

82.41 PROHIBITIONS.

Subdivision 1. **License required.** No person shall act as a real estate broker, salesperson, or real estate closing agent unless licensed as herein provided.

Subd. 2. **Misrepresenting status as licensee.** No persons shall advertise or represent themselves to be real estate brokers, salespeople, or closing agents unless licensed as herein provided.

Subd. 3. **Commission-splitting, rebates, and fees.** No real estate broker, salesperson, or closing agents shall offer, pay, or give, and no person shall accept, any compensation or other thing of value from any real estate broker, salesperson, or closing agents by way of commission-splitting, rebate, finder's fees, or otherwise, in connection with any real estate or business opportunity transaction. This subdivision does not apply to transactions (1) between a licensed real estate broker or salesperson and the parties to the transaction, (2) among persons licensed as provided herein, (3) between a licensed real estate broker or salesperson and persons from other jurisdictions similarly licensed in that jurisdiction, (4) involving timeshare or other recreational lands where the amount offered or paid does not exceed \$150, and payment is not conditioned upon any sale but is made merely for providing the referral and the person paying the fee is bound by any representations the person receiving the fee makes, and (5) involving a person who receives a referral fee from a person or an agent of a person licensed under this section, provided that in any 12-month period, no recipient may earn more than the value of one month's rent, that the recipient is a resident of the property or has lived there within 60 days of the payment of the fee, and that the person paying the fee is bound by any representations made by the recipient of the fee. A licensed real estate broker or salesperson may assign or direct that commissions or other compensation earned in connection with any real estate or business opportunity transaction be paid to a corporation, limited liability company, or sole proprietorship of which the licensed real estate broker or salesperson is the sole owner.

Subd. 4. **Authorizing or engaging unlicensed person to act on licensee's behalf.** No real estate broker, salesperson, or closing agent shall engage or authorize any person, except one licensed as provided herein, to act as a real estate broker, salesperson, or closing agent on the engager's or authorizer's behalf.

Subd. 5. **Self-serving provision prohibited.** No purchase agreement, earnest money contract, or similar contract for the purchase, rental, or lease of real property may contain any hold harmless clause or arbitration clause which addresses the rights or liabilities of persons required to be licensed pursuant to this chapter unless the person required to be licensed is a principal in the transaction.

This does not prohibit separate and independent written agreements between any of the parties and persons required to be licensed pursuant to this chapter.

Subd. 6. **Disclosure regarding representation of parties.** (a) No person licensed pursuant to this chapter or who otherwise acts as a real estate broker or salesperson shall fail to provide at the first substantive contact with a consumer in a residential real property transaction an agency disclosure form as set forth in section 82.22.

(b) The seller may, in the listing agreement, authorize the seller's broker to disburse part of the broker's compensation to other brokers, including the buyer's brokers solely representing the buyer.

Subd. 7. **Closing agents.** A real estate closing agent may not charge a fee for closing services to a borrower, and a borrower may not be required to pay such a fee at settlement, if the fee was not previously disclosed in writing at least one business day before the settlement. This disclosure requirement will be considered satisfied if a disclosure is made or an estimate given under section 507.45.

Subd. 8. **Securities sold by businesses outside scope of licensing.** A license issued under this chapter does not allow a licensee to engage in the business of buying, selling, negotiating, brokering, or otherwise dealing in vendor's interests in contracts for deed, mortgagee's interests in mortgages, or other evidence of indebtedness regarding real estate, except that a licensee may, if there is no compensation in addition to the brokerage commission or fee, and if the licensee represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of real estate, arrange for the sale of a contract, mortgage, or similar evidence of indebtedness for the subject property.

Subd. 9. **Closing services.** No real estate broker, salesperson, or closing agent shall require a person to use any particular lender, licensed attorney, real estate broker, real estate salesperson, real estate closing agent, or title company in connection with a residential real estate closing.

Subd. 10. **Exclusive agreements.** (a) Except as provided in paragraph (c), a licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written contract granting exclusive representation or assistance in connection with the property to another real estate broker, buyer, or lessee, nor shall a licensee negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has executed a written contract granting exclusive representation or assistance for the purchase, lease, or exchange of the real property with another real estate broker.

(b) Licensees shall not induce any party to a contract of sale, purchase, lease, or option, or to an exclusive listing agreement or buyer's agreement, or facilitator services agreement, to breach the contract, option, or agreement.

(c) A licensee may discuss the terms upon which a listing or buyer representation contract or a contract for facilitator services may be entered into after expiration of any existing exclusive contract when the inquiry or discussion is initiated by the owner, lessor, buyer, or lessee. The licensee must inquire of the owner, lessor, buyer, or lessee whether such an exclusive contract exists.

Subd. 11. **Prohibition on guaranteeing future profits.** Licensees shall not, with respect to the sale or lease of real property, guarantee or affirmatively encourage another person to guarantee future profits or earnings that may result from the purchase or lease of the real property in question unless the guarantee and the assumptions upon which it is based are fully disclosed and contained in the contract, purchase agreement, or other instrument of sale or lease.

Subd. 12. **Prohibition against discouraging use of attorney.** Licensees shall not discourage prospective parties to a real estate transaction from seeking the services of an attorney.

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"; and

(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: 1973 c 410 s 3; 1975 c 38 s 2; 1985 c 148 s 1; 1985 c 251 s 6,7; 1986 c 358 s 8; 1986 c 444; 1989 c 347 s 5-9; 1992 c 555 art 1 s 2; 1993 c 309 s 4-6; 1993 c 375 art 5 s 1; 1995 c 68 s 2; 1996 c 439 art 3 s 1; 1997 c 73 s 1; 1997 c 222 s 33; 2002 c 286 s 1; 2004 c 203 art 2 s 14-18,61; 2005 c 118 s 15