

CHAPTER 82

REAL ESTATE BROKERS AND SALESPERSONS

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82.17 DEFINITIONS.

[For text of subs 1 to 9, see M.S.2004]

Subd. 10. **Loan broker.** "Loan broker" means a licensed real estate broker or salesperson who, for another and for an advance fee 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, or represents himself or herself or otherwise holds himself or herself out as a licensed real estate broker or salesperson, either in connection with any transaction in which he or she directly or indirectly negotiates or offers or attempts to negotiate a loan, or 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 or seller of real estate, incidentally assists the purchaser or seller 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.

For the purposes of this subdivision, an "advance fee" means a commission, fee, charge, or compensation of any kind paid before the closing of a loan, that is intended in whole or in part as payment for finding or attempting to find a loan for a borrower. Advance fee does not include pass-through fees or commitment or extended lock fees or other fees as determined by the commissioner.

[For text of subs 11 to 17, see M.S.2004]

Subd. 18. **Real estate broker; broker.** "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 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, which is not a residential mortgage loan as defined by section 58.02, subdivision 18;

(c) "real estate broker" or "broker" as set forth in clause (b) shall not apply to the originating, making, processing, selling, or servicing of a loan in connection with the ordinary business activities of a mortgagee, lender, or servicer 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 as a multifamily seller/servicer by the Federal Home Loan Mortgage Corporation, or as a multifamily partner approved by the Federal National Mortgage Association;

(d) 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 good will, inventory, or fixtures, or any interest therein;

(c) 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;

(f) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same, promotes the sale of real estate by advertising it in a publication issued primarily for this purpose, if the person:

(1) negotiates on behalf of any party to a transaction;

(2) disseminates any information regarding the property to any party or potential party to a transaction subsequent to the publication of the advertisement, except that in response to an initial inquiry from a potential purchaser, the person may forward additional written information regarding the property which has been prepared prior to the publication by the seller or broker or a representative of either;

(3) counsels, advises, or offers suggestions to the seller or a representative of the seller with regard to the marketing, offer, sale, or lease of the real estate, whether prior to or subsequent to the publication of the advertisement;

(4) counsels, advises, or offers suggestions to a potential buyer or a representative of the seller with regard to the purchase or rental of any advertised real estate; or

(5) engages in any other activity otherwise subject to licensure under this chapter;

(g) 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 subds 19 to 24, see M.S.2004]

History: 2005 c 118 s 12,13

82.31 LICENSING: APPLICATION.

[For text of subds 1 to 4, see M.S.2004]

Subd. 5. Period for application. An applicant who obtains an acceptable score on a salesperson's examination must file an application and obtain 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.

[For text of subd 6, see M.S.2004]

History: 2005 c 100 s 7

82.33 LICENSING: RENEWAL.

[For text of subds 1 to 3, see M.S.2004]

Subd. 4. Renewal; examination. Except as provided in section 82.29, subdivision 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 two years shall be required by the commissioner to again take an examination.

[For text of subds 5 and 6, see M.S.2004]

History: 2005 c 10 art 1 s 16

82.36 LOAN BROKERS.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **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.

[For text of subs 5 to 7, see M.S.2004]

History: 2005 c 118 s 14

82.41 PROHIBITIONS.

[For text of subs 1 to 12, see M.S.2004]

Subd. 13. **Fraudulent, deceptive, and dishonest practices. (a) Prohibitions.** For the purposes of section 82.35, subdivision 1, clause (b), the following acts and practices constitute fraudulent, deceptive, or dishonest practices:

- (1) act on behalf of more than one party to a transaction without the knowledge and consent of all parties;
- (2) act in the dual capacity of licensee and undisclosed principal in any transaction;
- (3) 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, in accordance with section 82.35, subdivision 1;
- (4) violate any state or federal law concerning discrimination intended to protect the rights of purchasers or renters of real estate;
- (5) make a material misstatement in an application for a license or in any information furnished to the commissioner;
- (6) procure or attempt to procure a real estate license for himself or herself or any person by fraud, misrepresentation, or deceit;
- (7) represent membership in any real estate-related organization in which the licensee is not a member;
- (8) advertise in any manner that is misleading or inaccurate with respect to properties, terms, values, policies, or services conducted by the licensee;
- (9) make any material misrepresentation or permit or allow another to make any material misrepresentation;
- (10) 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 this chapter;
- (11) fail within a reasonable time to account for or remit any money coming into the licensee's possession which belongs to another;
- (12) commingle with his or her own money or property trust funds or any other money or property of another held by the licensee;
- (13) demand from a seller a commission to compensation which the licensee is not entitled, knowing that he or she is not entitled to the commission compensation;
- (14) 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 item does not apply to money or goods paid or given to the parties to the transaction);
- (15) fail to maintain a trust account at all times, as provided by law;
- (16) engage, with respect to the offer, sale, or rental of real estate, in an anticompetitive activity;

(17) represent on advertisements, cards, signs, circulars, letterheads, or in any other manner, that he or she is engaged in the business of financial planning unless he or she provides a disclosure document to the client. The document must be signed by the client and a copy must be left with the client. The disclosure document must contain the following:

(i) the basis of fees, commissions, or other compensation received by him or her in connection with rendering of financial planning services or financial counseling or advice in the following language:

“My compensation may be based on the following:

(a) ... commissions generated from the products I sell you;

(b) ... fees; or

(c) ... a combination of (a) and (b). [Comments]”;

(ii) the name and address of any company or firm that supplies the financial services or products offered or sold by him or her in the following language:

“I am authorized to offer or sell products and/or services issued by or through the following firm(s):

[List]

The products will be traded, distributed, or placed through the clearing/trading firm(s) of:

[List]”;

(iii) the license(s) held by the person under this chapter or chapter 60A or 80A in the following language:

“I am licensed in Minnesota as a(n):

(a) ... insurance agent;

(b) ... securities agent or broker/dealer;

(c) ... real estate broker or salesperson;

(d) ... investment adviser”;

(iv) the specific identity of any financial products or services, by category, for example mutual funds, stocks, or limited partnerships, the person is authorized to offer or sell in the following language:

“The license(s) entitles me to offer and sell the following products and/or services:

(a) ... securities, specifically the following: [List];

(b) ... real property;

(c) ... insurance; and

(d) ... other: [List].”

(b) **Determining violation.** A licensee shall be deemed to have violated this section if the licensee has been found to have violated sections 325D.49 to 325D.66, by a final decision or order of a court of competent jurisdiction.

(c) **Commissioner's authority.** Nothing in this section limits the authority of the commissioner to take actions against a licensee for fraudulent, deceptive, or dishonest practices not specifically described in this section.

History: 2005 c 118 s 15