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STATE OF MINNESOTA



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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 7			
1	Monday June 21	Monday June 28	Monday July 5
2	Monday June 28	Friday July 2	Monday July 12
3	Friday July 2	Monday July 12	Monday July 19
4	Monday July 12	Monday July 19	Monday July 26

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quic
Governor

Carol Anderson Porter
Editor

David Zunker
Information Officer

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener, Roy Schmidtke, Jean Walburg
Editorial Staff

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Debbie Kobold
Circulation Manager

Margaret Connelly
State Register Index Editor

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How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
• Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
• Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
• Notice of adoption of temporary rules.
• Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive (Issue 39, cumulative for 1-39); Issues 14-25, inclusive (Issues 40-51, inclusive); Issue 26, cumulative for 1-26 (Issue 52, cumulative for 1-52); Issue 27-38, inclusive.

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

**Department of Agriculture
Marketing Division**

**Proposed Rules Governing Use of the Minnesota Food Products Logo (3 MCAR
§§ 1.4035-1.4040)**

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes § 17.102, subd. 1. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner of Agriculture is authorized by Minnesota Statutes § 17.102 to establish a Minnesota food products logo or labeling statement for use in identifying food products which are Minnesota grown, processed or manufactured, and to promulgate rules for use of the logo. The proposed rules contain a facsimile of the Minnesota food products logo; provisions regarding eligibility of producers, processors and manufacturers to use the logo; requirements for application and authorization to use the logo, as well as procedures for renewing applications; and provisions for promotional use of the logo.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250.00, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250.00, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this notice and proposed rules are available and may be obtained by contacting Mr. Heil.

June 11, 1982

Rollin M. Dennistoun
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.4035 Authority and purpose.

A. Purpose. In keeping with the policy of the department to expand, improve, and develop markets for Minnesota agricultural products by promoting their use and sale, it is the purpose of the Minnesota food products logo to identify and promote those food products which are Minnesota produced, processed, or manufactured.

B. Authority. Rules 3 MCAR §§ 1.4035-1.4040 are prescribed by the commissioner pursuant to Minn. Stat. § 17.102, subd. 1.

3 MCAR § 1.4036 Definitions.

A. Applicability. For the purposes of 3 MCAR §§ 1.4035-1.4040 the terms in this rule have the meanings given them.

B. Agricultural products. "Agricultural products" means livestock, dairy products, poultry or poultry products, fish, fruit of all kinds, vegetables, grains, bees, and apiary products.

C. Certification mark. "Certification mark" means the logo registered by the department with the Secretary of State and the United States Office of Patents and Trademarks to identify a food product which is produced, processed, or manufactured in Minnesota.

D. Commissioner. "Commissioner" means the Commissioner of Agriculture or his authorized representative.

E. Commodity council. "Commodity council" means any of the agricultural research and promotion councils created under the provisions of Minnesota Statutes.

F. Department. "Department" means the Department of Agriculture.

G. Food product. "Food product" means an agricultural product used directly for food or drink for human consumption or a combination of agricultural products, raw materials, and food ingredients which is processed or manufactured into an article of food or drink for human consumption.

H. Improper use. "Improper use" means an unauthorized use of the logo or a use of the logo inconsistent with 3 MCAR §§ 1.4035-1.4040.

I. Labeling statement. "Labeling statement" means the phrase "Minnesota Food Product" or other words signifying Minnesota origin.

J. Logo. "Logo" means the Minnesota food products logo. A facsimile of the logo appears in Exhibit 3 MCAR § 1.4036 J.-1.

K. Manufacturer; processor. "Manufacturer" or "processor" means an individual, partnership, cooperative association, or corporation which processes or manufacturers raw materials and other food ingredients into food products, reprocesses food products, packages food products for sale to others for resale, or commercially slaughters animals or poultry. The terms include cold storage warehouses as defined in Minn. Stat. § 28.01, subd. 3, dairy plants as defined in Minn. Stat. § 32.01, subd. 6, and individuals, partnerships, cooperative associations, or corporations which extract, ferment, distill, pickle, bake, freeze, dry, smoke, grind, mix, stuff, pack, bottle, treat, or preserve food for sale to others for resale.

L. Producer. "Producer" means an individual, partnership, family farm, family farm corporation, authorized farm corporation, or cooperative association engaged in the production for sale of agricultural products.

M. Retailer. "Retailer" means an individual, partnership, cooperative association, or corporation selling a food product to the consumer and not for the purpose of resale in any form.

N. Trade association. "Trade association" means a Minnesota-based organization of producers, processors, manufacturers, or retailers of food products.

O. Wholesaler. "Wholesaler" means an individual, partnership, cooperative association, corporation, business trust, or unincorporated organization which sells or supplies a food product to a retailer, industrial buyer, restaurant, or institution or sells on behalf of one wholesaler to another wholesaler.

3 MCAR § 1.4037 Eligibility for application to use the logo.

A. Producers. A producer may apply to use the logo on an agricultural product to be used in its original state as a food product or on an agricultural product intended to be processed or manufactured into a food product, if the agricultural product is produced on a production unit located completely or in part within the boundaries of Minnesota, and if the food product meets all applicable minimum requirements for the production of the food product in Minnesota.

B. Processors. A processor may apply to use the logo on a food product if the food product was processed or manufactured in a plant located completely or in part within the boundaries of Minnesota, and if the food product meets all applicable minimum requirements for processing or manufacturing the food product in Minnesota.

3 MCAR § 1.4038 Application; authorization; renewal.

A. Application.

1. An eligible producer, processor, or manufacturer of Minnesota food products may apply to use the logo.

2. Application shall be made on forms provided by the commissioner and shall contain the following:

a. the name and address of the applicant;

b. the location of the production unit, processing plant, or manufacturing plant providing food products on which the logo is intended to be used;

c. a list of all food products on which the logo may be used;

d. at least one facsimile of the tag, sticker, package, container, or other way the logo will be used on the food products. The facsimile must include the manner in which the labeling statement will accompany the logo;

e. a statement that the food product on which the logo may be used is Minnesota produced, processed, or manufactured and meets all applicable minimum requirements for producing, processing, or manufacturing the food product in Minnesota; and

f. any other information deemed relevant and necessary by the commissioner.

3. Application to use the logo with any food product not listed with the commissioner may be made between renewals of a previous application.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

B. Authorization.

1. Authorization to use the logo is dependent upon approval of the application by the commissioner and extends for three years from the authorization date.
2. Use of the logo, with the labeling statement, on approved food products remains discretionary with the authorized producer, processor, or manufacturer during the three-year authorization period.
3. When used on a food product, the logo must be accompanied by an approved labeling statement.
4. Authorized users will receive a certificate of qualification to use the logo, including a registration number, which they may display in their place of business. Reproduction proofs of the logo will also be furnished to authorized users.
5. The department may advise and assist any authorized user of the logo with respect to the size of the logo, its color, its placement on packages, or similar matters, as requested.

C. Renewal.

1. Every three years the commissioner shall notify authorized users of the logo 60 days prior to the scheduled renewal date.
2. Authorization to use the logo shall be renewed if reapplication, including any changes from the previous application, is made on forms provided by the commissioner and approval is granted by the department.
3. Renewal may be denied if the commissioner determines there has been improper use of the logo or if the user fails to reapply for use of the logo within 30 days after the renewal date and fails to notify the commissioner of the reason.

3 MCAR § 1.4039 Promotional use of the logo. The logo may be used with or without the labeling statement for promotional purposes by an authorized producer, processor, or manufacturer on any materials used in a direct, national or international marketing effort, by a wholesaler, retailer, commodity council, or trade association in any promotion of Minnesota food products, or by the department on any stationery, business cards, or other items determined by the commissioner which will promote Minnesota food products. Use of the logo and any accompanying labeling statement must have the prior approval of the commissioner in cases under 3 MCAR § 1.4039 where Minnesota food products are being promoted.

3 MCAR § 1.4040 Enforcement.

A. Investigation and revocation. If the commissioner has reason to believe there is improper use, the commissioner may investigate any use of the logo and determine whether there is improper use. The commissioner may revoke authorization to use the logo when its use is inconsistent with 3 MCAR §§ 1.4035-1.4040.

B. Legal action. When investigation reveals improper use of the logo, the commissioner may seek injunctive relief or other available legal remedies in a court of competent jurisdiction.

C. No warranty of quality. The certification mark does not represent a warranty by the department of any kind, express or implied, as to the quality of the food product on which it appears. The certification mark means only that the food product certified was produced, processed, or manufactured in Minnesota, and that the authorized producer, processor, or manufacturer represents that the food product meets all applicable minimum requirements for producing, processing, or manufacturing the food product in Minnesota.

D. Other law. Compliance with 3 MCAR §§ 1.4035-1.4040 does not exempt a producer, processor, or manufacturer from complying with other laws and rules relating to food products and the labeling of food products.



Exhibit 3 MCAR § 1.0436 J.-1
Minnesota Food Products Logo

Department of Commerce Commissioner of Securities and Real Estate

Proposed Adoption, Amendment and Repeal of Rules and Forms of the State Securities and Real Estate Division Governing Real Estate Brokers and Salespersons

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Securities and Real Estate Division proposes to adopt, amend and repeal the above-entitled rules and forms without a public hearing. The commissioner has determined that the proposed adoption, amendment and repeal of these rules and forms will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

Authority for the adoption of these rules is contained in Minnesota Statutes § 82.28 (1980). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available for inspection by the public, during regular business hours, at the above address.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Hardy.

The proposed rules follow this notice.

June 11, 1982

Mary Alice Brophy
Commissioner of Securities and Real Estate

Rules as Proposed

4 MCAR § 1.41500 Definitions.

A. Applicability. For the purposes of ~~these rules~~ 4 MCAR §§ 1.41501-1.41552, the terms defined in this ~~section~~ shall rule have the meanings given to them.

~~1. "Chapter" shall mean Minnesota Laws 1973, Ch. 410 (codified as Minn. Stat. 1973, ch. 82).~~

B. Commissioner. "Commissioner" means the Commissioner of Securities and Real Estate.

~~2. C. Licensee.~~ "Licensee" ~~shall mean any~~ means a person duly licensed under this chapter Minn. Stat. ch. 82.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.

PROPOSED RULES

D. Loan broker. "Loan broker" means a licensed real estate broker or salesperson who for another and for a commission, fee, or other valuable consideration or with the intention or expectation of receiving the same (1) directly or indirectly negotiates or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance on real estate or (2) represents himself or herself or otherwise holds himself or herself out as a licensed real estate broker or salesperson (a) in connection with any transaction in which he or she directly or indirectly negotiates or offers or attempts to negotiate a loan or (b) in connection with the conduct of his or her ordinary business activities as a loan broker.

"Loan broker" does not include a licensed real estate broker or salesperson who, in the course of representing a purchaser of real estate, incidentally assists the purchaser in obtaining financing for the real property in question if the licensee does not receive a separate commission, fee, or other valuable consideration for this service.

E. Primary broker. "Primary broker" means the broker on whose behalf salespersons are licensed to act pursuant to Minn. Stat. § 82.20, subd. 6. In the case of a corporation licensed as a broker, "primary broker" means each officer of the corporation who is individually licensed to act as a broker for the corporation. In the case of a partnership, "primary broker" means each partner licensed to act as a broker for the partnership.

F. Overpayment. "Overpayment" means any payment of moneys in excess of a statutory fee or for a license for which a person does not qualify.

~~3.~~ G. Override clause. "Override clause" ~~shall mean~~ means a provision in a listing agreement or similar instrument allowing the broker to receive a commission when the property is sold, after the listing agreement has expired, to persons with whom a broker or salesperson had negotiated or exhibited the property prior to the expiration of the listing agreement.

H. Person. "Person" means a natural person, firm, institution, partnership, corporation, or association.

I. Property. "Property" means real property or other property within the scope of Minn. Stat. ch. 82, unless the context clearly indicates otherwise.

~~4.~~ J. Protective list. "Protective list" ~~shall refer to~~ means the written list of names and addresses of prospective purchasers with whom a ~~broker or salesperson had~~ licensee has negotiated or the sale or rental of the property or to whom a licensee has exhibited the property prior to the expiration of the listing agreement. For the purposes of this paragraph "property" means the property which is the subject of the listing agreement in question.

K. Rental service. "Rental service" means a person who gathers and catalogs information concerning apartments or other units of real estate available for rent, and who, for a fee, provides information intended to meet the individual needs of specifically identified lessors or prospective lessees. This term shall not apply to newspapers or other periodicals with a general circulation or individual listing contracts between an owner or lessor of property and a licensee.

L. School. "School" means a person offering or providing real estate education.

4 MCAR § 1.41501 Payment of fees.

A. Cash not accepted. All fees shall be paid by check, draft, or other negotiable or non-negotiable instrument or order of withdrawal which is drawn against funds held by a financial institution. Cash will not be accepted.

B. Overpayment of fees. "Overpayment" ~~shall mean any payment of monies in excess of a statutory fee or for an examination or license for which a person does not qualify.~~ An overpayment of any a fee paid pursuant to this chapter Minn. Stat. ch. 82 shall be refunded within a reasonable time after a letter requesting ~~said~~ the refund is received by the commissioner and signed by the person making the overpayment.

Refunds shall not be given for other than overpayment of fees. A request for a refund of an overpayment must be received by the commissioner within three months of the date of deposit or it will be forfeited.

4 MCAR § 1.41502

~~A.~~ Passing grade. ~~While the examinations are different~~ A passing grade ~~of~~ for a salesperson's and broker's examination shall be a score of 75 percent or higher ~~shall be a passing grade for~~ on the uniform portion and a score of 75 percent or higher on the state portion of the ~~real estate broker and real estate salesperson's~~ examination.

The commissioner shall not accept the scores of a person who has cheated on an examination. Cheating on a real estate examination shall be grounds for denying an application for a broker's or salesperson's license.

4 MCAR § 1.41503 License.

A. Application for broker's license. After successful completion of the real estate broker's examination, a ~~person an~~

PROPOSED RULES

individual shall have one year from the date of such the examination to apply for a broker's license, unless such the individual is a salesperson who remains continually continuously active in the real estate field as a licensee. Failure to apply for the broker's license or to remain continuously active in the real estate field will result in necessitate a re-examination reexamination.

An individual who holds a broker's license in his or her own name or for or on behalf of a corporation or partnership shall be issued an additional broker's license only upon demonstrating: (1) that the additional license is necessary in order to serve a legitimate business purpose; (2) that he or she will be capable of supervising all salespersons over whom he or she will have supervisory responsibility or, in the alternative, that he or she will have no supervisory responsibilities under the additional license; and (3) that he or she has a substantial ownership interest in each corporation or partnership for or on whose behalf he or she holds or will hold a broker's license.

For the purposes of this rule a legitimate business purpose includes engaging in a different and specialized area of real estate or maintaining an existing business name.

B. Cancellation of a salesperson's or broker's license. A salesperson's or broker's license which has been cancelled for failure of a salesperson licensee to complete required instruction post-licensing education requirements must be returned to the commissioner by the salesperson's licensee's broker within ten days of receipt of notice of cancellation. Such The license may shall be reinstated without re-examination reexamination by completing the required instruction and, filing an application, and paying the fee for a salesperson's or brokers' license within one year of the cancellation date.

C. Waivers. The commissioner may waive the real estate licensing experience requirement for the broker's examination.

1. Qualifications. An applicant for a waiver shall provide evidence of either:

- a. Successful completion of a minimum of ninety (90) quarter credits or two hundred seventy (270) classroom hours of real estate-related studies; or
- b. A minimum of five (5) consecutive years of practical experience in real estate-related areas; or
- c. Successful completion of thirty (30) credits or ninety (90) classroom hours and three (3) consecutive years of practical experience in real estate-related areas.

2. Requests. A request for a waiver shall be submitted to the commissioner in writing and be accompanied by such documents as necessary to evidence qualification as set forth in 1.

3. The waiver will lapse if the applicant fails to successfully complete the broker's examination within one year from the date of the granting of the waiver.

4 MCAR § 1.41505

~~A.~~ Trust funds.

~~+~~ A. Listing broker. Unless otherwise agreed upon in writing by the parties to a transaction, the broker with whom trust funds are to be deposited in satisfaction of Minn. Stat. § 82.24, subd. 1 of this chapter shall be the listing broker.

~~2.~~ Trust funds received by a broker or his salesperson shall include but not be limited to funds received in connection with the following:

- ~~a.~~ offers to purchase
- ~~b.~~ options
- ~~c.~~ land contracts
- ~~d.~~ rent contracts
- ~~e.~~ mortgages
- ~~f.~~ mortgage payments
- ~~g.~~ real estate taxes and insurance payments
- ~~h.~~ any other receipts pertaining to the sale, exchange, purchase, or rental of real estate.

~~This obligation shall extend to business opportunities and mortgage financing.~~

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PROPOSED RULES

~~3- B. Maintenance. Said~~ Trust funds shall be maintained in ~~the~~ a trust account until disbursement is made in accordance with the terms of the applicable agreements ~~provided 4 MCAR § 1.41505 A.2. above~~ and proper accounting is made to the parties entitled ~~thereto~~ to an accounting.

Disbursement shall be made within a reasonable time following the consummation or termination of a transaction if the applicable agreements are silent as to the time of disbursement.

4- C. Consent to place in special account. Trust funds may be placed by the broker in a special account; which may be an interest-bearing account or certificate of deposit, provided if the buyer and the seller consent in writing to such the special account or deposit and to the disposition of such the trust funds, including any interest thereon.

D. Licensee as principal. Funds which would constitute trust funds if received by a licensee acting as an agent must, if received by a licensee acting as principal, be placed in a trust account unless a written agreement signed by all parties to the transaction specifies a different disposition of the funds. The written agreement shall state that the funds would otherwise be placed in a real estate trust account.

Rules as Proposed (all new material)

4 MCAR § 1.41514 Loan brokers; standards of conduct. Loan brokers shall comply with the requirements of A.-F.

A. Contract provisions. A loan broker shall enter into a written contract with each customer and shall provide a copy of the written contract to each customer at or before the time of receipt of any fee or valuable consideration paid for loan brokerage services. The written contract shall:

1. Identify the escrow account into which the fees or consideration will be deposited;
2. Set forth the circumstances under which the loan broker will be entitled to disbursement from the escrow account;
3. Set forth the circumstances under which the customer will be entitled to a refund of all or part of the fee;
4. Specifically describe the services to be provided by the loan broker and the dates by which the services will be performed;
5. State the maximum rate of interest to be charged on any loan obtained;
6. Contain a statement which notifies the customer of his or her rights to cancel the contract pursuant to B.;
7. Disclose, with respect to the 12-month period ending ten business days prior to the date of the contract in question, the percentage of the loan broker's customers for whom loans have actually been funded as a result of the loan broker's services. This disclosure need not be made for any period prior to the effective date of this rule; and
8. Disclose the cancellation rights and procedures set forth in B.

B. Cancellation. Any customer of a loan broker who pays a fee prior to the time a loan is actually funded shall have an unconditional right to rescind the contract for loan brokerage services at any time until midnight of the third business day after the day on which the contract is signed. Cancellation is evidenced by the customer giving written notice of cancellation to the loan broker at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox properly addressed to the loan broker with postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the customer not to be bound by the contract. No act of a customer of a loan broker shall be effective to waive the right to rescind as provided in this paragraph.

C. Escrow account. The loan broker shall deposit in an escrow account within 48 hours all fees received prior to the time a loan is actually funded. The escrow account shall be in a bank located within the State of Minnesota and shall be controlled by an unaffiliated accountant, lawyer, or bank officer or employee.

D. Records. The loan broker shall maintain a separate record of all fees received for services performed or to be performed as a loan broker. Each record shall set forth the date funds are received; the person from whom the funds are received; the amount received; the date of deposit in the escrow account; the account number; the date the funds are disbursed and the check number of the disbursement; and a description of each disbursement and the justification for the disbursement.

E. Monthly statement. The loan broker shall provide to each customer at least monthly a detailed written accounting of all disbursements of the customer's funds from the trust account.

F. Disclosure of lenders. The loan broker shall provide to each customer at the expiration of the contract a list of the lenders or loan sources to whom loan applications were submitted on behalf of the customer.

4 MCAR § 1.41515 Standards of conduct. The methods, acts, or practices set forth in 4 MCAR §§ 1.41516-1.41526 are standards of conduct governing the activities of real estate brokers and salespersons under Minn. Stat. ch. 82. Failure to comply with these standards shall constitute grounds for license denial, suspension, or revocation or for censure of the licensee.

4 MCAR § 1.41516 Responsibilities of brokers.

A. Supervision of personnel. Brokers shall adequately supervise the activities of their salespersons and employees. Supervision includes the on-going monitoring of listing agreements, purchase agreements, other real estate-related documents which are prepared or drafted by the broker's salespersons or employees or which are otherwise received by the broker's office, and the review of all trust account books and records. If an individual broker maintains more than one place of business, each place of business shall be under the broker's direction and supervision. If a partnership or corporate broker maintains more than one place of business, each place of business shall be under the direction and supervision of an individual broker licensed to act on behalf of the partnership or corporation.

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

B. Preparation and safekeeping of documents. Brokers shall be responsible for the preparation, custody, safety, and accuracy of all real estate contracts, documents and records, even though another person may be assigned these duties by the broker.

C. Documentation and resolution of complaints. Brokers shall investigate and attempt to resolve complaints made regarding the practices of any individual licensed to them and shall maintain, with respect to each individual licensed to them, a complaint file containing all material relating to any complaints received in writing for a period of three years.

D. Disclosure of listed property information. No broker shall allow any unlicensed person to disclose any information regarding a listed property except to state the address of the property and whether it is available for sale or lease.

4 MCAR § 1.41517 Temporary broker's permit. In the event of death or incapacity of a broker, the commissioner may issue a 45-day temporary permit to an individual who has had a minimum of two years actual experience as a licensed real estate salesperson and who is otherwise reasonably qualified to act as a broker. Upon application prior to its expiration, the 45-day temporary permit shall be renewed once by the commissioner if the applicant demonstrates that he or she has made a good faith effort to obtain a broker's license within the preceding 45 days and an extension of time will not harm the public interest.

Only those salespersons licensed to the deceased or incapacitated broker at the time of death or incapacity may conduct business for or on behalf of the person to whom the temporary broker's license was issued.

4 MCAR § 1.41518 Licensee as agent of broker; disclosure. A salesperson shall only conduct business under the licensed name of and on behalf of the broker to whom he or she is licensed. An individual broker shall only conduct business under his or her licensed name. A broker licensed to a corporation or partnership shall only conduct business under the licensed corporate or partnership name. A licensee shall affirmatively disclose prior to the negotiation or consummation of any transaction the licensed name of the broker under whom he or she is authorized to conduct business in accordance with this rule.

4 MCAR § 1.41519 Listing agreements.

A. Requirement. Licensees shall obtain a signed listing agreement, or other written authorization, from the owner of real property or from another person authorized to offer the property for sale or lease prior to advertising to the general public that the real property is available for sale or lease.

For the purposes of this rule "advertising" shall include placing a sign on the owner's property which indicates that the property is being offered for sale or lease.

B. Contents. All listing agreements shall be in writing and shall 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;

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PROPOSED RULES

5. A clear statement explaining the events or conditions which 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 the seller with a protective list within 72 hours after the expiration of the listing agreement; and

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 AMOUNT OR RATE OF REAL ESTATE COMMISSIONS OR FEES IS NOT FIXED BY LAW AND MAY NOT LEGALLY BE FIXED BY MEANS OF AN AGREEMENT BETWEEN OR AMONG COMPETING REAL ESTATE FIRMS AND COMPANIES.”

C. Prohibited provisions. Licensees shall not include in a listing agreement a holdover clause, automatic extension, or any similar provision, or an override clause the length of which is more than six months after the expiration of the listing agreement.

D. Override clauses. Licensees shall not seek to enforce an override clause unless a protective list has been furnished to the seller within 72 hours after the expiration of the listing agreement.

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

The protective list shall contain the following notice in boldface type:

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

The protective list need not contain this notice if the written listing agreement specifically states that after its expiration 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.

4 MCAR § 1.41520 Guaranteed sale programs. If a broker advertises or offers a guaranteed sale program, or other program whereby the broker undertakes to purchase real property in the event he or she is unable to effectuate a sale to a third party within a specified period of time, a written disclosure which sets forth clearly and completely the terms and conditions under which the broker agrees to purchase the property and the disposition of any profit at the time of resale by the broker must be provided to the seller prior to the execution of a listing agreement.

4 MCAR § 1.41521 Disclosure requirements.

A. Advertising. Each licensee shall identify himself or herself as either a broker or an agent in any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other disposition of real property, whether the advertising pertains to his or her own property or the property of others.

B. Financial interests of licensee. Prior to the negotiation or consummation of any transaction, a licensee shall affirmatively disclose to the owner or real property that the licensee is a real estate broker or agent, and in what capacity the licensee is acting, if the licensee directly, or indirectly through a third party, purchases for himself or herself or acquires, or intends to acquire, any interest in, or any option to purchase, the owner's property.

C. Material facts. Licensees shall disclose to any prospective purchaser all material facts pertaining to the property, of which the licensee is 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 licensee is aware.

D. Nonperformance of any party. If a licensee is aware that any party to a real estate transaction is clearly unwilling or unable to perform in accordance with the terms of a purchase agreement or other similar agreement, the licensee shall immediately disclose the fact of that party's unwillingness or inability to perform to the other party or parties to the transaction if the licensee is aware that the other party or parties have acted or are likely to act to their detriment in reasonable reliance upon the anticipated consummation of the transaction. Whenever reasonably possible, the licensee shall inform the party who is unable or unwilling to perform of the licensee's intention to disclose this fact to the other party or parties to the transaction prior to making the disclosure.

4 MCAR § 1.41522 Prohibition on guaranteeing future profits. Licensees shall not, with respect to the sale or lease of real property, guarantee or project or permit or encourage another person to guarantee or project future profits or earnings which may result from the purchase or lease of the real property in question unless the guarantee or projection and the assumptions upon which it is based are fully disclosed and contained in the contract, purchase agreement, or other instrument of sale or lease.

4 MCAR § 1.41523 Negotiations.

A. Written offers. All offers to purchase or lease shall be promptly submitted in writing to the seller.

B. Nondisclosure of terms of offer. A licensee shall not disclose the terms of an offer to another prospective buyer or the buyer's agent prior to the presentation of the offer to the seller.

C. Closing costs. Licensees shall disclose to a buyer or a seller at or before the time an offer is written or presented that the buyer or seller may be required to pay certain closing costs, and the approximate amount of these costs.

D. Required documents. Licensees shall furnish to the parties to the transaction at the time the documents are signed or become available a true and accurate copy of listing agreements, earnest money receipts, purchase agreements, contracts for deed, option agreements, closing statements, truth-in-housing forms, energy audits, and any other record, instrument, or document which is material to the transaction and which is in the licensee's possession.

E. Closing statement. The listing broker or his or her designee shall deliver to the seller at the time of closing a complete and detailed closing statement setting forth all of the receipts and disbursements handled by the broker for the seller. The listing broker shall also deliver to the buyer at the time of closing a complete and detailed statement setting forth the disposition of all moneys received in the transaction from the buyer.

F. Exclusive agency agreements. 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 agency in connection with the property to another real estate broker. The licensee shall inquire of the owner or lessor whether such a contract exists.

G. Prohibition against interference with contractual relationships of others. Licensees shall not induce any party to a contract of sale or lease, option, or exclusive listing agreement, to breach the contract, option, or agreement.

H. Prohibition against discouraging use of attorney. Licensees shall not discourage prospective parties to a real estate transaction from seeking the services of an attorney.

4 MCAR § 1.41524 Compensation.

A. Licensee to receive only from broker. A licensee shall not accept a commission or other valuable consideration for the performance of any acts requiring a real estate license from any person except the real estate broker to whom he is licensed or to whom he was licensed at the time of the transaction.

B. Undisclosed compensation. A licensee shall not accept, give, or charge any undisclosed commission or realize any direct or indirect remuneration which inures to the benefit of the licensee on an expenditure made for a principal.

C. Limitation on broker when transaction not completed. When for any reason the owner fails or is unable to consummate a real estate transaction, the listing broker may not claim any portion of any trust funds deposited with the broker by the purchaser, absent a separate agreement with the purchaser, regardless of whether the commission from the owner has been earned.

4 MCAR § 1.41525 Notice to the commissioner. Licensees shall notify the commissioner of the facts in A.-D.

A. Change of application information. The commissioner shall be notified in writing of a change of information contained in the license application on file with the commissioner within ten days of the change.

B. Civil judgment. The commissioner shall be notified in writing within ten days of a final decision or order of a court, whether or not the decision or order is appealed, regarding any proceeding in which the licensee was named as a defendant, and which alleged fraud, misrepresentation, or the conversion of funds.

C. Disciplinary action. The commissioner shall be notified in writing within ten days of the suspension or revocation of a licensee's real estate or other occupational license issued by this state or another jurisdiction.

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D. Criminal offense. The commissioner shall be notified in writing within ten days if a licensee is charged with, adjudged guilty of, or enters a plea of guilty or nolo contendere to a charge of a felony, gross misdemeanor, misdemeanor, or any comparable offense.

4 MCAR § 1.41526 Access to governing statutes and rules. Every real estate office and branch office shall have a current copy of Minn. Stat. chs. 82 and 83 and the rules adopted thereunder available for the use of licensees.

4 MCAR § 1.41527 Rental services.

A. License. A rental service shall obtain a real estate broker's license prior to engaging in business or holding itself out as being engaged in business. No person shall act as a real estate salesperson on behalf of a rental service without first obtaining a real estate salesperson's license on behalf of the rental service.

B. Dissemination of unit information. A rental service shall not provide information regarding a rental unit without the express authority of the owner of the unit.

C. Availability of unit. A rental service shall not represent a unit as currently available unless its availability has been verified within 72 hours preceding the representation.

D. Advertising. A rental service shall not advertise in a manner which is misleading with regard to fees charged, services provided, the availability of rental units or rental terms or conditions.

4 MCAR § 1.41528 Fraudulent, deceptive, and dishonest practices. For the purposes of Minn. Stat. § 82.27, subd. 1, clause (b), the following acts and practices constitute fraudulent, deceptive, or dishonest practices:

A. Act on behalf of more than one party to a transaction without the knowledge and consent of all parties;

B. Act in the dual capacity of licensee and undisclosed principal in any transaction;

C. Receive funds while acting as principal, which funds would constitute trust funds if received by a licensee acting as an agent unless the funds are placed in a trust account. Funds need not be placed in a trust account if a written agreement signed by all parties to the transaction specifies a different disposition of the funds, see 4 MCAR § 1.41505 D.;

D. Violate any state or federal law concerning discrimination intended to protect the rights of purchasers or renters of real estate;

E. Make a material misstatement in an application for a license or in any information furnished to the commissioner;

F. Procure or attempt to procure a real estate license for himself or herself or any person by fraud, misrepresentation, or deceit;

G. Represent membership in any real-estate related organization in which the licensee is not a member;

H. Advertise in any manner which is misleading or inaccurate with respect to properties, terms, values, policies, or services conducted by the licensee;

I. Make any material misrepresentation or permit or allow another to make any material misrepresentation;

J. Make any false or misleading statements, or permit or allow another to make any false or misleading statements of a character likely to influence, persuade, or induce the consummation of a transaction contemplated by Minn. Stat. ch. 82;

K. Fail within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to another;

L. Commingle with his or her own money or property trust funds or any other money or property of another held by the licensee;

M. Demand from a seller a commission to which the licensee is not entitled;

N. Pay or give money or goods of value to an unlicensed person for any assistance or information relating to the procurement by a licensee of a listing of a property or of a prospective buyer of a property. This paragraph does not apply to money or goods paid or given to the parties to the transaction;

O. Commingle personal or other funds with trust funds or fail to maintain a trust account at all times, as provided by law;

P. Engage, with respect to the offer, sale, or rental of real estate, in an anticompetitive activity.

A licensee shall be deemed to have violated this provision if he has been found to have violated the Minnesota Antitrust Law of 1971, Minn. Stat. §§ 325D.49-325D.66 by a final decision or order of a court of competent jurisdiction.

Nothing in 4 MCAR § 1.41528 limits the authority of the commissioner to take actions against a licensee for fraudulent, deceptive, or dishonest practices not specifically described in this rule.

4 MCAR § 1.41529 Salespersons; initial real estate education requirements.

A. Generally. An approved 90-hour course of initial education shall consist of three 30-classroom-hour courses to be designated as Course I, Course II, and Course III. Pursuant to Minn. Stat. § 82.22, subd. 6, each applicant for a salesperson's license or salesperson is required to complete all courses successfully. Courses I, II, and III must be taken in sequence and may not be taken concurrently.

B. Salesperson's examination. Applicants must successfully complete the salesperson's examination within one year after the successful completion of Course I. After this date, credit for Course I will expire and successful completion of the first 30-hour course must be repeated before taking the salesperson's examination.

An exception will be made for students pursuing a full-time course of study in either a two-year or four-year real estate education program. The burden of demonstrating full-time status is on the student. Applicants must successfully complete the salesperson's examination within one year after the successful completion of the two-year or four-year course of study.

C. Application for salesperson's license. Applicants must apply for a salesperson's license within one year after successful completion of the licensing examination. Applicants who fail to apply for a license within the one-year period must retake Course I and successfully complete the examination.

D. Post-licensing education course. Courses II and III must be completed within one year after obtaining a salesperson's license.

E. Alternative means of completing initial education. Applicants may elect to complete Course II and Course III prior to examination or licensure and shall receive credit for those courses successfully completed if the applicant is otherwise in compliance with the time limitations set forth in B. and C.

F. Limitations on course substitutions. No course may be substituted for Course I.

Written requests for substitutions for Courses II and III shall be granted if the request is submitted no later than six months prior to the date upon which that education is due to be completed, if:

1. The salesperson is engaged exclusively in a specialized field, such as property management, and the course proposed to be substituted for Course II or III provides the student with at least 30 hours of instruction in that field; or

2. The salesperson demonstrates successful completion of a course in another jurisdiction which is substantially similar to Course II or III.

G. Limitation on use of certain education courses. Courses I and II may not be taken for credit towards a licensee's continuing education requirements.

Any Course III may be taken for credit towards a licensee's continuing education requirements if the licensee has not previously received credit for that course or a substantially similar course.

H. Textbooks required. Courses I, II, and III shall require the use of a textbook. The textbook shall cover substantially the subject matter of the course. The textbook shall be current and may be disallowed by the commissioner upon demonstration that it contains material errors.

I. Completion of initial education. Successful completion of Courses I, II and III includes full-time classroom attendance throughout the course, completion of required assignments or reading materials if applicable, and passage of an examination designed by the school which is sufficiently comprehensive to measure the student's knowledge of all aspects of the course.

J. Course I.

1. Hours. Course I shall incorporate the following number of hours for each of the following topics, for a total of 30 hours:

- (a) Introduction to real estate, one hour;
- (b) Real estate licensing law (Minn. Stat. chs. 82 and 83), four hours;
- (c) Law of agency, four hours;
- (d) Law of contracts, five hours;
- (e) Real estate financing, six hours;

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- (f) Types and classifications of property, three hours;
 - (g) Examination of title, one hour; and
 - (h) Title closing, six hours.
2. Curriculum. The Course I curriculum shall be based on the following outline:
- I. Introduction to real estate
 - A. Overview of Course I
 - 1. Course goals
 - 2. Attendance
 - 3. Examination policy
 - 4. Course and instructor evaluation
 - B. Scope of industry
 - C. Areas of specialization
 - D. Industry terminology
 - E. Professional standards and ethics
 - F. Broker-salesperson relationship
 - II. Real estate license law, (Minn. Stat. ch. 82), subdivided land sales practices act (Minn. Stat. ch. 83) and securities act (Minn. Stat. ch. 80A)
 - A. Real estate license law
 - 1. Purpose of law and rules
 - 2. Administration of law
 - 3. Substantive provisions of law
 - a. Trust accounts
 - b. Prohibition of fraudulent, deceptive or dishonest practices
 - c. Standards of conduct
 - d. Federal and state antidiscrimination laws
 - e. Licensing requirements
 - f. Education requirements
 - g. Real estate education, research and recovery fund
 - B. Subdivided land sales practices act
 - 1. Scope of law
 - 2. Registration and public disclosure provisions
 - 3. Licensing requirements
 - C. Securities act; potential applicability to real estate
 - III. Law of agency
 - A. Agent and agency
 - 1. Broker-principal relationship
 - 2. Termination of relationships
 - 3. Dual agency
 - 4. Cooperative broker
 - B. Duties of broker and agent
 - 1. Accountability
 - 2. Fiduciary responsibility to seller

- 3. Full disclosure
- C. Listing contract
 - 1. Types
 - 2. Essential elements of a listing agreement
 - 3. Multiple listing
 - 4. Commissions earned
- D. Responsibilities to buyer
- IV. Contracts
 - A. Definition
 - 1. Types
 - 2. Essentials
 - 3. Breach; remedies
 - B. Purchase agreements
 - 1. Examination and analysis
 - C. Other types of contracts
 - 1. Contract for deed
 - 2. Options
 - D. Cancellation of contract
 - E. Property description
 - 1. Lot and block number
 - 2. Metes and bounds
 - 3. Government survey
 - 4. Datum planes
 - 5. Measurement and mathematics
- V. Real estate financing
 - A. Note as evidence of indebtedness
 - B. Sources of mortgage funds
 - 1. Lenders
 - 2. Secondary mortgage market
 - 3. Owner financing
 - C. Mortgage
 - 1. Legal elements
 - 2. Theories
 - a. Lien
 - b. Title
 - 3. Mortgage clauses
 - a. Covenants
 - 1. Indebtedness

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2. Insurance
3. Removal
4. Taxes
5. Acceleration clause
6. Warranty of title
- b. Special clauses
 1. Attorney's fees
 2. Receiver
 3. Sale in one parcel
 4. Trust
 5. Prepayment penalties
 6. Subordination
 7. Due-on-sale clause
 8. Condemnation clause
 9. Defeasance clause
 10. Good repair
- D. Types of mortgages
 1. FHA
 2. VA
 3. Conventional/insurance conventional, types currently available
 4. Other
 5. Points
- E. Mortgage assumption and nonalienation
- F. Contract for deed financing
- G. Foreclosure (default)
 1. Mortgage
 2. Contract for deed
- H. Buyer qualifications
 1. Credit information
 2. Standards for approval
- I. Usury law
- VI. Types of property
 - A. Classification
 1. Real property
 2. Personal property
 3. Fixtures
 - B. Title
 1. Private grant
 2. Public grant
 3. Political relations
 - a. Eminent domain
 - b. Escheat

- 4. Public policy
 - a. Adverse possession
 - b. Prescription
 - c. License
- C. Estates and interests in land
 - 1. Estates
 - 2. Fee simple
 - 3. Life estate (waste)
 - 4. Remainders and reversions
 - 5. Other
- D. Concurrent ownership
 - 1. Joint tenancy
 - 2. Tenancy in common
 - 3. Other
- E. Easements
- VII. Examination of title
 - A. History
 - B. Examination of abstract
 - C. Title insurance
 - 1. Owners
 - 2. Purchasers
 - 3. Mortgage
 - D. Title registration (Torrens)
- VIII. Title closing
 - A. Review of topics I-VII
 - B. Closing checklist
 - C. Methods of closing
 - 1. Closing through escrow
 - 2. Other
 - D. Delivery of deed
 - E. Responsibilities of buyer and seller
 - 1. Taxes and liens
 - 2. Reduction certificate (assumption statement)
 - 3. Insurance
 - 4. Leases
 - 5. Bill of sale
 - 6. Title search
 - 7. Survey

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8. Leases
9. Certificate of occupancy
10. Violations (ordinances)
11. Apportionments
- F. Adjournment of closing (settlement)
- G. Real estate settlement procedures act
 1. Lender requirements
 2. Truth-in-lending (regulation Z)
 3. Settlement (closing)
- H. Broker's responsibilities

K. Course II.

1. Hours. Course II shall incorporate the following number of hours for each of the following topics, for a total of 30 hours:

- (a) Deeds, three hours;
- (b) Search and examination of title, one hour;
- (c) Residential appraisal, six hours;
- (d) Residential construction, two hours;
- (e) Land development and use, three hours;
- (f) Condominiums, cooperatives, planned unit developments, and manufactured housing, three hours;
- (g) Taxation, four hours;
- (h) Investment and appraisal, four hours;
- (i) Real property management, two hours; and
- (j) Leases and leasing, two hours.

2. Curriculum. The Course II curriculum shall be based on the following outline:

I. Deeds

- A. Parts of a deed
 1. Parties
 2. Consideration
 3. Words of conveyance
 4. Property description
 5. Appurtenances
 6. Habendum (estate)
 7. Execution and acknowledgement
 8. Seal
- B. Delivery
- C. Recording
- D. Types of deeds
 1. Quitclaim
 2. Warranty deed and covenants
 3. Special warranty deed
 4. Other
- E. Covenants running with the land

- F. Validity
- II. Search and examination of title
 - A. Object of search
 - 1. Chain of title
 - 2. Recording acts
 - B. Grantor-grantee system of indexing
 - 1. Running the chain of title
 - 2. Grantors
 - 3. Mortgages
 - 4. Lis pendens
 - 5. Judgments
 - 6. Liens
 - 7. Taxes
 - 8. Probate court
 - 9. Special assessments
 - C. Lot and block indexing
- III. Residential appraisal
 - A. Values
 - 1. Economic concepts
 - 2. Value and price
 - 3. Cost
 - 4. Elements of value
 - a. Physical
 - b. Economic
 - c. Social
 - d. Legal
 - 5. Characteristics of value
 - a. Utility
 - b. Scarcity, demand
 - c. Transferability
 - 6. Principles of value
 - a. Substitution
 - b. Conformity
 - c. Anticipation
 - B. Fundamental considerations
 - 1. Population trends
 - 2. Neighborhood characteristics
 - 3. Building description

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- 4. Site evaluation
- 5. Market value
- C. Highest and best use
 - 1. Factors of production
 - 2. Diminishing returns
 - 3. Over and under improvement
- D. Approaches to value
 - 1. Cost
 - 2. Market
 - 3. Income
- E. Appraisal report
- IV. Residential construction
 - A. Government regulations
 - B. Architectural styles
 - C. Plans and specifications
 - 1. Foundations
 - 2. Exterior
 - 3. Interior
 - D. Disclosure
- V. Land development and use
 - A. Public land use control
 - 1. City planning
 - a. Enabling acts
 - b. Planning commissions
 - c. Capital improvements
 - d. Master planning
 - e. Future scope of planning
 - 2. Zoning
 - a. Purpose
 - b. Form of ordinances
 - c. Exclusionary zoning
 - d. Board of appeals
 - e. Nonconforming use
 - f. Variance
 - g. Green acres law
 - 3. Building codes
 - 4. Environmental impact statements
 - 5. Subdivision regulations
 - B. Prepurchase
 - 1. Analysis of market
 - 2. Site selection
 - 3. Land costs

4. Drainage, soil tests, topography
 5. Utilities
 6. Road costs
 7. Transportation, schools, shopping
 8. Covenants
 9. Government
 10. Financing
 - a. Purchase, option or escrow
 - b. Rolling option
- C. Planning
1. Subdivision
 2. Planned urban development
 3. Filing the plat
 4. Consumerism and environmental protection
 5. Subdivided land sales and practices act
 6. State and local land use regulations
- D. Urban development and revitalization
- VI. Condominiums, cooperatives, planned unit developments and manufactured housing
- A. Cluster housing
1. History
 2. Economics
 - a. Land use efficiency
 - b. Amenities
- B. Condominiums
1. Rights and obligations
 - a. Declaration
 1. Bylaws
 2. Rules and regulations
 3. Assessments and collections
 4. Homeowners associations
 - b. Map
 - c. Conveyance
 - d. Management agreement
 1. Duties
 2. Enforcement of rules
 3. Collection of fees and dues
 2. Financing
 3. Time share ownership

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4. Minnesota Condominium Act
 5. Conversions
 - a. Physical changes
 - b. Feasibility
 - c. Tenant rights
 - d. Moratoriums
 - C. Cooperatives
 1. Cooperator (individual shareholder)
 2. Refinancing methods
 3. Owner's association
 4. Tax treatment (the 80 percent rule)
 5. Other forms
 - D. Planned unit developments
 1. Planned land uses
 2. Organization
 - E. Manufactured housing
 1. Definition
 2. Considerations
 - a. Site
 - b. Value
 - c. Safety
 3. Financing
- VII. Taxation
- A. Real property taxes
 1. Tax assessment levies
 - a. City
 - b. County
 - c. School district
 2. Obtaining tax information
 3. Appraisal and classification
 4. Homestead status
 - B. Residential property
 1. Basis
 2. Adjustment of basis
 3. Installment plan sales
 4. Tax deferral on sale and repurchase
 5. Tax implications of residential ownership
 - C. Income producing property
 1. Long term capital gain and loss
 2. Offsetting gains and losses
 3. Classification
 - D. Depreciation on real property

- E. Residential rehabilitation expense
- VIII. Investment and appraisal
 - A. Risks
 - 1. Purchasing power
 - 2. Market
 - 3. Interest rates
 - 4. Earning power
 - 5. Liquidity
 - B. Leverage
 - C. Cash and tax flow
 - D. Investment analysis
 - 1. Effective gross income
 - 2. Margin
 - 3. Return on investment
 - E. Real estate syndication
 - 1. General partners
 - 2. Limited partners
 - 3. Regulation
 - 4. Risks and rewards
 - F. Real estate investment trusts
 - G. Appraisal of investment property
 - 1. Net operating income
 - a. Converting net income to value
 - b. Rate of return (discount rate)
 - 2. Estimate of value
- IX. Real property management
 - A. Background
 - 1. Development of management
 - 2. Scope of management
 - a. Residential
 - b. Commercial
 - c. Industrial
 - d. Agricultural
 - 3. Professional management
 - 4. Types of owners
 - B. Management plan
 - 1. Objectives
 - 2. Regional analysis

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3. Neighborhood analysis
4. Property analysis
 - a. Physical
 - b. Fiscal
 - c. Operational
5. Market analysis
 - a. Costs and profit
 - b. Comparable
 - c. Escalation base
6. Analysis of alternatives
7. Conclusions and recommendations
- C. Government and real estate management
 1. Local government
 - a. Rent control
 - b. Handicapped requirements
 - c. Fire code requirements
 - d. Miscellaneous ordinances
 2. State government
 - a. Landlord-tenant laws
 - b. Nondiscrimination
 - c. Extension of tenants' rights
 3. Federal government
 - a. Nondiscrimination
 - b. HUD subsidies
 - c. Regulated housing
 4. Housing programs
- D. Management operations
 1. Marketing
 2. Tenant underwriting
 3. Tenant administration
 4. Physical plant maintenance
 - a. Preventative maintenance
 - b. Energy management
 5. Operational record keeping
 - a. Physical records
 - b. Tenant files
 - c. Budget
 - d. Fiscal
- X. Leases and leasing
 - A. Statute of frauds
 - B. Elements of a contract (review)
 - C. Types of tenancies

1. Estate for years
2. Tenancy from year to year
3. Tenancy at will
4. Tenancy at sufferance
5. Holdover tenants

D. Types of leases

1. Gross
2. Net
3. Percentage
4. Land
5. Farm

E. Form of lease

1. Common covenants
2. Residential leases
3. Responsibilities of lessor
4. Responsibilities of lessee
5. Termination
 - a. Expiration
 - b. Automatic renewal
 - c. Breach of conditions
 - d. Abandonment
 - e. Eviction
6. Minnesota landlord-tenant act

L. Course III.

1. Hours. Course III shall be a 30-hour course consisting of one of the following:
 - (a) Real estate appraisal, 30 hours;
 - (b) Closing procedures, 30 hours;
 - (c) Farm and ranch brokerage, 30 hours;
 - (d) Real estate finance, 30 hours;
 - (e) Real estate investment, 30 hours;
 - (f) Real estate law, 30 hours;
 - (g) Real estate management, 30 hours;
 - (h) Real estate mathematics, 30 hours;
 - (i) Business brokerage, 30 hours; or
 - (j) A combination course of no more than three of the subjects set forth in (a)-(i), 30 hours.
2. Curriculum.
 - (a) The real estate appraisal course shall be based on the following outline:

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Real estate appraisal

- I. Nature, importance and purposes of appraisals
- II. Nature, importance and characteristics of property and value
- III. Principles controlling real estate value
- IV. The appraisal process
- V. Economic and neighborhood analysis
- VI. Considerations and fundamentals of site evaluation
- VII. Construction methods and materials
- VIII. Architectural styles and utility
- IX. Cost approach: estimating costs and accrued depreciation
- X. Analysis
- XI. Market data approach
- XII. Income approach: income and expense analysis, capitalization theory and techniques
- XIII. Reconciliation and final value estimate
- XIV. Writing the report
- XV. Course examination

(b) The closing procedures course shall be based on the following outline:

Closing procedures

- I. Overview of closing: persons present, protocol, timeliness
- II. Review of purchase agreement, supplements, addenda
- III. Compilation of data needed to prepare a closing file
- IV. Legal documents
- V. Abstracts, title procedures
- VI. Review of settlement costs: buyer, seller
- VII. Closing statement; prorations and other math;
- VIII. Review of sample cases
- IX. Follow-up procedures
- X. Course examination

(c) The farm and ranch brokerage course shall be based on the following outline:

Farm and ranch brokerage

- I. Responsibilities of broker to seller and buyer
- II. Selling options
- III. Sources of financing
- IV. Factors in selecting a farm or ranch
- V. Advantages and disadvantages of irrigation systems
- VI. Determination of farm and ranch value
- VII. Considerations in the constructing of purchase agreements
- VIII. Course examination

(d) The real estate finance course shall be based on the following outline:

Real estate finance

- I. Introduction to the mortgage market
- II. Sources of mortgage money

- III. Real estate investment trusts and syndication
 - IV. Mortgage banking
 - V. Financing residential properties
 - VI. Financing income producing properties
 - VII. Construction and land development loans
 - VIII. Special techniques used in financing real estate
 - IX. Junior mortgages
 - X. Land contracts
 - XI. Financing long term leases
 - XII. Course examination
- (e) the real estate investment course shall be based on the following outline

Real estate investment

- I. Real estate investments
- II. Discounted cash flow analysis
- III. Measuring investment returns
- IV. Estimation of real estate cash flows
- V. Real estate financing
- VI. The tax process
- VII. Acquisitions and operations
- VIII. Dispositions and exchanges
- IX. After tax investment analysis
- X. Speculative land investment
- XI. Multiple exchanges
- XII. Course examination

- (f) The real estate law course shall be based on the following outline:

Real estate law

- I. The process of real estate law
- II. Real estate brokerage
- III. Contract for the sale of real estate
- IV. Property conveyance
- V. Title insurance and closing
- VI. Property ownership and taxes
- VII. Estates in land and landlord/tenant relationships
- VIII. Cooperatives, condominiums and planned unit developments
- IX. Real estate lending and land use regulations
- X. Course examination

- (g) The real estate management course shall be based on the following outline:

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PROPOSED RULES

Real estate management

- I. Overview and economics of real estate management
- II. Government involvement
- III. The management plan
- IV. Owner relations and record keeping
- V. Marketing and leasing
- VI. Property operations
 - A. Tenant administration
 - B. Physical plant maintenance
 - C. Staffing and employee relations
- VII. Residential management
 - A. Rental housing
 - B. Condominiums and cooperatives
- VIII. Commercial management
 - A. Office building and special purpose properties
 - B. Shopping centers and retail properties
- IX. The management office
- X. Creative property management
- XI. Course examination

(h) The real estate mathematics course shall be based on the following outline:

Real estate mathematics

- I. Functions
 - A. Percentages, fractions, decimals: equivalencies, functions
 - B. Basic geometric rules
 - C. Ratio, proportion, scale
 - D. Basic algebraic operations
 - II. Areas of application to real estate
 - A. Broker trust accounts
 - B. Sales and listings
 - C. Valuation and spatial problems
 - D. Finance
 - E. Income and investment property
 - F. Closing
 - III. Course examination
- (i) The business brokerage course shall be based on the following outline:
- I. Business financial statements
 - II. Financial statement ratio analysis
 - III. Cash flow, rate of return, and breakeven analysis
 - IV. Competitive market analysis
 - V. Valuation of the business
 - VI. Developing the business plan
 - VII. Qualifying the buyer

VIII. Terms of the purchase agreement**IX. Financing the business opportunity****X. Evaluation of business risk****XI. Course examination**

(j) A combination course shall consist of no more than three of the preceding nine subjects and shall devote at least ten hours to each subject. A school which proposes to offer a combination Course III shall submit to the commissioner, as part of the application for approval, an outline setting forth the subjects to be addressed and the number of hours proposed to be devoted to each topic.

3. Course objectives

(a) Real estate appraisal. Upon completion of the real estate appraisal course, a student should be able to explain the nature, importance and characteristics of the factors affecting property value; perform an economic and neighborhood analysis; discuss and apply the cost, market and income approaches to value; estimate the value of 1-4 units of residential property; and prepare a written report of the appraisal.

(b) Closing procedures. Upon completion of the closing procedures course, a student should be able to develop a checklist of activities and documents needed to carry out a closing; coordinate the compilation of information and documents from all parties to a closing; interpret all information on a purchase agreement; compute prorations and other calculations required for a closing; complete acceptable legal formats for all documents serving to transfer title; prepare an accurate closing statement; and develop a closing file system.

(c) Farm and ranch brokerage. Upon completion of the farm and ranch brokerage course, a student should be able to utilize the management assistance available to brokers, buyers and sellers of farm real estate; determine the value of farm or ranch real estate; understand the components that make up farm and ranch real estate; identify and describe methods of financing farm and ranch property; and understand the considerations in the preparation of a purchase agreement for the sale of farm or ranch property.

(d) Real estate finance. Upon completion of the real estate finance course, a student should be able to identify and describe methods of financing real property; explain the role of financial institutions in financing the purchase or sale of real estate; utilize compound interest or "time value of money" concepts to facilitate investment and financing decisions; apply these methods to solve client financing problems; and discuss the practices and procedures of loan application, analysis, closings and foreclosure.

(e) Real estate investment. Upon completion of the real estate investment course, a student should be able to understand and describe investment tax considerations such as depreciation, capital gains, installment sales and exchanges; utilize the mathematics of real estate investment; perform feasibility studies including market analysis; perform property analysis; and apply techniques of investment analysis to specific types of real estate.

(f) Real estate law. Upon completion of the real estate law course, a student should be able to understand the process of real estate law, its historical origins, and the legal responsibilities placed upon real estate salespersons and brokers; prepare and understand the basic contracts of property conveyance; explain the major legal aspects of property conveyance, property ownership, insurance settlement procedures, taxes and leasing agreements; recognize and apply the specific requirements in planned unit developments, condominium and cooperative housing transactions; and understand the requirements of real estate lending and land use regulations.

(g) Real estate management. Upon completion of the real estate management course, a student should be able to explain and discuss the scope, nature and importance of property management; outline the essentials of a management plan; and understand the significant differences between residential, commercial, industrial and retail property management.

(h) Real estate mathematics. Upon completion of the real estate mathematics course, a student should be able to identify required mathematical procedures to be used in real estate transactions; perform required mathematical functions with a high level of accuracy; isolate and explain the steps of each calculation; and explain mathematical procedures to clients as needed.

(i) Business brokerage. Upon completion of the business brokerage course, a student should be able to evaluate

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PROPOSED RULES

business financial statements, qualify potential buyers, review relevant markets including competition, develop a business plan, value the firm's assets and goodwill, negotiate the terms of a purchase agreement, and explain terms of financing, valuation, and business risk to a potential buyer.

4 MCAR § 1.41530 Continuing education.

A. Generally. Continuing education shall consist of approved courses which impart substantive and procedural knowledge in the real estate field.

B. Attendance. Courses must be attended in their entirety in order for a licensee to obtain credit. No credit will be given for partial attendance at a course.

C. Credit approved. Courses will be approved only in hour segments. No fractional hours will be approved, nor will applicants be given credit for any period of less than a whole hour.

D. Examinations. Course examinations will not be required for continuing education courses unless they are required by the school or the licensee elects to take Course III for continuing education credit.

E. Textbooks. Textbooks are not required to be used for continuing education courses. In instances in which textbooks are not used, students are to be provided with a syllabus containing, at a minimum, the course title; the times and dates of the course offering; the names and addresses or telephone numbers of the course coordinator and instructor; and a detailed outline of the subject materials to be covered.

F. Credit earned. Upon completion of approved courses, students shall earn one hour of continuing education credit for each hour of attendance and approved instructors shall earn three hours of continuing education credit for each hour of instruction. Credit may not be earned if the licensee has previously obtained credit for the same course as either a student or instructor.

G. Disapproved courses. Approval will not be granted for courses (1) designed to prepare students for passing any licensing examinations; (2) in mechanical office or business skills, including typing, speed-reading, use of calculators or other machines or equipment; (3) in sales promotion, including meetings held in conjunction with the general business of the licensee's broker; (4) or in motivation, salesmanship, psychology or time management.

H. Continuing education credit for Course III. Licensees may attend or teach Course III for continuing education credit. Credit will be given for less than the entire Course III only for combination courses offered pursuant to 4 MCAR § 1.41529 L.1.j. Credit will be given only for attendance at segments of the combination Course III which completely cover a subject. An examination will be required only if the licensee takes the entire combination course or if the school requires a separate examination for each subject covered.

The burden of demonstrating that courses impart substantive and procedural knowledge in the real estate field is upon the person seeking approval or credit.

4 MCAR § 1.41531 General real estate education requirements. Rules 4 MCAR §§ 1.41532-1.41548 constitute general requirements applicable to all real estate education courses.

4 MCAR § 1.41532 Course approval.

A. Generally. Courses must be approved by the commissioner in advance and will be approved or disapproved on the basis of their compliance with the provisions of Minn. Stat. § 82.22 and the rules adopted thereunder.

No advance approval is required for continuing education offerings if the licensee demonstrates attendance at an offering which was in substantial compliance with Minn. Stat. ch. 82 and the rules adopted thereunder.

Approval will not include time spent on breaks, meals, or other unrelated activities.

B. Permitted course offerings. Courses complying with Minn. Stat. ch. 82 and the rules adopted thereunder may be offered or sponsored by schools.

Coordinators must immediately notify the commissioner of any material change in an application for approval or in the exhibits attached to it.

C. Limitation on advertising. Courses may not be advertised prior to approval.

D. Applications. Applications for course approval will be accepted on forms prescribed by the commissioner no later than 30 days prior to the course offering and shall include the following:

1. The course title;
2. The date, time, and place of the course offering;
3. The name, address, and telephone number of the sponsoring entity;
4. The name, address, and telephone number of the course coordinator;

5. The name, address, and telephone number of the instructor;
6. The name, edition, and date of publication of the text to be used, if applicable;
7. A detailed outline of the course offering, or a statement of compliance with the prescribed outlines for Course I, II, or III; and
8. Compliance with the service of process provisions of Minn. Stat. § 82.31, if applicable.

The form in 4 MCAR § 1.41555 (RE-3) shall be used for Courses I, II, and III and the form in 4 MCAR § 1.41558 (RE-6) shall be used for continuing education courses.

E. Subsequent offerings of courses. Approval shall be granted for subsequent offerings of identical continuing education courses without requiring a new application if a Notice of Subsequent Offerings, 4 MCAR § 1.41560 (RE-8), is filed with the commissioner at least 30 days in advance of the date the course is to be held.

Subsequent offerings of identical Courses I, II, and III do not require the approval of or notice to the commissioner.

4 MCAR § 1.41533 Courses open to all. All course offerings shall be open to any interested individuals. Discounts of tuition shall not be given because of affiliation with any particular brokerage or franchise.

4 MCAR § 1.41534 Course coordinator.

A. Requirement. Each course of study shall have one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with Minn. Stat. ch. 82 and the rules adopted thereunder. Schools may engage an additional approved coordinator in order to assist the coordinator or to act as a substitute for the coordinator in the event of an emergency or illness.

B. Qualifications. The commissioner shall approve as a coordinator a person meeting one or more of the following criteria:

1. A minimum of the previous five years as an active real estate broker;
2. At least three years of full-time experience in the administration of an education program during the five-year period immediately preceding the date of application; or
3. A degree in education plus two years real estate experience.

Application for approval must be submitted on the form in 4 MCAR § 1.41554 (RE-2).

C. Responsibilities. A coordinator shall be responsible for:

1. Assuring compliance with all laws and rules pertaining to real estate education;
2. Assuring that students are provided with current and accurate information relating to the laws and rules governing their real estate activity;
3. Supervising and evaluating courses and instructors. Supervision shall include assuring, especially when a course will be taught by more than one instructor, that all areas of the curriculum are addressed without redundancy and that continuity is present throughout the entire course;
4. Furnishing the commissioner, upon request, with copies of evaluations of instructors or courses;
5. Investigating complaints related to course offerings and instructors;
6. Maintaining records relating to course offerings, instructors, and student attendance for a period of three years from the date on which the course was completed. These records shall be made available to the commissioner upon request.

In the event that a school should cease operation for any reason, the coordinator shall be responsible for maintaining the records or providing a custodian for the records acceptable to the commissioner. Under no circumstances will the commissioner act as custodian of the records. In order to be acceptable to the commissioner, custodians must agree to make copies of acknowledgements available to students at a reasonable fee.

7. Assuring that the coordinator is available to instructors and students throughout course offerings and providing the name of the coordinator and a telephone number at which the coordinator can be reached;

8. Attending workshops or instructional programs as reasonably required by the commissioner;

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PROPOSED RULES

9. Reporting on the form in 4 MCAR § 1.41557 (RE-5) the attendance of licensed students in Courses II and III to the commissioner within 14 days of their completion of the course; and

10. Providing students with Course Completion Certificates, 4 MCAR § 1.41553 (RE-1), for Courses I, II, and III, and continuing education courses.

4 MCAR § 1.41535 Instructors.

A. Requirement. Each course of study shall have an instructor who is qualified by education, training, or experience to insure competent instruction.

B. Qualifications. The following provisions relate to the approval and qualification of instructors:

1. Applicants shall submit requests for instructor approval on the form in 4 MCAR § 1.41556 (RE-4) for Courses I, II, and III and the form in 4 MCAR § 1.41559 (RE-7) for continuing education courses. Requests must be submitted at least 30 days prior to instruction in an approved course;

2. Applicants for Courses I, II, and III shall be approved if they achieve a rating of 70 points or higher based upon the scale in Exhibit 4 MCAR § 1.41535 B.-1.

Exhibit 4 MCAR § 1.41535 B.-1.

Ratings for Applicants Seeking Approval as Instructors of Courses I, II, and III

POINTS	CRITERIA
20	2-year degree or certificate;
40	4-year degree;
50	post graduate degree;
60	2-year real estate degree or certificate;
70	4-year real estate degree or certificate. Points may not be accumulated in the case of individuals holding more than one degree or certificate;
10	Each 45 hours of continuing real estate education attended or taught. No points will be allowed for periods of less than 45 hours;
30	First three-year period in which engaged full-time in the real estate industry as a licensed broker or salesperson or, in the case of applicants for Course III, the first three-year period in which engaged full-time in a business or profession relating to the subject being taught. No points will be allowed for an applicant who has been licensed for less than three years or who has been engaged in a related business or profession for less than three years;
10	Each full year, after the first full three years, in which engaged full-time in the real estate industry as a licensed broker or salesperson or, in the case of applicants for Course III, each full year, after the first full three years, in which engaged full-time in a business or profession relating to the subject being taught.

3. The same instructor may teach all three courses. Instructors may engage a nonapproved or guest instructor to teach up to ten hours of specialized coursework covered in Course I, II, or III. Approved instructors remain responsible for complying with the provisions of C.; and

4. Continuing education instructors must have either:

- a. a degree in any area plus two years practical experience in the subject area being taught;
- b. five years practical experience in the subject area being taught;
- c. a college or graduate degree in the subject area being taught; or

d. have held a broker's license for three years or have three years practical experience in the subject area being taught. These individuals shall also have completed at least 60 hours of approved continuing education in the subject area being taught.

C. Responsibilities. Approved instructors shall be responsible for the following:

- 1. Compliance with all laws and rules relating to real estate education;
- 2. Providing students with current and accurate information;

3. Maintaining an atmosphere conducive to learning in the classroom;
4. Assuring and certifying attendance of students enrolled in courses;
5. Providing assistance to students and responding to questions relating to course materials; and
6. Attending such workshops or instructional programs as are reasonably required by the commissioner.

4 MCAR § 1.41356 Prohibited practices for coordinators and instructors.

A. Generally. In connection with an approved course coordinators and instructors shall not:

1. Recommend or promote the services or practices of any particular real estate brokerage, franchise, coordinator, instructor or school;
2. Encourage or recruit individuals to engage the services of, or become associated with, any particular real estate brokerage or franchise;
3. Use materials, clothing, or other evidences of affiliation with any particular real estate brokerage or franchise;
4. Require students to participate in other programs or services offered by the school, coordinator, or instructor;
5. Take a Minnesota real estate licensing examination without the prior approval of the commissioner;
6. Attempt, either directly or indirectly, to discover questions or answers on a real estate licensing examination; or
7. Disseminate to any other person specific questions, problems, or information known or believed to be included in licensing examinations.

B. Notification of misconduct. Coordinators and instructors shall notify the commissioner within ten days of a felony conviction or of disciplinary action taken against a real estate or other occupational license held by the coordinator or instructor.

C. Coordinators and instructors shall notify the commissioner within ten days of any changes in the information set forth in the application for approval on file with the commissioner.

4 MCAR § 1.41537 Extensions. Upon appropriate showing of a bona fide financial or medical hardship, the commissioner may extend the time period during which post-licensing or continuing education instruction must be successfully completed. Loss of income resulting from cancellation of a license is not a bona fide hardship. Requests for extensions must be submitted in writing no later than 45 days prior to the date of license cancellation and shall include an explanation and verification of the hardship, and a verification of enrollment in an approved course of study and the dates during which the course will be held.

4 MCAR § 1.41538 Waivers. Required real estate education shall not be waived for any licensee or applicant for a license.

4 MCAR § 1.41539 Fees. Fees for approved courses and related materials shall be reasonable and clearly identified to students. In the event that a course is cancelled for any reason, all fees shall be returned promptly. In the event that a course is postponed for any reason, students shall be given the choice of attending the course at a later date or of having their fees refunded in full. If a student is unable to attend a course or cancels a course, school policies regarding refunds shall govern.

4 MCAR § 1.41540 Facilities. Each course of study shall be conducted in a classroom or other facility which is adequate to implement the offering. Approved courses shall not be held on the premises of a real estate brokerage, franchise, or an affiliate thereof.

4 MCAR § 1.41541 Conflict of interest. A course will not be approved if it is offered by a person who derives substantial income from the real estate brokerage business.

4 MCAR § 1.41542 Supplementary materials. An adequate supply of supplementary materials to be used or distributed in connection with an approved course must be available in order to ensure that each student receives all of the necessary materials. Outlines and any other materials which are reproduced shall be of readable quality.

4 MCAR § 1.41543 Advertising.

A. Generally. Advertising must be truthful and not deceptive or misleading.

B. Approval statement. No advertisement, pamphlet, circular, or other similar materials pertaining to an approved offering may be circulated or distributed in this state unless the following statement is prominently displayed on the cover of it:

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PROPOSED RULES

1. For initial education courses, "This course has been approved by the Commissioner of Securities and Real Estate pursuant to Minn. Stat. § 82.22, subd. 6 for initial education courses;" or

2. For continuing education courses, "This course has been approved by the Commissioner of Securities and Real Estate pursuant to Minn. Stat. § 82.22, subd. 13, relating to continuing real estate education."

The preceding language need not be displayed on the cover of any out-of-state offering advertisement; however, it is the responsibility of the school to provide students with evidence that the course has been approved.

C. Approved course advertisements. Advertising of approved courses must be clearly distinguishable from the advertisement of other nonapproved courses and services.

4 MCAR § 1.41544 Notice. At the beginning of each approved offering, the following notice shall be read to students: "This real estate educational offering is recognized by the Commissioner of Securities and Real Estate as satisfying hours of credit toward (choose one, or more, of the following: prelicensing, postlicensing, or continuing) real estate education requirements pursuant to Minn. Stat. § 82.22. If you have any comments about this real estate offering, please mail them to the Commissioner of Securities and Real Estate, 500 Metro Square Building, St. Paul, Minnesota 55101."

4 MCAR § 1.41545 Audits. The commissioner reserves the right to audit subject offerings with or without notice to the school.

4 MCAR § 1.41546 Disciplinary action. The commissioner may deny, censure, suspend, or revoke the approval of a coordinator, instructor, or course if it is determined that they are not in compliance with Minn. Stat. ch. 82 or the rules adopted thereunder.

4 MCAR § 1.41547 Course completion certificates. Applicants for a salesperson's license shall submit to the commissioner, along with their application for licensure, a copy of the Course Completion Certificate, 4 MCAR § 1.41553 (RE-1), for Course I, and for Courses II and III if completed prior to being licensed.

Students are responsible for maintaining copies of Course Completion Certificates.

4 MCAR § 1.41548 Reports to commissioner. Continuing education credits shall be reported by the licensee on the form in 4 MCAR § 1.41561 (RE-9).

Forms will not be accepted unless they reflect the entire 45 required hours. Incomplete forms will be returned to the licensee.

Forms must be received by the commissioner no later than June 15 of the year in which the credits are due. Forms which are mailed shall be deemed timely received if addressed to: Real Estate Licensing, 500 Metro Square Building, Saint Paul, MN 55101, and postmarked prior to 12:01 a.m. on June 14. Licensees are encouraged to submit the form as soon as they have completed the 45 hours of continuing education credit.

4 MCAR § 1.41549 Automatic transfer of salesperson's license.

A. Applicability. A salesperson may utilize the automatic license transfer provisions of Laws 1982, ch. 478, section 1, subdivision 9, clause (b) if the salesperson commences his or her association with the broker to whom he or she is transferring, as evidenced by the dates of the signatures of both brokers on the form in 4 MCAR § 1.41562 (RE-10), within five days after terminating his or her association with the broker from whom he or she is transferring, provided the salesperson's educational requirements are not past due.

A salesperson may not utilize the automatic license transfer provisions of Laws 1982, ch. 478, section 1, subdivision 9, clause (b) if he or she has failed to notify the commissioner within ten days of any change of information contained in his or her license application on file with the commissioner or of a civil judgment, disciplinary action, or criminal offense, which notice is required pursuant to 4 MCAR § 1.41525.

B. Procedure. An application for automatic transfer shall be made only on the form in 4 MCAR § 1.41562 (RE-10). The transfer is ineffective if the form is not completed in its entirety.

The form in 4 MCAR § 1.41562 (RE-10) shall be accompanied by a \$10 transfer fee, and the license renewal fee, if applicable, plus an additional \$10 if the salesperson holds a subdivided land license. Cash will not be accepted. If the licensee holds a subdivided land license it must be transferred at the same time as the salesperson's license. In order for the transfer of the subdivided land license to be effective the broker to whom the salesperson is transferring must also hold a subdivided land license.

The signature on the form in 4 MCAR § 1.41562 (RE-10) of the broker from whom the salesperson is transferring must predate the signature of the broker to whom the salesperson is transferring. The salesperson is unlicensed for the period of time between the times and dates of both signatures. The broker from whom the salesperson is transferring shall sign and date the transfer application upon the request of the salesperson and shall destroy the salesperson's license immediately.

C. Effective date.

1. The transfer is effective when the broker to whom the salesperson is transferring signs and dates the transfer

application form in 4 MCAR § 1.41562 (RE-10), provided the commissioner receives the form and fee within 72 hours after the date and time of the new broker's signature, either by certified mail or personal delivery to the commissioner's office. In the event of a delay in mail delivery, an application postmarked within 24 hours of the date of the signature of the new broker shall be deemed timely received.

2. The transfer is ineffective if the fee is paid by means of a check, draft or other negotiable or non-negotiable instrument or order of withdrawal drawn on an account with insufficient funds.

3. The salesperson shall retain the certified mail return receipt, if the transfer application is delivered to the commissioner by mail, retain a photocopy of the executed transfer application, and provide a photocopy of the executed transfer application to the broker from whom he or she is transferring.

4 MCAR § 1.41550 Approved lender is not a broker. The definition of "real estate broker" or "broker" set forth in Minn. Stat. § 82.17, subd. 4, clause (b) shall not apply to the making of a loan in connection with his or her ordinary business activities by a mortgagee or lender approved or certified by the secretary of housing and urban development, or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association.

4 MCAR § 1.41551 Applicability. Prior rules exclusively govern all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of these rules. Judicial review of all administrative orders issued prior to the effective date of these rules as to which review proceedings have not been instituted by the effective date of these rules is governed by prior rules.

4 MCAR § 1.41552 Withdrawal of status or application.

A. Request to commissioner. A licensee or license applicant may at any time file with the commissioner a request to withdraw from the status of licensee or to withdraw a pending license application. Withdrawal from the status of licensee or withdrawal of the license application becomes effective 30 days after receipt of a request to withdraw or within a shorter period the commissioner determines unless a revocation, suspension, or denial proceeding is pending when the request to withdraw is filed or a proceeding to revoke, suspend, deny, or to impose conditions upon the withdrawal is instituted within 30 days after the request to withdraw is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

B. Failure to renew license. If a license lapses or becomes ineffective due to the licensee's failure to file a timely renewal application or otherwise, the commissioner may institute a revocation or suspension proceeding within one year after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect.

C. Revocations. If the commissioner finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker or salesperson or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application.

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PROPOSED RULES

4 MCAR § 1.41553 Course Completion Certificate. The real estate education course completion certificate shall be in the form in Exhibit 4 MCAR § 1.41553-1.

Exhibit 4 MCAR § 1.41553-1



State of Minnesota
 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, Minnesota 55101
 (612) 296-9458

RE-1

COURSE COMPLETION CERTIFICATE

- NOTICE TO SCHOOL: Furnish two copies to student.
 NOTICE TO STUDENTS:
1. For Course I, attach one copy to license application.
 2. For Course II and III, retain for your records unless course was completed prior to licensure. If completed prior to licensure, attach one copy to license application.
 3. For continuing education courses, transfer information from this form to Form RE-9 and submit to Real Estate Licensing when total is 45 hours. Retain one copy for your records.

Student's Name (as it appears on your license)		Home Address	
City, State, Zip		Company to Which You are Licensed	
School/Sponsoring Entity			
Completion Date of Course	<input type="checkbox"/> Course I <input type="checkbox"/> Course II <input type="checkbox"/> Course III		
<input type="checkbox"/> Continuing Education	No. of Hrs.	Course No.	Course Title
Coordinator's Signature		Date	

CM-00502-01

4 MCAR § 1.41554 Application for Coordinator Approval. The real estate education application for coordinator approval shall be in the form in Exhibit 4 MCAR § 1.41554-1.

Exhibit 4 MCAR § 1.41554-1



State of Minnesota
 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, Minnesota 55101
 (612) 296-9458

RE-2

APPLICATION FOR COORDINATOR APPROVAL

Name of Applicant		Address	
City, State, Zip	Phone ()	School/Sponsoring Entity for Which Seeking Approval	

4 MCAR § 1.41534 Course Coordinator. B. Qualifications -- The Commissioner shall approve as a coordinator a person having the following qualifications:

1. A minimum of the previous five years as an active real estate broker
 OR:
2. At least three of the prior five years of full time experience in the administration of an education program
 OR:
3. A degree in education plus two years real estate experience.

Educational Background Relating to Criteria for Approval		
School	Dates Attended	Degree (indicate major)

Employment History Relating to Criteria for Approval			
Name of Employer	Address	Date of Employment	Position

1. Do you have a real estate license in Minnesota or any other state? If Yes, date issued: _____ Type of License: _____	Yes	No
---	-----	----

► If the answer to any of the following questions is yes, attach a detailed explanation.

2. Have you ever been the subject of any inquiry or investigation by any agency through which you have been licensed or certified?	Yes	No
3. Have you ever had a real estate, securities or insurance license in any state which has been suspended, revoked, cancelled or terminated?	Yes	No
4. Have you ever been convicted of any criminal offense (felony, gross misdemeanor or misdemeanor) in any State or Federal Court, other than traffic violations?	Yes	No
5. Have you ever been a defendant in any lawsuit involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of real estate contract?	Yes	No
6. Are you currently an officer, partner or owner of a licensed real estate company?	Yes	No

I certify that the information contained on this application is correct. I understand that if approved as coordinator, I will be responsible for compliance with Minnesota laws and rules relating to real estate education in connection with any courses conducted under my supervision. I further certify that I have read and understood the Minnesota laws and rules relating to real estate education.

Signature of Applicant	Date
------------------------	------

4 MCAR § 1.41555 Application for Course Approval for Course I, II, and III. The real estate education application for course approval for courses I, II, and III shall be in the form in Exhibit 4 MCAR § 1.41555-1.

Exhibit 4 MCAR § 1.41555-1



State of Minnesota
 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, Minnesota 55101
 (612) 296-9458

**APPLICATION FOR COURSE APPROVAL
 FOR COURSE I, II, AND III**

RE-3

- Instructions: 1. Attach Service of Process Form (for out-of-state applicants only).
 2. Attach Instructor Approval Form if instructor has not previously been approved.

"X" applicable course: Course I Course II Course III

Course Title		School/Sponsoring Entity	
Address		City, State, Zip	Phone (include area code) ()
Course Dates:	From	To	Time
	Course Location		Total Hours
Name of Text		Date of Edition	Author

"X" if you certify that course material is in compliance with prescribed outlines: Yes No

If Course III is a combination of subjects, list below:

Subject	Number of Hours

Coordinator	Home Address
City, State, Zip	Phone (include area code) ()

As coordinator of the proposed offering, I certify that the information contained in this application is correct to the best of my knowledge. I also certify that this course is not being offered by an individual, firm or business organization, the primary income of which is derived from the real estate brokerage business.

Signature of Coordinator	Date
--------------------------	------

State of _____)
) ss
 County of _____)

On this _____ day of _____, 19____, _____
 appeared before me, a Notary Public, and being duly sworn, says that she/she has read the foregoing application and accompanying exhibits, and that the contents thereof are true to her/his own knowledge.

NOTARIAL
 SEAL

Notary Public	
County	My Commission Expires

FOR OFFICE USE ONLY		
Course No.	Course Title	Date Approved
Reason for Non-approval		
Signature		Title

PROPOSED RULES

4 MCAR § 1.41556 Application for Instructor Approval for Courses I, II, III. The real estate education application for instructor approval for courses I, II, and III shall be in the form in Exhibit 4 MCAR § 1.41556-1.

Exhibit 4 MCAR § 1.41556-1



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 Department of Commerce
 Securities and Real Estate Division
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 St. Paul, Minnesota 55101
 (612) 296-9458

APPLICATION FOR INSTRUCTOR APPROVAL FOR COURSES I, II, III

RE-4

Name of Applicant		Address	
City, State, Zip	Phone (include area code) ()	School/Sponsoring Entity	

4 MCAR § 1.41535 Instructors 2. Applicants for Course I, II, and III shall be approved if they achieve a rating of 70 points or higher based upon the scale below.

Points	
20	2 year degree or certificate
40	4 year degree
50	Post graduate degree
60	2 year real estate degree or certificate
70	4 year real estate degree or certificate
10	Each 45 hours of approved continuing real estate education attended or taught.
30	First three year period in which engaged full time in real estate industry or profession related to area of teaching.
10	Each successive year in which engaged in full time in real estate or profession relating to area of teaching.

Educational Background For Which Applicant Seeks Points		
Name of School	Dates Attended	Degree

Educational Points: _____

Continuing Real Estate Education For Which Applicant Seeks Points	
Total No. of Hours Attended	Total No. of Hours Taught

Continuing Education Points: _____

Professional Experience For Which Applicant Seeks Points		
Place of Employment	Dates	Position Held

Experience Points: _____

TOTAL POINTS: _____

1. Do you have a real estate license in Minnesota or any other state? If yes, date issued: _____ Type of License: _____	Yes	No
---	-----	----

► If the answer to any of the following questions is yes, attach a detailed explanation.

2. Have you ever been the subject of any inquiry or investigation by any agency through which you have been licensed or certified?	Yes	No
3. Have you ever had a real estate, securities or insurance license in any state which has been suspended, revoked, cancelled or terminated?		
4. Have you ever been convicted of any criminal offense (felony, gross misdemeanor or misdemeanor) in any State or Federal Court, other than traffic violations?		
5. Have you ever been a defendant in any lawsuit involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of real estate contract?		
6. Are you currently an officer, partner or owner of a licensed real estate company?		

OVER

4 MCAR § 1.41558 Application for Course Approval for Continuing Education. The real estate education application for course approval for continuing education shall be in the form in Exhibit 4 MCAR § 1.41558-1.

Exhibit 4 MCAR § 1.41558-1



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 Securities and Real Estate Division
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 St. Paul, Minnesota 55101
 (612) 296-9458

RE-6

**APPLICATION FOR COURSE APPROVAL
 FOR CONTINUING EDUCATION**

- Instructions:**
1. Attach a Service of Process Form (for out-of-state applicants only).
 2. Attach syllabus (pursuant to 4 MCAR § 1.41530 (E) and include the time allotted to each segment in the outline.
 3. Attach instructor approval form.

Course Title		School/Sponsoring Entity	
Address		City, State, Zip	Phone (include area code) ()
Course Dates:	From	To	Total Hours
	Course Location		
Name of Text (if applicable)		Date of Edition	Author
Coordinator		Home Address	
City, State, Zip		Phone (include area code) ()	

As coordinator of the proposed offering, I certify that the information contained in this application is correct to the best of my knowledge. I also certify that this course is not being offered by an individual, firm or business organization, the primary income of which is derived from the real estate brokerage business.

Signature of Coordinator	Date
--------------------------	------

State of _____)
) ss
 County of _____)

On this _____ day of _____, 19____, _____
 appeared before me, a Notary Public, and being duly sworn, says that she/he has read the foregoing application and accompanying exhibits, and that the contents thereof are true to her/his own knowledge.

NOTARIAL
 SEAL

Notary Public	
County	My Commission Expires

FOR OFFICE USE ONLY		
Course No.	Course Title	Date Approved
Reason for Non-Approval		
Signature		Title

CM-00507-01

PROPOSED RULES

4 MCAR § 1.41559 Application for Instructor Approval for Continuing Education. The real estate education application for instructor approval for continuing education shall be in the form in Exhibit 4 MCAR § 1.41559-1.

Exhibit 4 MCAR § 1.41559-1



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 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, Minnesota 55101
 (612) 296-9458

RE-7

APPLICATION FOR INSTRUCTOR APPROVAL FOR CONTINUING EDUCATION

Name of Applicant	Address
City, State, Zip	Telephone (include area code) ()
Course Title	School/Sponsoring Entity

4 MCAR § 1.41535 Instructors B. (4) Continuing Education instructors must have a degree in any area plus two years practical experience in the subject being taught; OR five years practical experience in the subject area being taught; OR a college degree in the subject area being taught; OR have held a broker's license for 3 years, or have 3 yrs. practical experience in the subject area being taught, and have completed at least 60 hours of approved continuing education in the subject area being taught.

College/University			
Name of School	Address	Year of Graduation	Major

Experience Related to Subject Area			
Dates	Place of Employment	Address	Position Held

1. Do you have a real estate license in Minnesota or any other state? If yes, date issued: _____ State _____ Type of License: _____	Yes	No
---	-----	----

► If the answer to any of the following questions is yes, attach a detailed explanation.

	Yes	No
2. Have you ever been the subject of any inquiry or investigation by any agency through which you have been licensed or certified?		
3. Have you ever had a real estate, securities or insurance license in any state which has been suspended, revoked, cancelled or terminated?		
4. Have you ever been convicted of any criminal offense (felony, gross misdemeanor or misdemeanor) in any State or Federal Court, other than traffic violations?		
5. Have you ever been a defendant in any lawsuit involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of real estate contract?		
6. Are you currently an officer, partner or owner of a licensed real estate company?		

I certify that the information contained in this application is correct and that I will notify the Commissioner within ten days of any changes in the information contained herein.

Signature of Applicant	Date
------------------------	------

State of _____)
) ss
 County of _____)

On this _____ day of _____, 19____, _____
 appeared before me, a Notary Public, and being duly sworn says that she/he is the applicant; that he/she has read the foregoing application and accompanying exhibits, and that the contents are true to his/her own knowledge.

NOTARIAL
 SEAL

Notary Public	
County	My Commission Expires

PROPOSED RULES

4 MCAR § 1.41560 Notice of Subsequent Offerings of Continuing Education Courses. The real estate education notice of subsequent offerings of continuing education courses shall be in the form in Exhibit 4 MCAR § 1.41560-1.

Exhibit 4 MCAR § 1.41560-1



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Department of Commerce
Securities and Real Estate Division
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-9458

RE-8

**NOTICE OF SUBSEQUENT OFFERINGS
OF CONTINUING EDUCATION COURSES**

This Form is to be used to notify the Commissioner no later than 30 days in advance of the proposed offering of previously approved courses.

Course No.	Course Title	School/Sponsoring Entity		
School Address		City, State, Zip	Phone (area code) ()	
Coordinator's Name		Home Address	City, State, Zip	
Course Dates:	From	To	Time	Total Hours
	Course Location			
Submitted by (print or type)		Signature		
Title		Date		

CM-00509-01

PROPOSED RULES

4 MCAR § 1.41561 Continuing Education Course Verification. The real estate education continuing education course verification shall be in the form in Exhibit 4 MCAR § 1.41561-1.

Exhibit 4 MCAR § 1.41561-1



State of Minnesota
 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, Minnesota 55101
 (612) 296-9458

CONTINUING EDUCATION COURSE VERIFICATION

The information which you furnish on this form will be used to determine whether you have complied with the continuing education requirement of Minnesota Statutes, Chapter 82. You are not legally required to provide this information. However, if you fail to do so, the Department of Commerce will be unable to renew your real estate license. Information contained on this application, other than name and address, will be private pursuant to Minnesota Statute, Chapter 15.

Instructions

1. This form is an on-going record of your continuing education credits for the three year reporting period. Attach additional forms if necessary.
2. Each time you complete a continuing education course, enter the course number, date completed, course title and the number of hours of credit received.
3. When the total number of hours received reaches 45, sign and date the bottom of the form and promptly submit to:

Real Estate Licensing
 500 Metro Square Building
 St. Paul, MN 55101

Do not wait until the renewal of your license. Retain a copy for your records.

4. Be sure that all information requested is provided. Incomplete forms will be returned to the licensee.
5. If credit is earned as instructor, place "instructor" next to the course title. Instructors may earn three credit hours for each one hour taught, only the first time a course is taught.

Name (as it appears on your license)	License No.	Name of Company to Which You Are Licensed
Home Address		City, State, Zip

Course No.	Date Completed	Course Title	Credit Hours
TOTAL			

CERTIFICATION

I certify that I have taken and completed the courses listed above and will furnish to the Securities and Real Estate Division, upon request, evidence of having taken any or all of the courses listed.

Signature	Date
-----------	------

4 MCAR § 1.41562 Real Estate Salesperson Automatic Transfer. The real estate salesperson automatic transfer shall be in the form in Exhibit 4 MCAR § 1.41562-1.

Exhibit 4 MCAR § 1.41562-1



State of Minnesota
 Department of Commerce
 Securities and Real Estate Division
 500 Metro Square Building
 St. Paul, MN 55101
 (612) 296-9458

RE-10

**REAL ESTATE SALESPERSON
 AUTOMATIC TRANSFER**

The data which you furnish on this form will be used to implement the automatic transfer of your real estate salesperson's license. You are not legally required to provide this data. However, if you fail to do so you will be unable to utilize the automatic license transfer provision of Minnesota Statute §82.20, Subd. 9(b). Disclosure of your social security number is voluntary, authorized by Minnesota Statute, Chapter 270A. Your social security number may be used to recapture payments made out of the Recovery Fund. Information contained in this application, other than your name and address, will be private pursuant to Minnesota Statutes, Chapter 15.

This form may be used to effect an automatic transfer of a salesperson's license from one broker to another broker provided:

- a) the applicant's educational requirements are not past due;
- b) this form is completed in its entirety;
- c) the applicant commences his/her association with the broker to whom he is transferring within five days after terminating his association with the broker from whom he/she is transferring;
- d) the appropriate transfer fee is attached (if the applicant transfers between May 1 and June 30, inclusive, of any year he/she must also pay the renewal fee in addition to the transfer fee);
- e) this form and the appropriate fees are received either by certified mail or personal delivery to the Securities and Real Estate Division of the Department of Commerce within 72 hours of execution by the broker to whom the applicant is transferring; (in the event of a delay in mail delivery, an application postmarked within 24 hours of the date of the signature of the new broker shall be deemed timely received);
- f) the signature of the previous broker pre-dates the signature of the broker to whom the salesperson is transferring;
- g) the applicant is in compliance with 4 MCAR Section 1.41525 concerning notice to the commissioner of any change of information contained in his/her license application or of any civil judgment, disciplinary action or criminal offense.

"X" one:	<input type="checkbox"/> Transfer	\$10.00	<input type="checkbox"/> Transfer and Renewal*	\$25.00
	<input type="checkbox"/> Transfer with Subdivided Land	\$20.00	<input type="checkbox"/> Transfer and Renewal with Subdivided Land*	\$35.00

*Renewal fees are subject to increase due to special assessments for the Real Estate Education, Research and Recovery Fund. If transferring between May 1 and June 30, inclusive, of any year contact the commissioner's office to determine whether a special assessment has been made.

Applicant's Name as it Appears on License	Social Security No.	License No.
Home Address	City, State, Zip	

Broker (company to whom presently licensed)	License No.
Signature of Broker	Date

Broker (company to whom you will be licensed)	License No.
I understand that I, as broker, am responsible for the real estate activities of this salesperson as of the time and date below:	
Signature of Broker	Date

I hereby certify that I currently hold a Minnesota Real Estate Salesperson's License and that I am eligible for an immediate transfer; that I am not past due for any educational requirements; and that all information contained herein is true and accurate. Further, I understand that I am unlicensed for any period of time between the signatures of the terminating broker and the broker to whom I am transferring. I understand and acknowledge that if this application is not received by the Securities and Real Estate Division within 72 hours of execution of the broker to whom I am transferring, or that if this application is not completed in its entirety, I am not eligible for an immediate transfer. I further certify that I have not failed to notify the Commissioner within 10 days of any change of information contained in my license application or of any civil judgment, disciplinary action or criminal offense, which notice is required pursuant to 4 MCAR 1.41525. (If this application is submitted to the Commissioner by certified mail, the return receipt shall constitute evidence of delivery.)

Signature of Applicant	Date
------------------------	------

CM-00511-01 APPLICANT MUST RETAIN A PHOTOCOPY OF THIS DOCUMENT AS EXECUTED AND SHALL ALSO PROVIDE THE BROKER FROM WHOM HE IS TRANSFERRING WITH A PHOTOCOPY OF THIS DOCUMENT AS EXECUTED.

Repealer. 4 MCAR § 1.41504, 4 MCAR § 1.41508, 4 MCAR § 1.41509, 4 MCAR § 1.41511, the forms following 4 MCAR § 1.41511, and 4 MCAR § 1.41512 are repealed.

Effective date. Rules 4 MCAR §§ 1.41529-1.41548 and 4 MCAR §§ 1.41553-1.41561 are effective January 1, 1983.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

State Board of Education Department of Education Special Services Division

Adopted Amendments to and Repeal of Rules Governing Private Business, Trade and Correspondence Schools (EDU 380-388)

The rules as proposed and published at *State Register*, Volume 6, Number 34, February 22, 1982 (6 S.R. 1464) are now adopted.

Rules as Adopted

Repealer. Rules EDU 380 B.4., 4.a. and 4.b.; EDU 381 D.; EDU 385 A., A.1. and 2., B., B.1. and 2.; and EDU 386 A. and C. are repealed.

Renumbering and Relettering. Renumber EDU 380 B.5. as EDU 380 B.4. Reletter EDU 385 D. as EDU 385 B.

Department of Energy, Planning and Development Energy Division

Notice of Continuation of Temporary Rules Governing the Home Energy Disclosure Program

Notice is hereby given that the Energy Division of the Department of Energy, Planning and Development is continuing the Adopted Temporary Rule Governing the Home Energy Disclosure Program. The continuation shall not be effective until this same notice has been mailed to all persons registered with the division to receive notice of any rule makings. These temporary rules shall be effective for 180 days or until permanent rules are adopted.

The adopted Temporary Rule was published at 6 S.R. 1493-1496, on February 22, 1982. The rules in their entirety were published at 6 S.R. 922-937 on November 16, 1981.

June 14, 1982

Kent E. Eklund, Commissioner
Department of Energy, Planning and Development
Energy Division

Department of Health Environmental Health Division

Adopted Rule Governing Formaldehyde in Housing Units

The rule proposed and published at *State Register*, Volume 6, Number 16, pages 667-669, October 19, 1981 (6 S.R. 667) is adopted with the following modifications:

Rule as Adopted

7 MCAR § 1.448 Formaldehyde in housing units.

A. Applicability. This rule applies to newly constructed housing units containing urea formaldehyde and to installations of urea formaldehyde foam insulation. The rule establishes a maximum permissible ~~ambient~~ indoor air level for formaldehyde and prescribes the methods for measuring levels of formaldehyde and the conditions under which the measurements are to be made.

B. Definitions. For the purpose of this rule, the following terms have the meanings given them.

1. ~~“Building materials” has the meaning given it in Minn. Stat. § 325F.18, subd. 1a.~~

2. “Commissioner” means the Commissioner of Health.

3. 2. “Housing unit” means one or more rooms which are intended for long-term human habitation. It includes any mobile home, single family residence, or living unit in a multi-unit structure, regardless of type of ownership, and any health care facility such as a nursing home, boarding care home, intermediate care facility, or hospital.

4. 3. “Newly constructed” means that the housing unit has not been previously occupied and that construction of the unit was completed more than 30 days after the effective date of this rule.

C. Maximum permissible formaldehyde level in housing units.

1. At the time of sale of a newly constructed housing unit, the ambient indoor air of any habitable room in the unit shall not contain more than ~~0.4~~ 0.5 parts of formaldehyde per million parts of air as measured according to the procedures specified in D. and E. The seller is responsible for assuring that the unit complies with this level.

2. The installation of urea formaldehyde foam insulation in a housing unit which is not newly constructed shall not cause the ~~ambient~~ indoor level of formaldehyde in any habitable room in the unit to exceed ~~0.4~~ the higher of 0.5 parts per million or the preinstallation level as measured according to the procedures specified in D., E. and F. The installer of urea formaldehyde foam insulation is responsible for assuring that the installation complies with this level.

D. Test method.

1. Formaldehyde shall be measured according to the National Institutes of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, Volume 1, 2nd Edition, NIOSH 77-157-A, 1977, Method Number P&CAM 125. Air samples shall be collected in a solution of one percent sodium bisulfite in distilled water.

E. Testing conditions. Whenever the level of formaldehyde is to be measured, all of the conditions prescribed in I.-4. must be met before a measurement is considered valid for the purpose of determining compliance with this rule.

1. Testing shall be carried out at an indoor temperature within the range of 70 degrees Fahrenheit to 85 degrees Fahrenheit and at ambient relative humidity. The resulting formaldehyde test levels shall be corrected to a 78 degree Fahrenheit condition using the following formula:

$$C = C_0 \times e^{-R(1/t - 1/t_0)}$$

$$C = C_0 \times e^{-R(1/t - 1/t_0)}$$

Where,

- C = test formaldehyde concentration level
- C₀ = corrected formaldehyde concentration level
- e = natural log base
- R = coefficient of temperature = 9799
- t = actual test condition of temperature in degrees Kelvin
- t₀ = corrected temperature in degrees Kelvin

F. Special testing conditions for use with urea formaldehyde foam insulation. In order to assure compliance with C.2., procedures in addition to those prescribed in E. must be followed with urea formaldehyde insulation. Those procedures are:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

1. The level of formaldehyde in a housing unit shall be measured no more than two weeks prior to installation and shall be measured again within 30 days after the installation of the urea formaldehyde foam insulation.

2. ~~The consumer shall, at least two hours before the air samples are taken, cease any activity and remove from the unit any major source of formaldehyde which has been introduced by the consumer into the unit which may contribute to the level of formaldehyde in the air of the unit. The major sources include, but are not limited to the following: draperies, furniture made of plywood or particleboard and upholstered furniture, any of which are less than one year old; and~~

3. If the entire roof or all exterior walls are to be insulated, the preinstallation air samples shall be taken as prescribed in E.1.-2. If only a portion of the unit is to be urea formaldehyde foam insulated the preinstallation measurement for formaldehyde shall be made in those two rooms closest to the walls where the installation is to be made. Postinstallation air samples shall be collected from the same rooms as those which were sampled prior to installation.

Department of Public Safety Fire Marshal Division

Adopted Rules Governing Minimum Safety Standards for Transportation of Natural and other Gas by Pipeline

The rules proposed and published at *State Register*, Volume 6, Number 41, pages 1709-1711, April 12, 1982 (6 S.R. 1709) are adopted as proposed.

Department of Public Safety Safety Administration Division

Adopted Rules Governing Issuance and Display of School Bus Inspections Certificates

The rules proposed and published at *State Register*, Volume 6, Number 37, pages 1578-1582, March 15, 1982 (6 S.R. 1578) are adopted with the following modifications:

Rules as Adopted

11 MCAR § 1.0021 Definitions. For the purposes of 11 MCAR §§ 1.0020-1.0024, the following terms shall have the meanings given them:

D. Rejection sticker. "Rejection sticker" means a sticker signifying the vehicle to which it is affixed is not to be used for school bus purposes. The size of the rejection sticker may not be larger than the inspection certificate.

11 MCAR § 1.0024 Method of inspection.

E. Point system. In accordance with C., defects in the equipment of a school bus listed in the left column will cause the number of points specified in the right column to be deducted from the starting score of 100.

25. Steering	<u>25</u>
a. One king pin bad (less <u>more</u> than 1/2 inch)	15
45. Heater Defroster fan <u>or heaters in excess of one in multiple heater buses</u>	each 5

Waste Management Board

Adopted Rules Governing Inspection of Public Records Held by the Waste Management Board and Defining Certain Terms

The rules proposed and published at *State Register*, Volume 6, Number 23, pages 1091-1093, December 7, 1981 (6 S.R. 1091) are adopted with the following modifications:

Rules as Adopted**6 MCAR § 8.015 ~~Public records and information classified by law as nonpublic or private.~~**

~~A. Inspection of public records. All records and data of the board or copies thereof, which are public pursuant to Minn. Stat. §§ 15.1611-15.1698 shall be available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the board offices. No public records shall be removed from the board's offices. Any inspection or copying of records shall be made in the presence of an officer, employee, or agent of the board. The board may charge and collect a reasonable fee, computed in accordance with 2 MCAR § 1.203 A.1.d.(1)-(5), for the reproduction of any public records.~~

~~B. Classification of private and nonpublic data.~~

~~1. Any data held by the board which consists of trade secret information as defined by Minn. Stat. § 15.1673, subd. 1, clause (b), sales information, or any other information which, if public, would tend to adversely affect the competitive position of the subject of the data, shall be classified as private or nonpublic data as defined in Minn. Stat. § 15.162, subds. 5a and 5e if it meets the following requirements:~~

~~a. A subject of the data must certify that the data qualifies as nonpublic or private data under Minn. Stat. § 115A.06, subd. 13, by submitting a written statement to the chairperson of the board setting forth those statutory grounds which require the board to keep such data classified as nonpublic or private; and~~

~~b. The chairperson must approve the classification in writing.~~

~~2. Data meeting the requirements of 1-a. shall not be released unless the chairperson fails to classify the data as private or nonpublic.~~

~~3. Whenever the chairperson denies classification of data as private or nonpublic, he shall notify the subject of the data of the denial at least three days before making the records or information available to the public. The subject of the data may withdraw the records or information if that option is available. An adverse determination by the chairperson may be appealed to the Commissioner of Administration. The appeal shall follow the procedures established for contested cases in Minn. Stat. Ch. 15, and the rules of the Office of Administrative Hearings relating to contested case proceedings.~~

~~4. The subject of data classified as private shall be notified by the board that the classification has been made. The notification shall include a list identifying the purposes, uses, and recipients of the particular data.~~

~~C. Use of private and nonpublic data. All data classified as private or nonpublic shall be appropriately identified and segregated at the offices of the board. Certified data approved for classification as private or nonpublic by the chairperson may be used by the board to compile and publish analyses or summaries and to carry out its statutory responsibilities in a manner which does not identify the subject of the data.~~

~~D. Disclosure of private and nonpublic information.~~

~~1. Data may be released when the board is specifically authorized to do so by statute.~~

~~2. Data certified as private or nonpublic by the subject of the data may be released if the chairperson does not approve the requested classification.~~

~~3. Regardless of whether data is classified as private or nonpublic, the board may disclose any data which it is obligated to disclose in order to comply with federal law and regulation, to the extent and for the purposes of the federally required disclosure. Whenever the board is required to release classified data pursuant to federal law, it shall notify the subject of the data of the requirement at least three days before making the records or information available to the public. The subject of the data may withdraw the information if that option is available.~~

~~4. The subject of data classified as private or nonpublic pursuant to Minn. Stat. § 115A.06, subd. 13, may authorize the disclosure of some or all of that data by the board.~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

Gerald and Betty Landsberger,

Appellants,

v.

Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated May 22, 1981, relating to the Income Tax of Appellants for the year 1979.

Docket No. 3354
Order dated June 11, 1982

The above entitled matter was heard by the Minnesota Tax Court on February 16, 1982, Judge Carl A. Jensen presiding.

Gerald Landsberger, one of the Appellants appeared on behalf of the Appellants.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of the Appellee.

Frank Forrester was allowed to file a Brief amicus curiae. In a Brief he stated the following:

"It is very important to recognize that Frank Forrester was/is the sole expert to testify re the organization, the purpose, the parties, the authority to act re IDI [International Dynamics, Inc.], IDI Credit Union [International Dynamics, Inc. Credit Union], Equity Credit Foundation, P. and T.S. [Personal and Technical Services], American Dynamics Corp., and Financial Counselors, Inc." (Language in brackets was supplied from other testimony.)

Syllabus

1. A so-called lifetime sale of "personal services property" between Landsberger, the Appellant herein, and P. and T.S., which was stated to be a trust of some kind, does not affect the taxability of income that Appellant received from his employer, Burlington Northern Railway. The employer is required to withhold income taxes, pay Social Security Taxes, carry Workers Compensation, and do any other things required of any employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minn. Stat. § 290.53.

3. A person advising or assisting in the fraudulent attempt to evade taxes may be guilty of a crime under Minn. Stat. § 609.05.

Findings of Fact

1. The Appellants, Gerald and Betty Landsberger, are cash basis, calendar year taxpayers and residents of the State of Minnesota. The taxable year at issue herein is 1979.

2. During the year 1979, Appellant Gerald Landsberger (hereinafter referred to as Landsberger) was employed in the Accounting Department of the Burlington Northern Railroad. Landsberger's employment with Burlington Northern began in 1952 and continued until his resignation in 1981. By reason of this employment, Landsberger was paid by Burlington Northern a total of \$25,027.72 in compensation during the taxable year 1979 as shown by his W-2 Form, Exhibit A.

3. On May 27, 1979, Landsberger signed a document titled "Personal Services Contract" with Professional and Technical Services (a trust) which was also signed by F. Forrester, Exhibit 1. On June 1, 1979, Landsberger signed a document titled "Intrusted Personal Services Contract" which was signed by Frank Forrester, trustee for Professional and Technical Services. Exhibit 1-A. The first contract indicates that it is an assignment of personal services to run continuously until cancelled in writing. Further language appears to indicate that the contract renews automatically for one year unless either party gives fifteen days notice in advance of the annual renewal date. Further language indicates that either party can terminate the contract by giving written notice thirty days in advance of the requested termination date. There appears to be some conflict in these provisions.

The second contract, Exhibit 1-A, appears to indicate that it runs "indefinitely." Nothing further is said about terminating but Frank Forrester stated in his rebuttal to Appellee's Brief as amicus curiae on Page 3 that it was "an actual legal, valid, irrevocable contract in full force and effect."

4. Burlington Northern, Landsberger's employer, had no knowledge of the contracts referred to above during the period involved herein.

5. Landsberger endorsed over to IDI \$15,236 of his pay checks from Burlington Northern. Burlington Northern withheld state and federal income taxes and Social Security taxes, and Landsberger received and was entitled to all the benefits of other employees of Burlington Northern.

6. Landsberger received \$14,475 in payments from IDI Credit Union. This is 95% of the amount he signed over to IDI. It appeared that as soon as he turned over a check to IDI he received in return a check for 95% of the check turned over. Landsberger and Forrester characterized the payments from IDI Credit Union as gifts from a charity. Similar contracts were signed by Forrester with other employees and Landsberger participated in soliciting and signing some of the contracts. Landsberger also handled some of the receipts and made some of the payments from IDI Credit Union. It appeared that the payments to other employees amounted to 80 to 100 percent of the amounts of the paychecks that they turned over. The checks were mailed to a Post Office Lock Box in the St. Paul Post Office from the other employees and Landsberger then deposited these checks in a St. Paul bank account over which he had signature authority and made the payments by check signed by him to the other employees.

7. Landsberger filed his 1979 Minnesota Tax Return indicating the amount he had received from his employer, Burlington Northern, and he took a deduction of \$15,236, which he called "factors discount on accounts receivable-resold," which was the amount of paychecks signed over to IDI.

8. Landsberger also took a deduction on his 1979 Tax Return of \$445 which he called "advisors fees for advice on investing assets/property."

9. The Appellants' 1979 Minnesota Income Tax claimed that no Minnesota Income Tax was due from Appellants and that they were entitled to a refund of \$753.

10. Appellants also claimed and received a property tax refund for 1979 in the amount of \$247 based on the net income shown on their tax return.

11. Upon audit by the Commissioner of Revenue, the factors discount deduction of \$15,236 and the deduction of \$445 for advisors fees were disallowed. The property tax refund was recomputed and as a result of these changes the following additional tax plus interest was assessed against Appellants for 1979:

Additional Income Tax	\$671
Property Tax Refund— Disallowed	\$247 —
Total	\$918

12. The Commissioner issued his Order of Assessment on May 22, 1981. The Appellants have taken a timely appeal from that Order to this Court.

13. Landsberger was an employee of Burlington Northern Railroad and was required to pay income taxes on the wages received from Burlington Northern Railway. Any transactions that he had with IDI or P. and T.S. had no effect on the taxability of his income from Burlington Northern Railway.

14. There is no basis for the factors discount deduction of \$15,236.

15. The deduction of \$445 for advisors fees was properly disallowed as there was no showing that it was made in connection with the management, conservation or maintenance of any of his property which produces or is intended to produce taxable income to him.

16. A claim of excess withholding exemptions or deductions resulting in tax reduction or exemption may be tantamount to fraud and willful evasion of taxes subject to criminal penalties under Minn. Stat. § 290.53.

17. A person advising or assisting in the fraudulent attempt to evade taxes may be guilty of a criminal act under Minn. Stat. § 609.05.

Conclusions of Law

1. The Commissioner's Order of Assessment dated May 22, 1981, is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

This is about as raw an attempt to evade and avoid taxes as has come to the attention of this Court. It appears that Frank Forrester, who calls himself the "inventor" of this scheme is responsible for a large number of apparently gullible people

TAX COURT

participating in this scheme of tax evasion. According to his testimony and briefs, several thousand people have been involved in his schemes.

Several other similar cases are pending in this Court, and according to the statements of parties and testimony, the facts are very similar, except that Landsberger was more knowledgeable than the others and an actual participant in the operation of the schemes.

Landsberger should have known that he could not transfer his earnings to some other body and receive 95% back tax free. Any claim that there is no connection with his turning over his income checks to IDI and receiving back from IDI Credit Union a check for 95% of this amount is ridiculous. Although this proceeding involves only civil liability, it would appear to this Court that consideration should be given to possible criminal proceedings against the active participants and perpetrators of this scheme. The U. S. Supreme Court in *Lucas v. Earl*, 50 S. Ct. Page 241, decided in 1930, very clearly stated that income tax could not be avoided by this type of scheme by stating the following:

“There is no doubt that the statute could tax salaries to those who earn them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it.”

The scheme involved here can hardly even be referred to as an anticipatory assignment of income since the employer, Burlington Northern, was not advised of it. This was simply a contract between Landsberger and P. and T.S. by which Landsberger would pay P. and T.S. the total amount that he earned in exchange for some illusory advice. There is a considerable question as to the validity and enforceability of this contract as between Landsberger and P. and T.S., but we do not have to concern ourselves with this.

It is absolutely clear that Burlington Northern did not make any agreement with P. and T.S. for it to supply Landsberger's services to Burlington Northern. Forrester attempts to compare this scheme to organizations and corporations that provide manpower or contractual services. Those organizations or corporations are the ones that contract in their name to provide certain services. They are perfectly legitimate operations.

Forrester in his “Rebuttal to Appellee's Brief by the Amicus Curiae” on Page 11-A and B provides information from the Research Institute of America, Inc. This states as follows:

“Current law provides that until June 30, 1982, employers who have a ‘reasonable basis’ for treating workers other than as employees and who satisfy other statutory requirements will be able to avoid employment tax liability with respect to such workers.”

If P. and T.S. had contacted and advised Burlington Northern of its scheme, it is obvious that Burlington Northern would still not have a reasonable basis for treating its workers other than as employees and it is obvious that Burlington Northern would not have been a participant in such a scheme. The article goes on to indicate that there is a change being considered which would allow taxpayers to either rely on the above common law test or rely on other standards as follows:

“But taxpayers who don't want to rely on the common law standard would instead be able to count on new safe harbor provisions to guarantee the treatment of persons as independent contractors. Under the proposed law, an individual who provides services would be treated as an independent contractor, and not as an employee, provided five requirements are satisfied:

- 1) The individual controls when and how many hours he works.
- 2) The person for whom he provides the services doesn't furnish him with his principal place of business, or does so only at a fair rental.
- 3) The individual owns or leases assets which are of significant value in performing the services and which represent a substantial investment relative to what he gets paid, or the individual risks income fluctuation because more than 90% of his remuneration relates to sales or other output rather than to the number of hours he works.
- 4) The services are performed under a written contract specifying that the individual won't be treated as an employee, and the individual is given written notice as to his duties with respect to self-employment and income taxes as an independent contractor.
- 5) The person for whom the services are performed files information returns with respect to the individual who performs them.”

Even if that law were passed, it is perfectly clear that Burlington Northern would still be required to treat Landsberger as an employee. Burlington would have no “reasonable basis” for treating Landsberger other than as an employee since it controlled his hours, furnished his place of work, owned all of the assets connected with his work and in all other respects Landsberger was a common law employee.

Forrester's failure to contact Burlington Northern to try to get them to go along with his scheme would appear to be evidence that Forrester had knowledge that his scheme was a hoax and a fraud. It also appeared that Forrester and P. and T.S. are one and the same, and it would appear that he knowingly received income tax withholding money that belonged to the State of Minnesota and he and Landsberger can both be held liable for the payment of any unpaid taxes. It also appears that Forrester advised Landsberger as to how to file his tax return to get a refund which appears to be a blatant fraud and both Forrester and Landsberger might very possibly be subject to criminal penalties.

Forrester attempted to compare his "scheme" with Manpower and other similar organizations. There would appear to be no similarity. It is our understanding that a party who wishes temporary services contacts Manpower who sends the employee. Payment is made to Manpower who pays the employee and also withholds income tax and pays other employee taxes such as Workers Compensation, Social Security and unemployment tax.

Forrester continues to say that no one understands that P. and T.S. owns the lifetime irrevocable "personal services property" belonging to Landsberger. This is ridiculous on the face of it. However, we are not concerned with the validity of this contract between Landsberger and P. and T.S. which is one and the same thing as Forrester. It is absolutely clear that Landsberger earned his wages from Burlington Northern as an employee and income taxes must be paid on those earnings. He could then buy whatever services he might wish from P. and T.S., and if he did, in fact, do this, it would appear that P. and T.S. might be taxable by the State of Minnesota, although this is not before us.

We are not involved in this proceeding with criminal fraud, but we want to make it clear that the findings in this case would not prohibit criminal charges for criminal fraud if they exist. These findings would not be res judicata in such a proceeding, but they would also not constitute double jeopardy. It would be the opinion of this Court that some action further than the payment of tax and interest should be taken to prevent this type of action in the future. It may be that legislative action is needed to make it clear that an obvious scheme to evade taxes and to encourage and assist others to evade taxes is a criminal act. The type of conduct involved here is not simply tax avoidance.

Appellant's conduct in this case appears to constitute a fraud on the government. We would not make these statements if Appellant had simply been sold this idea and had been advised that it was legal. Appellant here is a participant in the evasion efforts of Forrester or P. and T.S. or any of the other affiliated trusts or organizations.

Appellant's conduct, together with that of Frank Forrester, who entered the case as amicus curiae, appears to this Court to constitute a fraud against the persons who have been solicited to engage their services. Further than that, Appellant appeared to assist other people in preparing their income tax returns. There may be criminal violations of Minn. Stat. § 290.53 and Minn. Stat. § 609.52, subd. 2.

Forrester in his Amicus Brief repeatedly charges Appellee with false and fraudulent claims. Forrester and Landsberger cannot change the employer/employee relationship between Burlington Northern and Landsberger without Burlington being involved. If Burlington had been advised of the entire scheme, including the facts that they would not be subject to workers compensation, unemployment compensation, withholding, Social Security, retirement, sick leave, pension, group health, vacation, and the fact that no income tax was going to be paid by Landsberger, they may or may not have accepted an employment contract with P. and T.S. or Forrester to provide Landsberger's services since it appears patently fraudulent. Burlington Northern would undoubtedly be happy to be able to get away with the elimination of all of these benefits and expenses, but it would have been absolutely obvious to them that there was no way they could do that.

It is rather interesting to note on Page 6 of Forrester's Rebuttal to the Appellee's Brief that he makes the following statement:

"Anyone is free to sign and become an independent contractor working through P. and T.S. to become a first class-citizen and avoid the stigma of being an employee."

If we understand Forrester's position and contract, this first-class citizen becomes a lifetime slave of P. and T.S. without any right to any money for his services. This again is patently ridiculous.

Also, on Page 6 of Forrester's Rebuttal, he states:

"Neither Landsberger or Forrester have any officer, director, employee, or agent status with IDI or the IDI Credit Union which are separate legal entities."

It appeared that Landsberger made out checks for IDI and IDI Credit Union and this alone makes him an agent.

There seems to be no real distinction between American Dynamics Corporation, P. and T.S., IDI, or IDI Credit Union. The Court was not provided with any documents indicating the nature of any of these organizations or whatever one should call them. All the transactions appear to be mere paper transactions.

Forrester has attempted to completely avoid income taxes on behalf of Landsberger and then give Landsberger back more than he would have received had he paid income taxes. *There is no legal way that income for services performed can be transposed into non-taxable gifts, and any such attempt will be invalid and probably fraudulent.*

The following statement by Forrester in his Rebuttal as amicus is very interesting:

"It is very important to recognize that Frank Forrester was/is the sole expert to testify re the organization, the purpose, the parties, the authority to act re IDI, IDI Credit Union, Equity Credit Foundation, P&TS, American Dynamics Corp., and Financial Counsellors, Inc. No other party qualifies as a knowledgeable expert in the basic facts of the operating systems. Thus, in the absence of a public jury trial all relevant facts re operating functions, transactions, and authority have only one legal source: Frank Forrester. No one has any right or authority to dispute Frank Forrester's testimony. Any legal determination must, therefore, be based on the facts as given by Frank Forrester. And if Frank Forrester has declared that contra claims/statements are false or fraudulent, then that is what they are as no other supporting facts exist."

Forrester is apparently telling the Courts that they have no right or authority to dispute his testimony. If that were in fact true, the disposition would be very easy. The Court, in fact, finds most of the testimony of Forrester erroneous.

Forrester and Landsberger attempt to make much of the claim that Landsberger did not have constructive receipt of the wages earned by Landsberger from Burlington. Forrester apparently does not understand what constructive receipt means. Landsberger did not have constructive receipt of his earnings, he had actual receipt. Constructive receipt comes into play only when a party does not actually receive the income but he is charged with having received the income, and it is called constructive receipt. This generally occurs where a party does not actually receive income, but he has it available to him and could take it into his possession if he wished.

There has been considerable discussion by both parties relative to calling this transaction an anticipatory assignment of income. The Petitioner alleges that it is not an assignment of income and the Respondent alleges that it is an anticipatory assignment of income.

Actually this should probably not be referred to as an anticipatory assignment of income. At the least, the employer Burlington Northern had never been notified of any assignment. If the contract between Landsberger and P. and T.S. was, in fact, legal and enforceable, which we doubt, it amounted to a promise to transfer to P. and T.S. any earnings that Landsberger received. This case falls squarely within the facts of *Lucas v. Earl*, 281 U.S. 111, 50 S.Ct. 241 (1930). The Court there did not use the words anticipatory assignment of income but simply said:

" . . . the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it."

We agree with Respondent that the attempt to transfer Landsberger's earnings to some other party or organization and the receiving of 95% of it back in the form of an alleged tax free gift is a complete sham. It is so obviously a sham that it may well be considered fraudulent under the criminal statutes pertaining to such matters. This Court looks to the substance of the transactions and rather than the form and finds that this series of transactions was of no effect. *Commissioner of Internal Revenue v. Court Holding Co.*, 324 U.S. 331, 65 S.Ct. 707 (1945); *Midwest Federal Savings and Loan Association of Minneapolis v. Commissioner of Revenue*, 259 N.W. 2d 596 (Minn. 1977).

Lucas v. Earl, supra, was cited again in *U. S. v. Bayse*, 410 U. S. 441, 93 S.Ct. 1080, 35 Law Edition 2nd 412 (1973), when the Court said:

"The principle of *Lucas v. Earl* that he who earns income may not avoid taxation through anticipatory arrangements no matter how clever or subtle has been repeatedly invoked by this Court and stands today as a cornerstone of our graduated income tax system."

Also see, *Commissioner of Internal Revenue v. Culbertson*, 337 U.S. 733, 69 S.Ct. 1210, 93 Law Edition 1659 (1949); *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W. 2d 565 (1946); *Fury v. Commissioner*, Minn. Tax Court Docket No. 2626 (August 24, 1978), which was summarily affirmed by the Minn. Supreme Court on June 11, 1979; *Baldwin v. Commissioner of Revenue*, 309 N.W. 2d 750 (Minn. 1981).

The Supreme Court in *Commissioner of Internal Revenue v. Court Holding Co.*, supra, stated the law very clearly and succinctly as follows:

"The incidence of taxation depends upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title."

There is no great distinction between the facts in this matter and in those cases involving family estate trusts where the party would assign his lifetime services and income to the trust which would in turn pay all of the taxpayer's personal costs and living expenses. In a series of decisions, the Court have held that such attempts to assign "lifetime services" to a trust are merely anticipatory assignments of income, and, therefore, ineffective as a means of avoiding the taxpayer's personal income tax liability on the income earned by the taxpayer. *Vnuk v. Commissioner*, 621 F2d 1318 (8th Cir., 1980); *Ronald E. Morgan, TC*

Memo 1978-401, App. Dism. by 9th Circuit (Jan. 21, 1980); *George T. Horvat*, TC Memo 1977-104, aff'd per curiam by unpublished order (7th Circ, June 7, 1978); cert. den. 440 U.S. 959, 99 S.Ct. 1501 (1979); and *Peter Y. Taylor v. Wisc. Dept. of Revenue*, Wisc. Tax Appeals Comm. Dkt. No. 1-5817 (Sept. 19, 1979).

The holdings in these cases are aptly reflected in the final paragraph of the *Morgan* decision, supra, as follows:

"In summary, we conclude that the tax laws cannot be so easily circumvented by conceiving arrangements to transfer the exclusive use of lifetime services and the resulting compensation to family trusts as described herein. The inescapable conclusion is that the taxpayers, not the family trusts, control the earning of income."

Landsberger claimed a miscellaneous deduction of \$445 for what he termed "advisors fees for advice on investing assets/property." Landsberger and his witness, Forrester, claimed that this expenditure was for the preservation, maintenance and conservation of Landsberger's estate and property. However, Landsberger testified as follows:

"During the course of the year, 1979, I incurred various expenses associated with P. and T.S. . . . The amount of expenses incurred was \$445." (Tr. 13)

From the testimony at trial it is apparent that Landsberger is claiming this deduction under Minn. Stat. § 290.09, subd. 2(b) (2), which reads as follows:

"(b) Expenses for Production of Income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year.

- (1) For the production or collection of income;
- (2) For the management, conservation, or maintenance of property held for the production of income; or
- (3) In connection with the determination, collection, or refund of any tax. (Emphasis added.)

This statute is to be read together with Minn. Stat. § 290.10(1), which prohibits the deduction of any personal, living or family expenses.

Minn. Stat. § 290.09, subd. 2(b) (2), expressly requires that to be deductible an expenditure must be in connection with property held for the production of income which is otherwise taxable under Minnesota's income tax law. See Minn. Income Tax Reg. 2009(2)-15(a) (1). In this regard Landsberger has simply failed to show any connection between his payment of \$445.00 to IDI and the management, conservation or maintenance of any of his property which produces, or is intended to produce, income taxable to him. On the contrary, the record clearly shows that the \$445.00 was solely in connection with a non-productive tax avoidance scheme.

No new sources of taxable income were in any way created or preserved by the expense in question. In fact there was never any written contract produced at trial indicating exactly what the \$445.00 was spent for. (Tr. 66). All this record shows is a receipt from IDI to Landsberger (Exh. 2) indicating that IDI would:

- 1) Provide forms and procedures for establishing bank accounts.
- 2) Provide trustees for trusts.
- 3) Arrange to eliminate wills, probate court, death taxes, legal and CPA fees on estates.
- 4) Advise on interpretation of the latest changes in bureaucratic laws & regulations.

None of these activities bear any direct relationship to the management, conservation or maintenance of property held for the production of income taxable to Landsberger.

At least two federal authorities have held that expenses paid by taxpayers in connection with the establishment of "family estate trusts" are not deductible under I.R.C. Sec. 212, which is the federal counterpart to Minn. Stat. Sec. 290.09, subd. 2(b) (2). *Ronald E. Morgan*, supra; and Rev. Rul 79-324, IRB 1979-42, p. 12. These authorities constitute additional reasons why the commissioner was correct in disallowing Landsberger's deduction claim of \$445.00 for "advisors fees." That money was simply a personal expense for which no deduction is allowed under Minn. Stat. § 290.10(1).

On his Property Tax Refund Return for 1979, Landsberger claimed a property tax refund of \$403.00, based upon a total household income (i.e. federal adjusted gross income) of only \$13,800. This refund claim was inadvertently paid to Landsberger on September 26, 1980.

Upon audit by the commissioner, Landsberger's federal adjusted gross income for 1979 was increased to \$29,036.00, thereby resulting in a corresponding increase to his household income for property tax refund purposes. Thereupon, the commissioner recalculated Landsberger's property tax refund, resulting in a reduction of \$247.00 in his claimed refund, which was assessed against him as part of the Commissioner's Order at issue herein.

Since the property tax refund credit is directly tied to the level of a claimant's household income under Minn. Stat. Sec. 290A.04, the Commissioner was clearly correct in making the above described adjustment.

Forrester and Landsberger apparently are trying to claim that the trust was hired by the Burlington Northern to do Landsberger's job and that payments actually should have been made from Burlington Northern directly to P. and T.S. This is, of course, ridiculous because Burlington Northern never knew anything about P. and T.S. and certainly was under no contractual relationship with P. and T.S. Certainly it is true that a corporation or perhaps a trust could be hired to do a job, but if the entity doing the hiring has complete control over what the individual person does, when he does it, how he does it, what hours he works, etc., that person is the employee of the entity and neither the entity or the employee can escape withholding, F.I.C.A., unemployment tax, workers compensation, etc. The fact that the checks were issued to Landsberger is almost absolute proof that this was simply an employer/employee situation, but even if the employer had issued the check directly to P. and T.S., it could not escape these taxes and insurance requirements if, in fact, it was an employment situation which it was in this case.

Forrester's testimony appears to contain much double talk. For example, in Landsberger's "Post-Trial Memo of Law" in the Exhibit A, which is a transcript of a hearing in the Minnesota Revenue Department attended by Forrester and Landsberger, on page 4 Forrester talks about Landsberger deducting the factors' discount as an expense. He is admitting that Landsberger received the money and says that he is entitled to deduct expenses from it. In other places in Forrester's testimony he claims that Landsberger had no right to receive the money or to have any control or deduct any expenses from it.

Actually, if this scheme were legitimate, it could be said that P. and T.S. and Landsberger were engaging in a scheme to cheat Social Security. Landsberger and Forrester are attempting to say that Landsberger was not employed and not earning any money. Yet they are allowing or in effect directing that Social Security payments be made which would entitle Landsberger to benefits when he retires which he should not have been entitled to since he would not have been employed if we were to believe Forrester and Landsberger. This just further points out how ridiculous this scheme is.

It further appears to this Court that Landsberger's W-4 Form was possibly criminally fraudulent. This is referred to on page 27 of Landsberger's Post-Trial Memorandum of Law. He claimed a deduction for expenses on his W-4 Form and this can only mean that he was entitled to the money in the first place. If he was not entitled to his earnings, he should not have claimed an expense item against it simply to avoid taxes being withheld. This would appear to be a fraudulent avoidance of taxes on his part in which Forrester was an accomplice.

There is some similarity in this case to *Helvering v. Horst*, 311 U.S. 112 (1940). In that case, the owner of negotiable bonds detached the interest coupons for future years and gave them to his son who then collected the money when the coupons became payable. The Court stated the following:

"In the ordinary case, the taxpayer who acquires the right to receive income is taxed when he receives it, regardless of the time when his right to receive payment accrued. But the rule that income is not taxable until realized has never been taken to mean that the taxpayer, even on the cash receipts basis, who has fully enjoyed the benefit of the economic gain represented by his right to receive income, can escape taxation because he has not himself received payment of it from his obligor. The rule, founded on administrative convenience, is only one of postponement of the tax to the final event of enjoyment of the income, usually the receipt of it by the taxpayer, and not one of exemption from taxation where the enjoyment is consummated by some event other than the taxpayer's personal receipt of money or property. Cf. *Aluminum Castings Company v. Rutzahn*, 282 U.S. 92, 98, 51 S.Ct. 11, 13, 75 L.Ed. 234. This may occur when he has made such use or disposition of his power to receive or control the income as to procure in its place other satisfactions which are of economic worth."

If we are to believe that Landsberger did receive something of economic worth from P. and T.S. for which he paid his lifetime services, the above quotation clearly states that he must be taxed as a recipient of his earnings when those earnings are received either by him or the party to whom they were transferred.

The Court in the above case stated this even more clearly as follows:

"The tax laid by the 1934 Revenue Act upon income 'derived from . . . wages, or compensation for personal service, of whatever kind and in whatever form paid . . . ; also from interest . . . ' therefore cannot fairly be interpreted as not applying to income derived from interest or compensation when he who is entitled to receive it makes use of his power to dispose of it in procuring satisfactions which he would otherwise procure only by the use of the money when received."

In conclusion, this Court finds that all of the schemes of Landsberger and Forrester involved in the matters contained herein are of absolutely no consequence and that Landsberger is liable for all income taxes on his earnings. We would further note that in an Order of the United States District Court for the District of Minnesota, Third Division, in a case titled *United States of America v. Gerald J. Landsberger*, Civil Case No. 3-81-313, the Court characterized Landsberger's conduct as "fraudulent and deceptive conduct." It appears to this Court that Landsberger's conduct and Forrester's conduct as an accomplice, or actually in reality the principal, are possible criminal violations of the law and we would suggest that the persons charged with the responsibility to enforce the criminal laws examine into the schemes of Forrester and Landsberger in order to prevent continued exploitation of innocent people and possible continued violations of the criminal laws of the United States and the State of Minnesota.

C.A.J.

SUPREME COURT

Decisions Filed Friday, June 18, 1982

Compiled by John McCarthy, Clerk

81-1054 *State Bank of Rose Creek v. First State Bank of Austin*, Appellant. Mower County.

Under Minn. Stat. § 336.9-104 (i) (1980), establishing a set-off exclusion from coverage of the Uniform Commercial Code, Article 9, pertaining to secured transactions, a claimant of a set-off right need not comply with the security and filing requirements in order to assert whatever set-off rights he may possess.

The priority provisions of Article 9 of the Uniform Commercial Code are not applicable in a priority dispute where one party asserts a right to set-off.

Reversed. Otis, J. Took no part, Kelly, J.

81-503 *State of Minnesota v. Bruce E. Willis*, Appellant. Hennepin County.

Where, as passengers were leaving car after being lawfully ordered out, law enforcement officers saw a gun in open view protruding from under a passenger seat, officer was justified in entering the car and seizing the gun pursuant to the automobile exception to the requirement of a warrant.

Evidence was sufficient to justify conviction of defendant, a convicted felon, of constructive possession of the seized gun in violation of Minn. Stat. § 624.713, subd. (1) (b) and (2) (1980).

Affirmed. Yetka, J.

81-919 *In Re: Objections and Defenses to Real Property Taxes for the 1980 Assessment. Village Apartments, et al., petitioners, Appellants, v. State of Minnesota, et al.* Ramsey County.

An order denying class-action certification is not appealable as of right.

Dismissed and remanded. Wahl, J.

52049 *Fisher Nut Company, petitioner, v. Donald Lewis, Director of the City of Saint Paul Department of Human Rights ex rel. Leonard T. Garcia, et al.*, Appellants. Ramsey County.

Under Act of May 26, 1965, ch. 866, 1965 Minn. Laws 1627 (uncoded), the scope of review by the district court of a decision of the St. Paul Human Rights Commission is that provided by Minn. Stat. § 15.0425 (1980). The district court may, if it expressly so orders, choose to have a trial *de novo* on the record made at the hearing.

The decision of the St. Paul Human Rights Commission finding racial discrimination is unsupported by substantial evidence and the trial court properly dismissed the complaint.

Affirmed. Simonett, J.

Decision Filed Tuesday, June 8, 1982

82-415/Sp. *State of Minnesota v. William Earl Gorham*, Appellant. St. Louis County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from his sentences would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

Decisions Filed Thursday, June 10, 1982

82-205/Sp. *Charles E. Stephenson, petitioner, Appellant, v. State of Minnesota.* Hennepin County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentence would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

82-344/Sp. *State of Minnesota v. Gregory W. Root*, Appellant. St. Louis County.

District court properly denied postconviction petition for resentencing under the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentence would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

SUPREME COURT

82-409/Sp. Walter J. Stofferahn, Appellant, v. State of Minnesota. Hennepin County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines. Affirmed. Amdahl, C. J.

82-410/Sp. Charles Ray Powless, petitioner, Appellant, v. State of Minnesota. Hennepin County.

District court properly denied postconviction petition for resentencing under the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentence would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

82-413 State of Minnesota v. Steven Carl Klang, petitioner, Appellant. St. Louis County.

Trial court, in revoking stay of execution of sentences imposed in 1979, did not have authority to make those sentences run consecutively to sentences imposed in 1980.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed as modified. Amdahl, C. J.

82-416/Sp. State of Minnesota v. Edward William Larsen, Appellant. St. Louis County.

District court properly denied postconviction petition for resentencing under the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentence would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

Decision Filed Monday, June 14, 1982

81-1064 State of Minnesota, Plaintiff, v. Gerald A. Chryst and James Fagerstrom, *et al.*, Defendants. Scott County.

Prosecution of defendants for felony theft by swindle, based on alleged fraudulent sale of motor vehicles with altered odometers, is not barred by existence of statute making it a gross misdemeanor to sell or offer to sell a motor vehicle with knowledge that the odometer has been altered but without disclosing that fact.

Remanded for trial. Todd, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Security Office of Audit Coordination

Notice of Availability of Contract for Auditing Services

The Minnesota Department of Economic Security is seeking a qualified individual or firm to provide auditing services in accordance with the audit requirements of Attachment P to OMB Circular A-102 and to perform Financial and Compliance audit work at selected subgrantees throughout the state.

For copies of the Request for Proposals or for additional information contact:

Mr. Richard G. Hooy
Office of Audit Coordination
Room 124
390 North Robert Street
St. Paul, Minnesota 55101
(612) 297-2620

One contract will be awarded at a cost to the Department estimated not to exceed \$250,000. Proposals must be received by 4:00 p.m., Friday, August 6, 1982. Final award will be made by August 24, 1982.

Minnesota Correctional Facility-Red Wing

Notice of Availability of Contract for Medical Clinic Services

The program at the Minnesota Correctional Facility-Red Wing requires the services of a medical clinic. This clinic will provide all clinic services as ordered by the medical staff at MCF-Red Wing. Annual cost is limited to \$10,000.00.

Notice of Availability of Contract for Medical Laboratory Services

The program at the Minnesota Correctional Facility-Red Wing requires medical laboratory services. This vendor will provide all laboratory services as advised by the Medical Director at MCF-Red Wing. Annual cost is limited to \$8,500.00.

Notice of Availability of Contract for Dental Laboratory Services

The program at the Minnesota Correctional Facility-Red Wing requires dental laboratory services. The vendor will provide all laboratory services as ordered by the Dentist at MCF-Red Wing. Annual cost is limited to \$3,000.00.

For further information on these contracts, contact:

Thomas P. Kernan, Assistant Superintendent
Minnesota Correctional Facility-Red Wing
Box 45
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for these contracts is June 15, 1982.

Department of Human Rights

Notice of Extension of Deadline for Proposals for Legal Services to Indians

The deadline for submission of proposals for legal services to Indians in northern Minnesota published on page 1979 in the May 24, 1982 *State Register* has been extended to July 9, 1982.

Metropolitan Council of the Twin Cities Area

Request for Proposals for Services in Conducting a Regional Transportation Survey

The Metropolitan Council solicits a proposal for entering into a contract for the performance of services in conducting a telephone survey throughout the seven-county Metropolitan Area to gather travel data. The proposal should be submitted in five copies and mailed to the Metropolitan Council, Suite 300 Metro Square Building, St. Paul, Minnesota 55101, Attention: Natalio Diaz, Contract Manager.

The council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 5:00 p.m. on July 14, 1982 will be considered by the council and, in the event that a proposal is accepted, the council will notify the successful proposer in writing within 30 days following its consideration of the proposal.

Estimated cost of this project does not exceed \$70,000.

Requests for copies of the RFP should be directed to Natalio Diaz at (612) 291-6341.

STATE CONTRACTS

Department of Public Welfare Systems and Data Flow Division

Notice of Request for Proposals for Software Development

The Department of Public Welfare (DPW) is requesting proposals for the development of a systems design for the Public Welfare State Institutions System (PWSIS). Software is to operate on Texas Instruments Model 990/10 mini-computers utilizing the DX10 operating system, 1974 ANSI COBOL, and Texas Instrument utilities (TI-FORM, SORT/MERGE).

DPW is developing four of twelve modules of the planned PWSIS. The Security/Menu Module is the primary "housekeeping" portion of the system which will allow or prohibit access to programs, functions and files based on the identity of the user; and call the programs, procedures and files requested by the authorized user. The Resident ID Module will consist of the procedures and data required to establish and update a master control and index file for all data pertaining to an individual resident. The Resident Status Module will record location and status data in order to support aggregate population reporting and statistics, and provide individual resident histories. The Resident Banking Module will process the deposit and withdrawal of resident and social welfare monies, resident purchase orders, interest posting, periodic statements, and provide for auditing, balancing and control functions. The systems design will meet the Phase 2 requirements of the State's systems design methodology (P.R.I.D.E.).

A contract will be awarded to the lowest bidder demonstrating the necessary skills and experience to successfully complete the contract. Specific contractual requirements are defined in the Request for Proposal. The maximum value of this contract is estimated at \$15,000. All proposals must be received no later than July 19, 1982, with notification of award expected within 10 working days.

Inquiries and requests for proposals are available from:

Jeff Carman, Minnesota Department of Public Welfare, Mental Health Bureau Section,
Space Center Building, 444 Lafayette Road, Saint Paul, Minnesota, 55101, (612) 296-0981.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need (SLN) Registration for "Amiben"

Pursuant to Minnesota Statutes § 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture, on June 18, 1982, issued a Special Local Need (SLN) Registration for "Amiben," EPA Registration Number 264-138, manufactured by Union Carbide Agricultural Products Company, Research Triangle Park, North Carolina 27709.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration would allow the use of Amiben on soybeans, tank mixed with other herbicides as labeled followed by Amiben 10 to 21 days after planting to control wild proso millet.

The application and other data required under Minnesota Statutes § 18A.22, subdivision 2(a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN No. MN82-0012) is on file for inspection at:

OFFICIAL NOTICES

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 15, for the purpose of revoking, amending, or upholding this registration.

June 18, 1982

Mark W. Seetin, Commissioner
Department of Agriculture

Department of Commerce Board of Barber Examiners

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Barbering

Notice is hereby given that the State Board of Barber Examiners is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing Barber School Instructors. The promulgation of these rules is authorized by Minnesota Statutes § 154.24, which permits the agency to make reasonable rules for the administering of this chapter.

The State Board of Barber Examiners requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to: Adam J. Mikrot, 500 Metro Sq. Bldg., St. Paul, MN 55101.

Oral statements will be received during regular business hours over the telephone at 612/296-2364 and in person at the above address.

All statements of information and comment shall be accepted until 6 September, 1982. Any written material received by the State Board of Barber Examiners shall become part of the record in the event that the rules are promulgated.

Adam J. Mikrot
Executive Secretary

Department of Finance Debt Management Division

Notice of Maximum Interest Rate for Municipal Obligations for July 1982

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance Allan L. Rudell announced today that the maximum interest rate for municipal obligations in the month of July will be 14 percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to 15 percent per annum.

The maximum rate for obligations authorized by resolution prior to April 1, 1982 shall be 12 percent per annum.

Department of Natural Resources Soil and Water Conservation Board

Notice of Change of Meeting Date

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from July 13, 1982 to July 1, 1982. The board has also changed the meeting place for their July meeting from the 6th floor, Space Center Building, St. Paul, Minnesota, to the Best Western, Marshall, Minnesota. The board will resume their regular schedule on August 10, 1982.

OFFICIAL NOTICES

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Pennington County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the Meeting Room, Court House, Thief River Falls, MN, on August 3, 1982 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Albert Koop, Route 5, Box 142, Thief River Falls, MN 56701, Department of Natural Resources representative Merlyn Wesloh, Route 5, Box 41A, Bemidji, MN 56601, and County Soil and Water Conservation District representative Danny Johnson, Route 1, Goodridge, MN 55725.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subds. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

A. PUBLIC WATERS

1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>Township</u>	<u>Range-to-Section</u>	<u>Township</u>	<u>Range</u>
None					

2. Preliminarily designated under section 105.37, subds. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
None			

B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
57-10: Unnamed	4,9	152 (Hickory)	39
57-12: Unnamed	32	152 (Hickory)	39

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 15.0424 and 15.0425 (1980).

Any activity that would change the course, current or cross section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subds. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this notice and order may be directed to any member of the hearings unit or to:

David B. Milles
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/296-0516

June 16, 1982

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Transportation

Petition of the County of Hennepin for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Hennepin County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for roadway approaches to the bridge over Halsted's/Priest's Bay Channel of Lake Minnetonka on CSAH 44.

The request is for a variance from 14 MCAR § 1.5032 H.1.a., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a minimum design speed of 30 miles per hour instead of a minimum design speed of 40 miles per hour.

A State Aid Standards Variance Committee has been appointed by the Commissioner of Transportation to meet on Wednesday June 30th at 9:30 a.m. in Room 817 of the State Transportation Building to investigate and determine recommendations for variances from minimum State Aid roadway standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapter 161 and 162 (1978), as amended.

The request by Hennepin County will be included for hearing and recommendation of the Variance Committee.

Any interested person may attend the open public meeting or may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested hearing has been held on the request.

Dated this 21st day of June, 1982.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66768

WHEREAS, the Commissioner of Transportation has made his Order No. 66400, as amended by Orders Nos. 66446, 66550, 66628, and 66690, designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

WHEREAS, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 66400 is amended effective July 1, 1982 by adding the following designated streets and highway routes, or segment of routes, as follows:

CITY STREETS

- | | |
|------------|---|
| Hutchinson | — Arch Street between Michigan Avenue and the Farmer's Elevator (Seasonal). |
| | — Michigan Avenue between Arch Street and T.H. 7 (Seasonal). |
| Winona | — Pelzer Street between T.H. 61 and Theurer Boulevard (12 Month). |
| | — Riverview Drive between Theurer Boulevard and 2900 feet East of Prairie Island Road (12 Month). |
| | — Franklin Street between T.H. 43 and Front Street (Seasonal). |

Dated this 21st of June, 1982.

Richard P. Braun
Commissioner of Transportation

Minnesota Water Resources Board

Notice of Hearing on the Adopted Overall Plan of the Kanaranzi-Little Rock Watershed District

A public hearing on the adopted Overall Plan of the Managers of the Kanaranzi-Little Rock Watershed District will begin at 8:00 p.m. on Tuesday, June 29, 1982 in the High School Library of the Adrian Community High School, 1415 Kentucky Avenue, Adrian, Minnesota, 56110.

A complete notice of and order for hearing was published in the *Worthington Daily Globe*, Worthington, and the *Nobles County Review*, Adrian, on Thursday, June 10 and 17, 1982, and in the *Star-Herald*, Luverne, on Wednesday, June 9 and 16, 1982.

Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102 (612 296-2840).

STATE OF MINNESOTA
State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Legislative Reference Library
Room 111 Capitol

Interoffice