;

(6) has been shown to be incompetent, untrustworthy, or financially irresponsible;

(7) has been convicted of a violation of the State Building Code or, in jurisdictions that do not enforce the State Building Code, has refused to correct a violation of the State Building Code when the violation has been certified by a Minnesota licensed structural engineer;

(8) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326.83, subdivision 17, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid;

(9) has not furnished to the person making payment either a valid lien waiver as to any unpaid labor performed, or skill, material, or machinery furnished for an improvement, or a payment bond in the basic amount of the contract price for the improvement conditioned for the prompt payment to any person or persons entitled to payment;

(10) has engaged in conduct which was the basis for a contractor's recovery fund payment pursuant to section 326.975, which payment has not been reimbursed;

(11) has engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit arising out of their activities as a licensee under this chapter;

(12) has had a judgment entered against them for failure to make payments to employees or subcontractors, and all appeals of the judgment have been exhausted or the period for appeal has expired;

(13) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit; or

(14) has made use of forged mechanics' lien waivers under chapter 514.

Sec. 23. Minnesota Statutes 2000, section 326.975, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** (a) In addition to any other fees, each applicant for a license under sections 326.83 to 326.98 shall pay a fee to the contractor's recovery fund. The contractor's recovery fund is created in the state treasury and must be administered by the commissioner in the manner and subject to all the requirements and limitations provided by section 82.34 with the following exceptions:

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(1) each licensee who renews a license shall pay in addition to the appropriate renewal fee an additional fee which shall be credited to the contractor's recovery fund. The amount of the fee shall be based on the licensee's gross annual receipts for the licensee's most recent fiscal year preceding the renewal, on the following scale:

Fee	Gross Receipts
\$100	under \$1,000,000
\$150	\$1,000,000 to \$5,000,000
\$200	over \$5,000,000

Any person who receives a new license shall pay a fee based on the same scale;

(2) the sole purpose of this fund is to compensate any aggrieved owner or lessee of residential property located within this state who obtains a final judgment in any court of competent jurisdiction against a licensee licensed under section 326.84, on grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under section 326.83, subdivision 19, on the owner's residential property or on residential property rented by the lessee, or on new residential construction which was never occupied prior to purchase by the owner, or which was occupied by the licensee for less than one year prior to purchase by the owner, and which cause of action arose on or after April 1, 1994;

(3) nothing may obligate the fund for more than \$50,000 per claimant, nor more than ~~\$50,000~~ \$75,000 per licensee; and

(4) nothing may obligate the fund for claims based on a cause of action that arose before the licensee paid the recovery fund fee set in clause (1), or as provided in section 326.945, subdivision 3.

(b) Should the commissioner pay from the contractor's recovery 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 authorizing payment from the fund. No licensee shall be granted reinstatement until the licensee has repaid in full, plus interest at the rate of 12 percent a year, twice the amount paid from the fund on the licensee's account, and has obtained a surety bond issued by an insurer authorized to transact business in this state in the amount of at least \$40,000.

Sec. 24. Minnesota Statutes 2000, section 332.41, is amended to read:

332.41 APPEALS.

Subdivision 1. ~~FILING OF APPEAL.~~ In the rejection of an application for a license or the renewal thereof filed under sections 332.31 to 332.45 or of the suspension or revocation of a license granted under sections 332.31 to 332.45 the applicant or licensee may within 90 days after receipt of notice of such rejection, suspension, or revocation, file an appeal and thereafter prosecute the appeal in accordance with the provisions of the statutes governing appeal from, or review of,

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decisions of administrative agencies in this state.

Subd. 2. **SUPERSEDEAS.** The filing of an appeal from an order of the commissioner of commerce rejecting an application for a license by a collection agency engaged in business as of July 1, 1969, or rejecting an application for the renewal of a license, or suspending or revoking a license within 60 days after the date of such order, shall operate as a supersedeas which shall continue pending final determination of such appeal.

Appeal from a denial, suspension, revocation, or censure of a license must be made according to chapter 14.

Sec. 25. Minnesota Statutes 2000, section 359.02, is amended to read:

359.02 TERM.

A notary commissioned under section 359.01 holds office for five years, unless sooner removed by the governor or the district court, or by action of the commissioner. Within ~~seven months~~ 60 days before the expiration of the commission a notary may be ~~reappointed~~ apply for reappointment for a new term to commence and to be designated in the new commission as beginning upon the day immediately following the date of the expiration. A notary whose commission expires on January 1, 2005, may apply for reappointment six months before the expiration date. The reappointment takes effect and is valid although the appointing governor may not be in the office of governor on the effective day.

(a) ~~All notary commissions issued before January 31, 1995, will expire on January 31, 1995.~~

(b) ~~All notary commissions issued after January 31, 1995, will expire at the end of the licensing period, which will end every fifth year following January 31, 1995.~~

(c) ~~All notary commissions issued during a licensing period expire at the end of that period as set forth in this section~~ expire on January 31 of the fifth year following the year of issue.

Sec. 26. Minnesota Statutes 2000, section 507.45, subdivision 3, is amended to read:

Subd. 3. **REQUIREMENTS FOR REAL ESTATE PERSONNEL.** If the closing services are to be provided by a real estate broker, real estate salesperson, or real estate closing agent, the following regulations shall apply.

(a) The written contract for closing services shall state in at least 10-point type that the real estate broker, real estate salesperson, or real estate closing agent has not and, under applicable state law, may not express opinions regarding the legal effect of the closing documents or of the closing itself.

(b) No closing fee may be charged in connection with the transfer of the legal or equitable ownership of a property if a closing is performed without either a mortgagee's or owner's title insurance commitment or a legal opinion regarding the status of title.

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Sec. 27. STUDY; FAIR HOUSING TRAINING.

The commissioner of commerce shall examine the issue of whether licensed occupations under the jurisdiction of the department and related to the purchase or financing of residential housing, including, but not limited to, appraisers, and employees of licensed mortgage originators and servicers, should be required to attend continuing education courses in state and federal fair housing law, and other antidiscrimination laws, in order to further consumer protection. The commissioner shall report the results of the examination to the commerce committees of the legislature by February 1, 2002.

Sec. 28. APPROPRIATION.

Up to \$1,000,000 is appropriated from the real estate education, research, and recovery fund established under Minnesota Statutes, section 82.34, to the department of commerce for an educational campaign aimed at fair housing and housing-related antidiscrimination initiatives. The appropriation must be used for educating real estate licensees and for a public information campaign across the state on consumer's rights under current fair housing laws. The educational campaign may include, but is not limited to, television and radio advertisements and printed material. The materials used for the public information campaign may be prepared in multiple languages if necessary.

Sec. 29. EFFECTIVE DATE.

Sections 1 to 8, 13, 19, and 26 are effective the day following final enactment. Section 14 is effective July 1, 2001. Section 21 is effective July 1, 2001, and applies to nonprofit corporations formed on or after that date. Section 23 is effective January 1, 2001, and applies to claims arising from incidents or conduct occurring on or after that date.

Presented to the governor May 25, 2001

Signed by the governor May 29, 2001, 11:28 a.m.

CHAPTER 209—S.F.No. 229

An act relating to criminal records; requiring that crime victims be notified of expungement proceedings and allowed to submit a statement; amending Minnesota Statutes 2000, sections 609A.02, subdivision 3; 609A.03, subdivisions 2, 3, 4, 5; 611A.0385; 611A.06, by adding a subdivision.

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

Section 1. Minnesota Statutes 2000, section 609A.02, subdivision 3, is amended to read:

Subd. 3. **CERTAIN CRIMINAL PROCEEDINGS NOT RESULTING IN A CONVICTION.** A petition may be filed under section 609A.03 to seal all records

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