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CHAPTER 82

REAL ESTATE BROKERS AND SALESMEN

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82.17 DEFINITIONS. Subdivision 1. For the purposes of this chapter the terms defined in this section have the meanings given to them.

Subd. 2. "Person" means a natural person, firm, partnership, corporation or association, and the officers, directors, employees and agents thereof.

Subd. 3. "Commissioner" means the commissioner of securities or his designee.

Subd. 4. "Real estate broker" or "broker" means any person who:

(a) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds himself or itself out as engaged in such activities;

(b) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same 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;

(c) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or rental of any business opportunity or business, or its goodwill, inventory, or fixtures, or any interest therein;

(d) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly offers,

sells or attempts to negotiate the sale of property that is subject to the registration requirements of chapter 83, concerning subdivided land;

(e) 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;

(f) Engages wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not such real estate is owned by such person. A person shall be presumed to be engaged in the business of selling real estate if such person engages as principal in five transactions during any 12 month period.

Subd. 5. "Real estate salesperson" means one who acts on behalf of a real estate broker in performing any act authorized by this chapter to be performed by the broker.

Subd. 6. "Trust account" means a demand deposit or checking account maintained for the purpose of segregating trust funds from other funds. A trust account shall not be an interest bearing account except by agreement of the parties and subject to regulations of the commissioner.

Subd. 7. "Trust funds" means funds received by a broker or salesperson in a fiduciary capacity as a part of a real estate or business opportunity transaction, pending the consummation or termination of a transaction, and includes all down payments, earnest money deposits, rents for clients, tax and insurance escrow payments, damage deposits, and any funds received on behalf of any person.

Subd. 8. For purposes of sections 82.17 to 82.34, real estate shall also include, a mobile home, when such mobile home is affixed to land. Mobile home means any factory built structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units and designed to be used as a dwelling unit or units.

Subd. 9. "Public member" means a person who is not, or never was, a real estate broker or real estate salesperson or the spouse of such person, or a person who has no, or never has had a material financial interest in acting as a real estate broker or real estate salesperson or a directly related activity.

[1978 c 410 s 1]

82.18 EXCEPTIONS. Unless a person is licensed or otherwise required to be licensed under this chapter, the term real estate broker does not include:

(a) A licensed practicing attorney acting solely as an incident to the practice of law, provided, however, that the attorney complies in all respects with the trust account provisions of this chapter;

(b) A receiver, trustee, administrator, guardian, executor, or other person appointed by or acting under the judgment or order of any court;

(c) Any person owning and operating a cemetery and selling lots therein solely for use as burial plots;

(d) Any custodian, janitor, employee or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager and similar information;

(e) Any bank, trust company, savings and loan association, public utility, or any land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law;

(f) Public officers while performing their official duties;

(g) Employees of persons enumerated in clauses (b), (d), (e) and (f), when engaged in the specific performance of their duties;

(h) Any person who acts as an auctioneer bonded in conformity with section 330.02, when he is engaged in the specific performance of his duties as an auctioneer;

(i) Any person who acquires such real estate for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial or industrial buildings for the purpose of resale, provided that no more than 25 such transactions occur in any 12 month period;

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(j) Any person who offers to sell or sells an interest or estate in real estate which is a security registered pursuant to chapter 80, when acting solely as an incident to the sale of such securities.

[1973 c 410 s 2]

82.19 PROHIBITIONS. Subdivision 1. No person shall act as a real estate broker or salesperson unless he is licensed as herein provided.

Subd. 2. No person shall advertise or represent himself to be a real estate broker or salesperson unless licensed as herein provided.

Subd. 3. No real estate broker or salesperson shall offer, pay or give, and no person shall accept, any compensation or other thing of value from any real estate broker or salesperson by way of commission-splitting, rebate, finder's fees or otherwise, in connection with any real estate or business opportunity transaction; provided this subdivision does not apply to transactions (1) between a licensed real estate broker or sales person and the person by whom he is engaged to purchase or sell real estate or business opportunity, and (2) among persons licensed as provided herein.

Subd. 4. No real estate broker or salesperson shall engage or authorize any person, except one licensed as provided herein, to act as a real estate broker or salesperson on his behalf.

[1973 c 410 s 3]

82.20 LICENSING REQUIREMENTS. Subdivision 1. **Generally.** The commissioner shall issue a license as a real estate broker or real estate salesperson to any person who qualifies for such license under the terms of this chapter.

Subd. 2. **Qualification of applicants.** Every applicant for a real estate broker or real estate salesperson license shall be at least 18 years of age at the time of making application for said license.

Subd. 3. **Application for license; contents.** (a) Every applicant for a license as a real estate broker or real estate salesperson shall make his application in writing upon forms prepared and furnished by the commissioner. Each application shall be signed and sworn to by the applicant and shall be accompanied by the license fee required by this chapter;

(b) Each application for a real estate broker license and real estate salesperson license shall contain such information as required by the commissioner consistent with the administration of the provisions and purposes of this chapter;

(c) Each application for a real estate salesperson license shall give the applicant's name, age, residence address and the name and place of business of the real estate broker on whose behalf said salesperson is to be acting;

(d) The commissioner may require such further information as he deems appropriate to administer the provisions and further the purposes of this chapter.

Subd. 4. **Corporate and partnership licenses.** (a) A corporation applying for a license shall have at least one officer individually licensed to act as broker for the corporation. The corporation broker's license shall extend no authority to act as broker to any person other than the corporate entity. Each officer who intends to act as a broker shall obtain a license;

(b) A partnership applying for a license shall have at least one partner individually licensed to act as broker for the partnership. Each partner who intends to act as a broker shall obtain a license;

(c) Applications for a license made by a corporation shall be verified by the president and secretary. Applications made by a partnership shall be verified by at least two partners;

(d) Any partner or officer who ceases to act as broker for a partnership or corporation shall notify the commissioner upon said termination. The individual licenses of all salespersons acting on behalf of a corporation or partnership, are automatically ineffective upon the revocation or suspension of the license of the partnership or corporation. The commissioner may suspend or revoke the license of an officer or partner without suspending or revoking the license of the corporation or partnership;

(e) The application of all officers of a corporation or partners in a partnership who intend to act as a broker on behalf of a corporation or partnership shall accompany the initial license application of the corporation or partnership. Officers or partners intending to act as brokers subsequent to the licensing of the corpora-

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tion or partnership shall procure an individual real estate broker's license prior to acting in the capacity of a broker. No license as a real estate salesperson shall be issued to any officer of a corporation or member of a partnership to which a license was issued as a broker;

(f) The corporation or partnership applicant shall make available upon request, such records and data required by the commissioner for enforcement of this chapter.

Subd. 5. Responsibility. Each broker shall be responsible for the acts of any and all of his sales people while acting on his behalf as his agents. Each officer of a corporation or partner in a partnership licensed as a broker shall have the same responsibility under this chapter as a corporate or partnership broker with regard to the acts of the salespersons acting on behalf of the corporation or partnership.

Subd. 6. Issuance of license; salesperson. A salesperson must be licensed to act on behalf of a licensed broker and may not be licensed to act on behalf of more than one broker in this state during the same period of time. The license of each real estate salesperson shall be mailed to and remain in the possession of the licensed broker with whom he is or is to be associated until canceled or until such licensee leaves such broker.

Subd. 7. Effective date of license. Every license issued pursuant to this chapter shall expire on the June 30 next following the issuance of said license.

Subd. 8. Renewals. (a) Persons whose applications have been properly and timely filed who have not received notice of denial of renewal are deemed to have been approved for renewal and may continue to transact business either as a real estate broker or salesperson whether or not the renewed license has been received on or before July 1. Application for renewal of a license shall be deemed to have been timely filed if received by the commissioner on or before June 15 in each year. Applications for renewal shall be deemed properly filed if made upon forms duly executed and sworn to, accompanied by fees prescribed by this chapter and contain any information which the commissioner may require. An application mailed shall be deemed proper and timely received if addressed to the commissioner and postmarked prior to 12:01 A.M. on June 14;

(b) Persons who have failed to make a timely application for renewal of a license and who have not received the renewal license as of July 1, shall be unlicensed until such time as the license has been issued by the commissioner and is received.

Subd. 9. Terminations; transfers. When a salesperson terminates his activity on behalf of a broker, the salesperson's license shall be ineffective. Within ten days of such termination the broker shall notify the commissioner in writing thereof, and shall return to the commissioner the license of the salesperson. The salesperson may make application for transfer of the license to another broker any time during the remainder of the license period, on forms provided by the commissioner along with the fee prescribed by this chapter. If the application for transfer qualifies, the commissioner shall grant the application. Upon receipt of a transfer application and payment of the transfer fee, the commissioner may issue a 45 day permit provisionally granting such transfer. If an application for transfer is not made within the license period, the commissioner shall require that an application for a new license be filed.

Subd. 10. Effect of suspension or revocation. The license of a salesperson is not effective during any period for which the license of the broker on whose behalf he is acting is suspended or revoked. The salesperson may apply for transfer to some other licensed broker by complying with subdivision 9.

Subd. 11. Notice. Notice in writing shall be given to the commissioner by each licensee of any change in personal name, trade name, address or business location not later than ten days after such change. The commissioner shall issue a new license if required for the unexpired period.

Subd. 12. Nonresidents. A nonresident of Minnesota may be licensed as a real estate broker or real estate salesperson upon compliance with all provisions of this chapter.

Subd. 13. Limited broker's license. The commissioner shall have the authority to issue a limited real estate broker's license authorizing the licensee to engage in transactions as principal only. Such license shall be issued only after receipt of the application described in subdivision 3 and payment of the fee prescribed by section

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82.21, subdivision 1. No salesperson may be licensed to act on behalf of an individual holding a limited broker's license.

[1973 c 410 s 4]

82.21 FEES. Subdivision 1. **Amounts.** The following fees shall be paid to the commissioner:

(a) A fee of \$50 for each initial individual broker's license, and a fee of \$25 for each annual renewal thereof;

(b) A fee of \$25 for each initial salesperson's license, and a fee of \$10 for each annual renewal thereof;

(c) A fee of \$50 for each initial corporate or partnership license, and a fee of \$25 for each annual renewal thereof;

(d) A fee of \$10 for each examination taken to satisfy the requirements of this chapter;

(e) A fee not to exceed \$20 per year for payment to the education, research and recovery fund in accordance with section 82.34;

(f) A fee of \$10 for each transfer.

Subd. 2. **Forfeiture.** All fees shall be retained by the commissioner and shall be nonreturnable, except that an overpayment of any fee shall be the subject of a refund upon proper application.

Subd. 3. **Deposit of fees.** Unless otherwise provided by this chapter, all fees collected under this chapter shall be deposited in the state treasury.

[1973 c 410 s 5]

82.22 EXAMINATIONS. Subdivision 1. **Generally.** Each applicant for a license must pass an examination conducted by the commissioner. The examinations shall be of sufficient scope to establish the competency of the applicant to act as a real estate broker or as a real estate salesperson. Any applicant who fails to pass the examination for a real estate salesperson's license after two attempts may not take another examination prior to the expiration of six months from the time the applicant took the last examination.

Subd. 2. **Broker's examination.** (a) The examination for a real estate broker's license shall be more exacting than that for a real estate salesperson, and shall require a higher degree of knowledge of the fundamentals of real estate practice and law.

(b) Every application for a broker's examination shall be accompanied by proof that the applicant has had a minimum of two years of actual experience as a licensed real estate salesperson 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. An applicant for a limited broker's license pursuant to section 82.20, subdivision 13, shall not be required to have a minimum of two years of actual experience as a real estate person in order to obtain a limited broker's license to act as principal only.

Subd. 3. **Re-examinations.** An examination may be required before the renewal of any license which has been suspended, or before the issuance of a license to any person whose license has been ineffective for a period of one year, except no re-examination shall be required of any individual who has failed to cause renewal of an existing license because of absence from the state while on active duty with the armed services of the United States of America.

Subd. 4. **Examination frequency.** The commissioner shall hold examinations at such times and places as he may determine, except that said examinations will be held at least every 45 days.

Subd. 5. **Period for application.** An applicant who obtains an acceptable score on a salesperson's examination must file an application for the license within one year of the date of successful completion of the examination or a second examination must be taken to qualify for the license.

Subd. 6. **Instruction; new licenses.** Every licensed salesperson, within two years of the date his license was first granted, shall be required to successfully complete a course of study in the real estate field consisting of not less than 60 hours of instruction, approved by the commissioner. Upon appropriate showing of hardship by the licensee, the commissioner may waive or modify the requirements of this subdivision. The commissioner may by rule prescribe the curriculum and

the institution or institutions in which the course of study is offered. This subdivision shall not apply to salespersons licensed prior to July 1, 1973.

Subd. 7. **Instruction; licensees subsequent to July 1, 1969.** Every salesperson licensed prior to July 1, 1973, but subsequent to July 1, 1969, within two years of the date his license was first granted, shall be required to successfully complete a course of study in the real estate field consisting of not less than 30 hours of instruction, approved by the commissioner. Upon the failure of a licensee covered by this subdivision to complete the required 30 hours of instruction, the licensee must pass a second examination more difficult in degree than the one required for granting of his salesman's license.

Subd. 8. **Duration.** No renewal of a salesperson's license shall be effective beyond a date two years after the granting of such salesperson's license unless the salesperson has furnished evidence of compliance with either subdivision 6 or 7. The commissioner shall cancel the license of any salesperson who fails to comply with subdivision 6 or 7.

Subd. 9. **Application.** Subdivisions 6 to 8 shall not apply to salespersons licensed in Minnesota prior to July 1, 1969.

Subd. 10. **Renewal; examination.** Except as provided in subdivisions 3 and 7, no examination shall be required for the renewal of any license, provided, however, any licensee having been licensed as a broker or salesperson in the state of Minnesota and who shall fail to renew the license for a period of one year shall be required by the commissioner to again take an examination.

Subd. 11. **Examination eligibility; revocation.** No applicant shall be eligible to take any examination if his license as a real estate broker or salesperson has been revoked in this or any other state within two years of the date of the application.

[1973 c 410 s 6]

82.23 BROKER'S RECORDS. Subdivision 1. **Retention.** A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, purchase money contracts, cancelled checks, trust account records, and such other documents as may reasonably be related to carrying on a real estate brokerage business. The retention period shall run from the date of the closing of the transaction, or from the date of the listing if the transaction is not consummated.

Subd. 2. **Delivery.** Each real estate broker or real estate salesperson shall furnish parties to a transaction a true and accurate copy of any document pertaining to their interests as the commissioner through appropriate rules may require.

Subd. 3. **Examination of records.** The commissioner may make examinations within or without this state of each broker's records at such reasonable time and in such scope as is necessary to enforce the provisions of this chapter.

[1973 c 410 s 7]

82.24 TRUST ACCOUNT REQUIREMENTS. Subdivision 1. **Generally.** All trust funds received by a broker or his salespersons shall be deposited forthwith upon receipt in a trust account, maintained by the broker for such purpose in a bank designated by the broker, except as such moneys may be paid to one of the parties pursuant to express written agreement between the parties to a transaction. The depository bank shall be a Minnesota bank or trust company or any foreign bank and shall authorize the commissioner to examine its records of such deposits upon demand by the commissioner.

Subd. 2. **Licensee acting as principal.** Any licensed real estate broker or salesperson 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 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 concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserve 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.

Subd. 3. **Nondepositable items.** Any instrument or equity or thing of value received by a broker or salesperson in lieu of cash as earnest money or down pay-

ment in a real estate transaction shall be held by an authorized escrow agent, whose authority is evidenced by a written agreement executed by the offeror and the escrow agent.

Subd. 4. Commingling funds. A broker or salesperson shall deposit only trust funds in a trust account and shall not commingle personal funds or other funds in a trust account, except that a broker or salesperson may deposit and maintain a sum not to exceed \$100 in a trust account from his personal funds, which sum shall be specifically identified and used to pay service charges relating to the trust account.

Subd. 5. Trust account records. Each broker shall maintain and retain records of all trust funds and trust accounts. The commissioner may prescribe information to be included in the records by appropriate rules and regulations.

Subd. 6. Notice of trust account status. The names of the banks and the trust account numbers used by a broker shall be provided to the commissioner at the time of application for the broker's license. The broker shall immediately report to the commissioner any change of trust account status including changes in banks, account numbers, or additional accounts in the same or other banks. A broker shall not close an existing trust account without giving ten days written notice to the commissioner.

[1973 c 410 s 8]

82.25 INVESTIGATION AND SUBPOENAS. Subdivision 1. When it appears by reasonable evidence that any provision of this chapter or any rule or order hereunder has been violated or is about to be violated, the commissioner may make necessary public or private investigations within or outside this state to aid in the enforcement of this chapter. The commissioner may also make necessary investigation incident to the promulgation of rules hereunder.

Subd. 2. The commissioner may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.

Subd. 3. For the purpose of any investigation hearing or proceeding under this chapter, the commissioner or any person designated by him may administer oaths or affirmations, and may subpoena witnesses, compel their attendance, take evidence, and compel the production of documents or other tangible items which the commissioner deems relevant or material to the inquiry.

Subd. 4. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the commissioner may apply to the district court for an order for contempt.

[1973 c 410 s 9]

82.26 LEGAL ACTIONS; INJUNCTIONS. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, he may bring an action in the name of the state in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder, or he may refer the matter to the attorney general. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief shall be granted.

[1973 c 410 s 10]

82.27 DENIAL, SUSPENSION AND REVOCATION OF LICENSES. Subdivision 1. The commissioner may by order deny, suspend or revoke any license or may censure a licensee if he finds (1) that the order is in the public interest, and (2) that the applicant or licensee or, in the case of a broker, any officer, director, partner, employee or agent or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker or controlled by the broker:

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

(b) Has engaged in a fraudulent, deceptive or dishonest practice;

(c) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate business;

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(d) Has failed to reasonably supervise his brokers or salesperson so as to cause injury or harm to the public; or

(e) Has violated or failed to comply with any provision of this chapter or any rule or order under this chapter.

Subd. 2. The commissioner may promulgate rules and regulations further specifying and defining those actions and omissions which constitute fraudulent, deceptive or dishonest practices, and establishing standards of conduct for real estate brokers and salespersons.

Subd. 3. The commissioner shall issue an order requiring a licensee or applicant for a license to show cause why the license should not be revoked or suspended, or the licensee censured, or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Subd. 4. The commissioner may delegate to a hearing examiner his authority to conduct a hearing. The examiner shall make proposed findings of fact and submit them to the commissioner. The examiner shall have the same power as the commissioner to compel the attendance of witnesses, to examine them under oath, to require the production of books, papers and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state.

Subd. 5. Orders of the commissioner shall be subject to judicial review pursuant to chapter 15.

Subd. 6. The commissioner may promulgate rules of procedure concerning all hearings and other proceedings conducted pursuant to this chapter.

[1973 c 410 s 11]

82.28 RULE MAKING POWERS. The commissioner may promulgate such rules and regulations as are reasonably necessary to carry out and make effective the provisions and purposes of this chapter.

[1973 c 410 s 12]

82.29 PUBLICATION OF INFORMATION. The commissioner may publish by newspaper, news letter or otherwise information to assist in the administration of sections 82.17 to 82.34, or to educate and protect the public regarding fraudulent, deceptive or dishonest practices. The commissioner may also publish materials for the benefit of license applicants.

[1973 c 410 s 13]

82.30 ADVISORY COMMISSION. Subdivision 1. There shall be a real estate advisory commission of seven members to be appointed by the governor by and with the advice and consent of the senate. Five members shall be real estate brokers with at least five years experience as licensed real estate brokers in Minnesota and two members shall be public members. 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 ordinary and necessary expenses in the same manner and amount as state employees while attending any called meeting of the commission.

Subd. 2. **Term of appointment.** The term of appointment of each member shall be five years; provided that the members of the real estate advisory commission established pursuant to section 82.125, shall serve out the remaining portion of their current terms and that two additional members shall be appointed, one for a term of four years and one for a term of 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. **Annual report.** The commission shall file a report of its actions with the governor on December 1 of each year.

[1973 c 410 s 14]

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82.31 NONRESIDENT SERVICE OF PROCESS. Subdivision 1. Every nonresident, 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 this chapter or any rule or order hereunder, 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.

Subd. 2. The commission of any act which constitutes a violation of this chapter or rule or order hereunder by any nonresident person who has not theretofore appointed the commissioner his attorney in compliance with subdivision 1 shall be conclusively deemed an irrevocable appointment by such person of the commissioner and his successor or successors in any action or proceedings 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.

Subd. 3. 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 three business days 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 subdivision 1 and at his last known address in the case of service on the commissioner as attorney pursuant to appointment by virtue of subdivision 2.

[1973 c 410 s 15]

82.32 PENALTY. Any person who violates any provision of this chapter, or any rule or order of the commissioner, shall be guilty of a gross misdemeanor.

[1973 c 410 s 16]

82.33 CIVIL ACTIONS. Subdivision 1. 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 for which a license is required under this chapter without alleging and proving that he was a duly licensed real estate broker or salesperson at the time the alleged cause of action arose.

Subd. 2. No person required by this chapter to be licensed 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 person bringing or maintaining the action.

[1973 c 410 s 17]

82.34 REAL ESTATE EDUCATION, RESEARCH AND RECOVERY FUND. Subdivision 1. There is established a "real estate education, research and recovery fund" to be administered by the commissioner of securities. The state treasurer shall be the custodian of the fund and shall operate under the direction of the commissioner.

Subd. 2. There is hereby created in the state treasury a real estate education, research and recovery fund which shall be administered by the commissioner in the manner and for the purposes prescribed in this section.

Subd. 3. Each real estate broker and real estate salesperson entitled under this chapter to renew his license, when renewing for the first time after July 1, 1973, shall pay in addition to the appropriate renewal fee a further fee of \$20 which shall be credited to the real estate education, research and recovery fund. Any person who receives a new real estate broker's or real estate salesperson's license after July 1, 1973 shall pay said fee of \$20 in addition to all other fees payable, provided that in no case shall any real estate broker or real estate salesperson be required under this subdivision to pay said fee of \$20 more than once.

Subd. 4. If at the end of any fiscal year following the establishment of the real

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estate education, research and recovery fund, the amount remaining in the fund is less than \$200,000, every licensed real estate broker and real estate salesperson, when renewing his license, shall pay in addition to the annual renewal fee, a sum not to exceed \$20 said sum having been determined by the commissioner to be sufficient to restore the balance in the fund to at least \$200,000.

Subd. 5. Any funds in excess of \$200,000 shall, upon request of the commissioner, be invested by the state board of investment in the class of securities specified in section 11.16 and acts amendatory thereto. All interest and profits from such investments shall be credited to the real estate education, research and recovery fund. The state treasurer shall be the custodian of securities purchased under the provisions of this section.

Subd. 6. The commissioner, in his discretion may use any funds in excess of \$200,000 for the following purposes:

(a) To promote the advancement of education and research in the field of real estate for the benefit of those licensed under this chapter;

(b) To underwrite educational seminars and other forms of educational projects for the benefit of real estate licensees;

(c) To establish a real estate chair or courses at Minnesota state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(d) To contract for a particular educational or research project in the field of real estate to further the purposes of this chapter.

Subd. 7. When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter, on grounds of fraudulent, deceptive or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, and which cause of action occurred on or after July 1, 1973, the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews and appeals, file a verified application in the court in which the judgment was entered for an order directing payment out of the real estate education, research and recovery fund of the amount of actual and direct loss in such transaction up to the sum of \$20,000 of the amount unpaid upon the judgment, provided that nothing in this chapter shall be construed to obligate the fund for more than \$20,000 per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction. A copy of the verified application shall be served upon the commissioner and upon the judgment debtor, and a certificate or affidavit of such service filed with the court.

Subd. 8. The court shall conduct a hearing upon such application 30 days after service of the application upon the commissioner. Upon petition of the commissioner, the court shall continue the hearing up to 60 days further; and upon a showing of good cause may continue the hearing for such further period as the court deems appropriate. At the hearing the aggrieved person shall be required to show that:

(a) He is not a spouse of debtor, or the personal representative of such spouse;

(b) He has complied with all the requirements of this section;

(c) He has obtained a judgment as set out in subdivision 7, stating the amount thereof and the amount owing thereon at the date of the application;

(d) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment;

(e) By such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;

(f) He has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the real estate education, research and recovery fund;

(g) He is making said application no more than one year after the judgment

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becomes final, or no more than one year after the termination of any review or appeal of the judgment.

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

Subd. 10. The commissioner may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses. The judgment debtor may defend any such action on his own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving his cause of action for fraudulent, deceptive or dishonest practices, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraudulent, deceptive or dishonest practices, or conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

Subd. 11. If the court finds after the hearing that said claim should be levied against the portion of the fund allocated for the purpose of carrying out the provisions of this section, the court shall enter an order directed to the commissioner requiring payment from the real estate education, research and recovery fund of whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this section.

Subd. 12. (a) Notwithstanding any other provision of this section, the liability of that portion of the real estate education, research and recovery fund allocated for the purposes of this section shall not exceed \$20,000 for any one licensee;

(b) If the \$20,000 liability of the real estate education, research and recovery fund is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, such \$20,000 shall be distributed among them in the ratio that their respective claims bear to the aggregate of such valid claims or in such other manner as the court deems equitable. Distribution of such moneys shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the commissioner, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the real estate education, research and recovery fund may be equitably adjudicated and settled.

Subd. 13. Should the commissioner pay from the real estate education, research and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the real estate education, research and recovery fund. No such broker or salesperson shall be granted reinstatement until he has repaid in full, plus interest at the rate of four percent a year, the amount paid from the real estate education, research and recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

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Subd. 14. If, at any time, the money deposited in the real estate education, research and recovery fund and allocated for purposes other than real estate education and research is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the real estate education, research and recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of four percent a year.

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

Subd. 16. It shall be unlawful for any person or the agent of any person to knowingly file with the commissioner any notice, statement, or other document required under the provisions of this section which is false or untrue or contains any material misstatement of fact. Such conduct shall constitute a gross misdemeanor.

Subd. 17. When, upon the order of the court, the commissioner has paid from the real estate education, research and recovery fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all his right, title and interest in the judgment to the extent of the amount so paid to the commissioner and any amount and interest so recovered by the commissioner on the judgment shall be deposited to the fund.

Subd. 18. Nothing contained in this section shall limit the authority of the commissioner to take disciplinary action against any licensee under other provisions of this chapter; nor shall the repayment in full of all obligations to the real estate education, research and recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter.

[1973 c 410 s 18; 1974 c 355 s 5]