

(3) where a sidewalk is so obstructed as to prevent safe use;

(4) when so directed by a traffic control device or by a peace officer; or

(5) temporarily in order to gain access to a motor vehicle.

(d) An electric personal assistive mobility device may not be operated at any time on a roadway with a speed limit of more than 35 miles per hour except to make a direct crossing of the roadway in a marked crosswalk.

(e) An electric personal assistive mobility device may not be operated at any time while carrying more than one person.

(f) A person operating an electric personal assistive mobility device on a sidewalk must yield the right-of-way to pedestrians at all times. A person operating an electric personal assistive mobility device on a bicycle path must yield the right-of-way to bicycles at all times.

Subd. 3. REFLECTORS. An electric personal assistive mobility device may not be operated unless the device bears reflectorized material on the front, back, and wheels, visible at night from 600 feet when illuminated by the lower beams of head lamps of a motor vehicle.

Subd. 4. LOCAL REGULATION. A local road authority may not further regulate the operation of electric personal assistive mobility devices, except that a local road authority may allow and regulate the operation of these devices on roadways within its jurisdiction that have a speed limit of more than 35 miles per hour.

Sec. 5. Minnesota Statutes 2000, section 171.01, subdivision 3, is amended to read:

Subd. 3. MOTOR VEHICLE. Every vehicle which that is self-propelled, other than an electric personal assistive mobility device as defined in section 169.01, subdivision 90, and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles.

Presented to the governor March 25, 2002

Signed by the governor March 26, 2002, 2:27 p.m.

CHAPTER 286—S.F.No. 2821

An act relating to commerce; regulating the conduct of real estate industry licensees; modifying disclosures; regulating records retention requirements; amending Minnesota Statutes 2000, sections 82.19, subdivision 9; 82.23, subdivision 1; 82.27, by adding a subdivision; Minnesota Statutes 2001 Supplement, section 82.197, subdivisions 1, 4, 6.

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

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Section 1. Minnesota Statutes 2000, section 82.19, subdivision 9, is amended to read:

Subd. 9. **EXCLUSIVE AGENCY AGREEMENTS.** (a) Except as provided in paragraph (b) (c), a licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written contract granting exclusive listing contract or exclusive contract for nonagency services representation or assistance in connection with the property with to another real estate broker, buyer, or lessee, nor shall a licensee negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has executed a written contract granting exclusive buyer representation contract or exclusive contract for nonagency services representation or assistance for the purchase, lease, or exchange of the real property with another real estate broker.

(b) Licensees shall not induce any party to a contract of sale, purchase, lease, or option, or to an exclusive listing agreement or buyer's agreement, or facilitator services agreement, to breach the contract, option, or agreement.

(c) A licensee may discuss the terms upon which a listing or buyer representation contract or a contract for nonagency facilitator services may be entered into after expiration of any existing exclusive contract when the inquiry or discussion is initiated by the owner, lessor, buyer, or lessee. The licensee must inquire of the owner, lessor, buyer, or lessee whether such an exclusive contract exists.

Sec. 2. Minnesota Statutes 2001 Supplement, 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 facilitator 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. 3. Minnesota Statutes 2001 Supplement, section 82.197, subdivision 4, is amended to read:

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

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for representation, you will be treated as a customer and will not receive any representation from the broker or salesperson. The broker or salesperson will be acting as a Facilitator (see paragraph V 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 Seller's broker owes to the Seller the fiduciary duties described below.(2) The broker must also disclose to the Buyer 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 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 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.

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 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

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disclose to the Buyer 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.

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 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 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.

V.

Facilitator: A broker or salesperson who performs services for 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. **THE 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 A WRITTEN FACILITATOR SERVICES AGREEMENT.** The facilitator broker or salesperson owes the duty of confidentiality to the party but owes no other duty to the party except those duties required by law or contained in a written 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

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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).

(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.

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. 4. Minnesota Statutes 2001 Supplement, section 82.197, subdivision 6, is amended 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

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

(3) is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.

(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 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. 5. Minnesota Statutes 2000, section 82.23, subdivision 1, is amended to read:

Subdivision 1. **RETENTION.** A licensed real estate broker shall retain for three years copies of all listings, buyer representation and facilitator services contracts, deposit receipts, purchase money contracts, canceled checks, trust account records, and such other documents as may reasonably be related to carrying on a real estate brokerage business. The retention period shall run from the date of the closing of the transaction, or from the date of the listing document if the transaction document is not consummated. The following documents need not be retained:

(1) agency disclosure forms provided to prospective buyers or sellers, where no contractual relationship is subsequently created and no services are provided by the licensee; and

(2) facilitator services contracts or buyer representation contracts entered into with prospective buyers, where the prospective buyer abandons the contractual relationship before any services have been provided by the licensee.

Sec. 6. Minnesota Statutes 2000, section 82.27, is amended by adding a subdivision to read:

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Subd. 2a. MONETARY SETTLEMENTS. The commissioner shall not coerce or attempt to coerce a licensee to enter into any monetary settlement with a consumer in connection with any complaint investigation. The commissioner may consider the totality of the circumstances, including any efforts by the licensee to mitigate any losses by a consumer, in determining the appropriateness or severity of administrative sanction.

Presented to the governor March 25, 2002

Signed by the governor March 26, 2002, 2:26 p.m.

CHAPTER 287—S.F.No. 2459

An act relating to health; modifying requirements for supplemental nursing services agencies; providing for revocation of supplemental nursing services agency's registration if the agency supplies persons with illegal diplomas to health care facilities; providing for revocation procedures; amending Minnesota Statutes 2001 Supplement, sections 144A.70, subdivision 6; 144A.71, subdivision 2; 144A.72, subdivision 1, by adding subdivisions; 144A.74.

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

Section 1. Minnesota Statutes 2001 Supplement, section 144A.70, subdivision 6, is amended to read:

Subd. 6. SUPPLEMENTAL NURSING SERVICES AGENCY. "Supplemental nursing services agency" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies. Supplemental nursing services agency does not include an individual who only engages in providing the individual's services on a temporary basis to health care facilities. Supplemental nursing services agency also does not include any nursing service agency that is limited to providing temporary nursing personnel solely to one or more health care facilities owned or operated by the same person, firm, corporation, or partnership.

Sec. 2. Minnesota Statutes 2001 Supplement, section 144A.71, subdivision 2, is amended to read:

Subd. 2. APPLICATION INFORMATION AND FEE. The commissioner shall establish forms and procedures for processing each supplemental nursing services agency registration application. An application for a supplemental nursing services agency registration must include at least the following:

(1) the names and addresses of the owner or owners of the supplemental nursing services agency;

(2) if the owner is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors;

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