

CHAPTER 82

REAL ESTATE BROKERS AND SALESMEN

Sec.		Sec.	
82.01	Definitions	82.10	Associations; licensing of officers and members
82.02	Exceptions	82.11	Down payment put in trust account
82.03	Licenses	82.12	Duties of commissioner of securities
82.035	Examination	82.125	Advisory commission created
82.04	Issuance or refusal to issue; revocation or suspension	82.13	Nonresidents
82.05	Statement of charges; notice of hearing	82.14	Fees used to defray expenses of administration
82.06	Hearing	82.15	Real estate license revolving fund
82.07	Appeal to District Court	82.16	Violations; actions to collect compensation
82.08	Examination of brokers' records		
82.09	Change of name, address		

82.01 DEFINITIONS. Subdivision 1. **Terms.** For the purposes of this chapter the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Person.** "Person" includes a firm, a partnership, an association, a corporation.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of securities.

Subd. 4. **Real estate broker.** "Real estate broker" means any person, including "business opportunity broker" as defined in subdivision 6, who, for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, or leases any real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate any such activity; or who advertises or holds himself or itself out as engaged in such activities; or shall negotiate or attempt to negotiate a loan secured or to be secured by mortgage or other encumbrance, upon a transfer of real estate; and shall include any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a fee, commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease of any such lot or parcel of real estate; and shall include also any person, who for another, and for a fee, commission or other valuable consideration, sells, exchanges, buys or rents or offers, or attempts to negotiate a sale, exchange, purchase or rental of any business, its goodwill, inventory, fixtures, or an interest therein and also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes to promote the sale of real estate through its listing in a publication issued primarily for such purpose.

Subd. 5. **Real estate salesman.** "Real estate salesman" means one who is employed by a real estate broker to perform any act authorized by Minnesota Statutes, Sections 82.01 to 82.16, to be performed by a real estate broker.

Subd. 6. **Business opportunity broker.** "Business opportunity broker" means any person, who for another, and for a commission, money or other thing of value, sells, exchanges, buys or rents or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its goodwill, inventory, fixtures or an interest therein; any reference to real estate broker contained herein shall apply, so far as is applicable, to a business opportunity broker.

[1955 c 489 s 1; 1959 c 335 s 1, 2]

82.02 EXCEPTIONS. Subdivision 1. **Persons.** Sections 82.01 to 82.16, do not apply to a person who performs any of the following acts:

(a) Acts as an attorney at law, attorney in fact, receiver, trustee in bankruptcy, administrator, executor, or under an order of court, a trust, or a will;

(b) Any person owning and operating a cemetery and selling lots therein solely for use as burial plots, or any officer or employee thereof who sells such lots solely for use as burial plots;

(c) Any person except a real estate broker or salesmen licensed under this

chapter who, as owner, lessor, or prospective purchaser, performs any act with reference to property owned, leased, or to be acquired by him, or to his regular employees, where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein;

(d) Acts as an auctioneer bonded in conformance with section 330.02, and such auctioneer may engage in the sale of real estate incidental to his work as an auctioneer, as defined and regulated by chapter 82, without any additional license or bond.

Subd. 2. Institutions otherwise supervised. This chapter does not apply to any financial or other institution whose real estate operations are subject to supervision by a regulatory board, body or official of the United States or of any state or territory.

Subd. 3. Attorneys. This chapter does not apply to any attorney at law duly admitted to practice in the state of Minnesota except that he shall comply with the requirements of Minnesota Statutes, Section 82.11.

[1955 c 489 s 2; 1959 c 335 s 3, 18; 1967 c 73 s 1; 1969 c 704 s 1]

82.03 LICENSES. **Subdivision 1. Requirement.** A person may not act as a real estate broker or a real estate salesman unless he first obtains a license from the commissioner.

Subd. 2. Applications, qualifications of applicants. No real estate broker's license shall be issued to a partnership, association or corporation, unless all the members or officers thereof who will actively engage in the real estate business or business opportunity business satisfy the same requirements in every respect provided for in sections 82.01 to 82.16, for an individual broker.

Every applicant for a license as a real estate broker or real estate salesman, as the case may be, shall make his application in writing upon blanks prepared and furnished by the commissioner. Every applicant for a real estate broker's license shall be at least 21 years of age and a citizen of the United States, but a person not a citizen of the United States may be granted a license after due proof is made to the commissioner that he has applied to become such a citizen. Each application shall be signed and sworn to by the applicant and shall be accompanied by the license fee herein prescribed. In the event that the commissioner does not issue the license, the fee shall be returned to the applicant.

The application for a real estate broker's license shall give the applicant's name, age and residence address and all business names and addresses used, or proposed to be used by him as a real estate broker. Such application shall also give the name and address of each real estate salesman he employs, and such other information as the commissioner requires.

The application for a real estate salesman's license shall give the applicant's name, age and address and the name and place of business of the real estate broker by whom said salesman is or is to be employed, and such other information as the commissioner requires.

Subd. 3. Bond. The applicant shall file with the application a surety bond issued by an insurer authorized to transact business in this state. The bond shall be in the amount of \$2,000, plus \$2,000 for each salesman employed by such broker but not to exceed a maximum bond of \$20,000, with the state of Minnesota as obligee, conditioned for the prompt payment to any person entitled thereto, other than a salesman, partner or associate of licensee, of any amounts received by the real estate broker or salesman or to protect any person, other than a salesman, partner or associate of licensee, from loss resulting from fraud, dishonesty, forgery, or theft in connection with any real estate transaction by the real estate broker or any real estate salesman he employs; provided, however, that the aggregate liability of the surety to all persons for all losses shall, in no event, exceed the amount of such bond. The bond shall remain operative for a period of time as long as the period for which the license is sought.

Subd. 4. Fees. The following fees shall be paid to the commissioner:

(a) For each real estate broker's initial license, \$50, and for each annual renewal of such a license, \$25; for each initial license as real estate broker issued to an additional designated member of a partnership or association, or officer of a corporation, a fee of \$50; and for each annual renewal of such license, \$25.

(b) For each real estate salesman's license, \$25, for each annual renewal of such a license, \$10, and for each transfer license, \$10.

(c) The license entitles that person to conduct business as a real estate broker

or salesman at the place of business designated in the application until July 1 following the date of issuance.

[1955 c 489 s 3; 1959 c 335 s 4, 5, 7; 1963 c 321 s 1, 2; 1967 c 73 s 2; 1969 c 1148 s 25; 1971 c 25 s 18]

82.035 EXAMINATION. Subdivision 1. Each applicant for a license shall be required to pass an examination conducted by the commissioner or his authorized representative. This examination shall be of a true or false or multiple choice type of examination and shall be of such scope and wording as to be sufficient, in the judgment of the commissioner, to establish the competency of the applicant to act as a real estate broker or as a real estate salesman.

Subd. 2. Each licensed salesman, within two years of the date his license was first granted, shall be required to pass a second examination more difficult in degree than the one required for granting of his salesman's license. Such examination may, however, be waived as provided in subdivision 3. No renewal of a salesman's license shall be effective beyond a date two years after the date of granting such salesman's license unless such second examination is passed or waived.

Subd. 3. The second examination required by subdivision 2 shall be waived by the commissioner upon proof satisfactory to the commissioner or his authorized representative that the licensee shall have satisfactorily completed a course of study in the real estate field consisting of not less than 30 hours of instruction approved by the commissioner or his authorized representative.

Subd. 4. The commissioner shall have power to adopt standards and regulations governing the approval of such courses of study.

Subd. 5. Subdivisions 2, 3, and 4 shall not apply to salesmen licensed in Minnesota prior to the effective date of such sections.

Subd. 6. The examination for a real estate broker's license shall be more exacting than those for a real estate salesman, and will require a higher standard of knowledge as to the fundamentals of real estate practices and general knowledge of the real estate licensing law. An applicant for a real estate broker's license shall satisfactorily show to the commissioner that he understands and has the general knowledge of the legal effect of earnest money contracts, deeds, mortgages, contracts for deed, and leases, and understands generally the liability of the agent to his principal.

Subd. 7. Every application for broker's examination shall be accompanied with proof that the applicant has had a minimum of two years of actual experience as a licensed real estate salesman in this or in another state having comparable requirements or is, in the opinion of the commissioner, otherwise or similarly qualified by reason of education or practical experience.

Subd. 8. Except as provided in subdivision 2, no examination shall be required for the renewal of any license, unless such license had theretofore been revoked or suspended. Provided, however, any licensee having been licensed as a broker or salesman in the state of Minnesota and who shall fail to renew his license may be required by the commissioner to again take an examination.

Subd. 9. No applicant shall be eligible to take the examination if his license as a real estate broker or salesman has been revoked in this or any other state within two years of the date of the application.

Subd. 10. The commissioner or his duly authorized representative shall hold examinations at such times and places as he may determine, except that the commissioner or his duly authorized representative shall hold said examinations at least every 45 days. The examination shall be predicated upon material contained in a manual to be prepared and made available by the commissioner.

Subd. 11. An examination fee of \$10 shall be paid by each applicant for each examination, in addition to the license fee, which examination fee shall be retained by the commissioner whether or not the applicant passes the examination. The examination fee shall be forfeited if the applicant does not take the examination within six months of the application date.

[1959 c 335 s 6; 1963 c 321 s 3; 1967 c 73 s 3; 1969 c 704 s 2]

82.04 ISSUANCE OR REFUSAL TO ISSUE; REVOCATION OR SUSPENSION. The commissioner shall issue a license as a real estate broker or real estate salesman to any person who qualifies for such license under the terms of sections 82.01 to 82.16. The commissioner may refuse to issue a license to any person or may suspend or revoke the license of any real estate broker or real estate salesman when he finds that any of the following conditions exist:

(a) That the real estate broker or real estate salesman has violated any condition of the bond required by this chapter;

(b) That the person, real estate broker, or real estate salesman has personally engaged in a fraudulent, deceptive, or dishonest practice;

(c) That the person, real estate broker, or real estate salesman has violated any provision of sections 82.01 to 82.16;

(d) That the person, real estate broker, or real estate salesman has been convicted of a felony in this state or of an act committed elsewhere which, if committed in this state, would constitute a felony.

This section shall not be construed to relieve any person from civil liability or from criminal prosecution under sections 82.01 to 82.16, or under law of this state.

[1955 c 489 s 4; 1959 c 335 s 8; 1963 c 321 s 4; 1969 c 704 s 3]

82.05 STATEMENT OF CHARGES; NOTICE OF HEARING. The commissioner may not refuse to issue a license or suspend or revoke a license under section 82.04 unless he furnishes the person, real estate broker, or real estate salesman with a written statement of the charges against him and affords him an opportunity to be heard upon the charges. He shall be given at least ten days written notice of the date and time of the hearing. The notice shall be sent by registered mail to the address of the person as shown on his application for license or it may be served in the manner in which a summons is served in civil cases commenced in the district court.

[1955 c 489 s 5; 1959 c 335 s 9]

82.06 HEARING. At the time and place fixed for the hearing the commissioner, or his duly appointed representative, shall hold the hearing and thereafter make his order either dismissing the charges or refusing, suspending, or revoking the license.

[1955 c 489 s 6; 1959 c 335 s 10]

82.07 APPEAL TO DISTRICT COURT. If the commissioner refuses to grant a license, or suspends or revokes a license that has been granted, the applicant shall have the right of appeal with a trial de novo to the district court of the county of the applicant's residence; and in the event the applicant is a nonresident of the state, then to the district court for Ramsey county. Such court shall advance such causes on their calendars for early disposition; and in counties having continuous sessions of court, the same shall be heard within 20 days after such appeal shall have been perfected. Such appeal shall be perfected by the service of a written notice of appeal upon the commissioner within 60 days after notice to the applicant of the commissioner's action.

[1955 c 489 s 7]

82.08 EXAMINATION OF BROKERS' RECORDS. The records of each licensed real estate broker, pertaining to his real estate transactions, shall be available for examination by the commissioner, or his duly authorized representative, at any reasonable time when written complaint relating thereto has been received.

[1955 c 489 s 8]

82.09 CHANGE OF NAME, ADDRESS. Notice in writing shall be given to the commissioner by each licensee of any change of name, address, employment or business location not later than ten days after such change, whereupon the commissioner shall issue a new license for the unexpired period, and, with respect to a real estate broker, without charge. Failure to give such notice to the commissioner shall be sufficient cause for suspension or revocation of the license theretofore issued.

[1955 c 489 s 9; 1959 c 335 s 11; 1965 c 253 s 1; 1969 c 704 s 4]

82.10 ASSOCIATIONS; LICENSING OF OFFICERS AND MEMBERS. Each real estate broker's license granted to any firm, partnership, association or corporation shall require such real estate broker to designate which of its members or officers are actively engaged in the real estate business who, upon compliance with the terms of Minnesota Statutes, Sections 82.01 to 82.16, shall, upon issuance of said real estate broker's license, be entitled to perform all of the acts of a real estate broker contemplated by Minnesota Statutes, Sections 82.01 to 82.16; provided, that a real estate broker's license granted to any individual, firm, partnership, association or corporation shall not be transferable.

Each officer and member so designated, however, must make application for an individual real estate broker's license, which application shall accompany the application for the real estate broker's license for the firm, partnership, association or corporation and be filed with the commissioner at the same time as the application of the firm, partnership, association or corporation for a license.

Each designated active member of a firm, partnership, or association or designated active officer of a corporation shall obtain a real estate broker's license as herein specified: Provided that the license of any such member or officer who ceases to be connected with such firm, partnership, association or corporation shall be automatically suspended, and that said license shall be automatically suspended upon the revocation of the real estate broker's license of such firm, partnership, association or corporation.

Provided, further, that in the event any person becomes an active designated member of a partnership or association or an active officer of a corporation after the issuance of a real estate broker's license thereto, he shall, as a prerequisite to becoming an active member or officer, procure an individual real estate broker's license as herein provided.

[1955 c 489 s 10; 1959 c 335 s 12]

82.11 DOWN PAYMENT PUT IN TRUST ACCOUNT. Subdivision 1. Any licensed real estate broker procuring the execution of an earnest money contract or option or other contract for the sale or purchase of real estate who shall take or receive any cash or down payment shall forthwith deposit said sum or sums so received in a Minnesota bank or trust company, or any foreign bank which authorized the commissioner of securities to examine its records of such deposits, in a trust account, pending the consummation or termination of the transaction, except as such moneys may be paid to one of the parties pursuant to such contract or option.

Subd. 2. Any licensed real estate broker or salesman acting in the capacity of principal in the sale of interests in real estate owned by him shall deposit in a Minnesota bank or trust company, or any foreign bank which authorizes the commissioner of securities to examine its records of such deposits, in a trust account, those parts of all payments received on contracts which are necessary to meet any amounts currently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserves for taxes and insurance or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property made to the parties entitled thereto.

[1955 c 489 s 11; 1965 c 253 s 2; 1965 c 548 s 1; 1969 c 704 s 5]

82.12 DUTIES OF COMMISSIONER OF SECURITIES. Subdivision 1. **Enforcement.** It shall be the duty of the commissioner to administer and provide for the enforcement of all of the provisions of Minnesota Statutes, Sections 82.01 to 82.16.

Subd. 2. **Employees, supplies.** The commissioner shall employ such persons and obtain such office space, furniture, stationery and supplies as shall be reasonably necessary for carrying out the provisions of this chapter.

Subd. 3. **Seal.** The commissioner shall adopt a seal, with such design as the commissioner may prescribe engraved thereon, by which he shall authenticate his proceedings.

Subd. 4. **Copies of records as evidence.** Copies of all records and papers in the office of the commissioner, duly certified and authenticated by the seal of said commissioner, shall be received in evidence in all courts equally and with like effect as the original.

Subd. 5. **Records open to public inspection.** All records kept in the office of the commissioner under authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the commissioner.

[1955 c 489 s 12; 1959 c 335 s 13]

82.125 ADVISORY COMMISSION CREATED. Subdivision 1. The department of securities shall include a real estate advisory commission of five members to be appointed by the governor by and with the advice and consent of the senate. They shall be selected for their knowledge of and interest in the real estate business in Minnesota, and a majority shall be real estate brokers with at least five years experience as licensed real estate brokers in Minnesota. They shall meet at the call of the commissioner and advise and consult with him on all major policy matters relating to the licensing of real estate brokers in Minnesota. They shall serve without pay except that each shall be allowed his actual and necessary traveling expenses while attending meetings, including out of state meetings when authorized by the commissioner.

Subd. 2. The first board shall be appointed to serve from July 1, 1963: One for one year; one for two years; one for three years; one for four years; and one for

five years. At the expiration of any term the governor shall appoint a successor for a term of five years. In the event of a vacancy on the commission for any reason the governor shall appoint a successor to fill the unexpired term.

Subd. 3. The commission shall file a report of its actions with the governor on December 1 of each year.

[1963 c 321 s 5; Ex1967 c 43 s 1]

82.13 NONRESIDENTS. Subdivision 1. **Licensing.** A nonresident of this state may become a real estate broker or real estate salesman by conforming to all of the provisions of Minnesota Statutes, Sections 82.01 to 82.16.

Subd. 2. **Service of process.** Every nonresident person, before being licensed as a real estate broker or real estate salesman, shall appoint the commissioner and his successor or successors in office as true and lawful attorney, upon whom may be served all legal process in any action or proceedings against such person, or in which such person may be a party, in relation to or involving any transaction covered by Minnesota Statutes, Sections 82.01 to 82.16, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Any such appointment shall be effective upon the issuance of the license in connection with which the appointment was filed.

The commission of any act which constitutes a violation of Minnesota Statutes, Sections 82.01 to 82.16 by any nonresident person who has not theretofore appointed the commissioner his attorney in compliance with the first paragraph of this subdivision shall be conclusively deemed an irrevocable appointment by such person of the commissioner and his successor or successors in any action or proceeding against him or in which he may be a party in relation to or involving such violation, and such violation shall be a signification of his agreement that all such legal process which is so served shall be as valid and binding upon him as if due and personal service thereof had been made upon him.

Service of process under this section shall be made by delivering a copy thereof to the commissioner personally or by filing the same in his office, accompanied by one additional copy for each person so served, and by the mailing by the commissioner of a copy thereof by registered mail, not later than the business day following the day of such service, to each person so served, at his address as shown by the records at the office of the commissioner in the case of service made on the commissioner as attorney pursuant to appointment in compliance with the first paragraph of this section and at his last known address in the case of service on the commissioner as attorney pursuant to appointment by virtue of the second paragraph of this subdivision.

[1955 c 489 s 13; 1959 c 335 s 14]

82.14 FEES USED TO DEFRAY EXPENSES OF ADMINISTRATION. All fees collected under this chapter shall be deposited in the state treasury to the credit of the commissioner and used to defray the expenses of administering this chapter.

[1955 c 489 s 14]

82.15 REAL ESTATE LICENSE REVOLVING FUND. Subdivision 1. **Creation.** There is hereby created the real estate license revolving fund and all moneys therein are hereby appropriated to the commissioner of securities for the administration and enforcement of this chapter.

Subd. 2. **Contents of fund.** Such fund shall consist of all receipts derived from the administration and enforcement of Minnesota Statutes, Sections 82.01 to 82.16, which the commissioner of securities is hereby directed to deposit in the state treasury to the credit of such fund.

Subd. 3. **Payments from fund.** Such fund shall be in the state treasury and the moneys therein shall be paid out in the manner prescribed by law for moneys in the state treasury.

Subd. 4. **Transfers from fund.** At the end of each fiscal year on June 30 there shall be transferred to the general fund from said revolving fund an amount equal to the amount of the unencumbered balance of said revolving fund at midnight of the preceding April 30.

[1955 c 489 s 15; 1959 c 335 s 15, 16; 1969 c 399 s 1]

82.16 VIOLATIONS; ACTIONS TO COLLECT COMPENSATION. Subdivision 1. **Gross misdemeanor.** Any person who violates the provisions of Minnesota Statutes, Sections 82.01 to 82.16, or any license or lawful order of the commissioner, shall be guilty of a gross misdemeanor.

MINNESOTA STATUTES 1971

1029

REAL ESTATE BROKERS AND SALESMEN 82.16

Subd. 2. Necessity of licensing. No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in Minnesota Statutes, Sections 82.01 to 82.16, without alleging and proving that he was a duly licensed real estate broker or salesman at the time the alleged cause of action arose.

Subd. 3. Listings in writing. No duly licensed real estate broker or salesman shall bring or maintain any action in the courts for any commission, fee, or other compensation with respect to the sale, lease or other disposition or conveyance of real property, or with respect to the negotiation or attempt to negotiate any sale, lease or other disposition or conveyance of real property unless such property was first listed in writing for sale, lease or other disposition with the licensed real estate broker or salesman bringing or maintaining the action.

[1955 c 489 s 16; 1959 c 335 s 17; 1969 c 704 s 6]