

CHAPTER 82

REAL ESTATE BROKERS AND SALESPERSONS

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82.17 DEFINITIONS.

[For text of subds 1 to 3, see M.S.1982]

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, herself, or itself out as engaged in these 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 or she undertakes to promote the sale of real estate through its listing in a publication issued primarily for this 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 the real estate is owned by the person. A person shall be presumed to be engaged in the business of selling real estate if the person engages as principal in five or more transactions during any 12-month period, unless the person is represented by a licensed real estate broker or salesperson.

[For text of subd 5, see M.S.1982]

Subd. 6. "Trust account" means, for purposes of this chapter, 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 rules of the commissioner, and shall not allow the financial institution a right of set off against moneys owed it by the licensee.

[For text of subds 7 to 9, see M.S.1982]

History: 1983 c 284 s 11.12

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 if 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, or employee of the owner or manager of a residential building who leases residential units in the building;

(e) any bank, trust company, savings and loan association, industrial loan and thrift company, regulated lender under chapter 56, public utility, or 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), (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 that person is engaged in the specific performance of his or her duties as an auctioneer;

(i) any person who acquires 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 if no more than 25 such transactions occur in any 12-month period and the person complies with section 82.24;

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

(k) any person who offers to sell or sells a business opportunity which is a franchise registered pursuant to chapter 80C, when acting solely to sell the franchise;

(l) any person who contracts with or solicits on behalf of a provider a contract with a resident or prospective resident to provide continuing care in a facility, pursuant to the Continuing Care Facility Disclosure and Rehabilitation Act (chapter 80D), when acting solely as incident to the contract;

(m) any broker-dealer or agent of a broker-dealer when participating in a transaction in which all or part of a business opportunity or business, including any interest therein, is conveyed or acquired pursuant to an asset purchase, merger, exchange of securities or other business combination, if the agent or broker-dealer is licensed pursuant to chapter 80A.

History: 1983 c 252 s 15; 1983 c 284 s 13

82.22 EXAMINATIONS.

[For text of subds 1 to 5, see M.S.1982]

Subd. 6. Instruction; new licenses. (a) Every salesperson, licensed after July 1, 1973 and before July 1, 1976 shall, within two years of the date his license was

first granted 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, or for persons licensed pursuant to section 82.20, subdivision 1, clause (b), the commissioner may waive or modify the requirements of this subdivision. Every salesperson licensed after July 1, 1976 and before July 1, 1978 shall, within three years of the date his license was first issued, be required to successfully complete a course of study in the real estate field consisting of not less than 90 hours of instruction, approved by the commissioner;

(b) After July 1, 1978, and before January 1, 1984, every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. Every salesperson licensed after July 1, 1978, and before January 1, 1984, shall, within one year of the date his license was first issued, be required to successfully complete a course of study in the real estate field consisting of 60 hours of instruction approved by the commissioner.

(c) After December 31, 1983, every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. After December 31, 1983, every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before filing an application for the license. Every salesperson licensed after December 31, 1983, shall, within one year of the date his license was first issued, be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner.

(d) The commissioner may approve courses of study in the real estate field offered in educational institutions of higher learning in this state or courses of study in the real estate field developed by and offered under the auspices of the national association of realtors, its affiliates, or private real estate schools licensed by the state department of education. The commissioner may by rule prescribe the curriculum and qualification of those employed as instructors.

[For text of subds 7 to 12, see M.S.1982]

Subd. 13. Continuing education. (a) After July 1, 1978, all real estate salespersons not subject to or who have completed the educational requirements contained in subdivision 6 and all real estate brokers shall be required to successfully complete 45 hours of real estate education, either as a student or a lecturer, in courses of study approved by the commissioner, within three years after their annual renewal date.

(b) For the purposes of administration, the commissioner shall classify by lot, the real estate brokers and salespersons subject to (a) above, in three classifications of substantially equal size. The first class shall complete 15 hours of approved real estate study between July 1, 1978 and June 30, 1979 inclusive. The second class shall complete 30 hours of approved real estate study between the dates of July 1, 1978 and June 30, 1980 inclusive. The third class shall complete 45 hours of approved real estate study between the dates of July 1, 1978 and June 30, 1981. After the first period, each class shall complete the prescribed educational requirements during successive three year periods.

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(c) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision.

(d) Any program approved by Minnesota Continuing Legal Education shall be approved by the commissioner of securities and real estate for continuing education for real estate brokers if the program or any part thereof relates to real estate.

History: 1983 c 284 s 14; 1983 c 328 s 9

82.27 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

[For text of subds 1 and 2, see M.S.1982]

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. The commissioner may by order summarily suspend a license pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing 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.

[For text of subds 4 to 6, see M.S.1982]

History: 1983 c 284 s 15

82.30 ADVISORY TASK FORCE.

Subdivision 1. The commissioner of real estate and securities shall appoint a real estate advisory task force. The task force shall include real estate brokers with at least five years experience as licensed real estate brokers in Minnesota and public members. The task force may advise the commissioner on all matters relating to education of licensees, prelicensing requirements, and other policy matters relating to the administration of sections 82.17 to 82.34. The task force shall expire and the terms, compensation, and removal of members shall be as provided in section 15.059. No member of the real estate advisory task force may establish, own, operate, invest in a course designed to fulfill any requirement of Minnesota law pertaining to licenses for real estate salespersons or brokers.

History: 1983 c 260 s 18

82.34 REAL ESTATE EDUCATION, RESEARCH AND RECOVERY FUND.

[For text of subds 1 to 6, see M.S.1982]

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, or performed acts permitted by section 327.55, subdivision 1a, 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 recovery portion of the fund of the amount of actual and direct out of pocket loss in the transaction, but excluding any attorney's fees, interest on the loss and on any judgment obtained as a result of the loss, 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, subject to the limitations set forth in subdivisions 12 and 14, regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. A copy of the verified application shall be served upon the commissioner and upon the judgment debtor, and a certificate or affidavit of service filed with the court. For the purpose of this section "aggrieved person" shall not include a real estate licensee who is seeking to recover a commission.

[For text of subds 8 to 20, see M.S.1982]

History: 1983 c 284 s 16