

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE  
COMMISSIONER OF SECURITIES AND REAL ESTATE

In the Matter of the Proposed Adoption,  
Repeal and Amendment of Rules and Forms  
Relating to Minnesota Statutes Chapter  
82 (Real Estate Brokers and Salespersons)

STATEMENT OF NEED  
AND  
REASONABLENESS

Commissioner of Securities and Real Estate Mary Alice Brophy ("Commissioner") presents herein her statement of the need for and reasonableness of the adoption of proposed rules and forms and the amendment and repeal of existing rules and forms relating to Minn. Stat. ch. 82 (1980 and Supp. 1981), as amended, Minn. Laws 1982 ch. 478 (Real Estate Brokers and Salespersons).

The above-captioned rules and forms are new rules and amendments to existing rules and forms. The existing rules and forms were last amended on June 16, 1978. On April 28, 1980 the Division caused to be published at 4 State Register 1720 a notice of intent to solicit outside opinions concerning changes to these rules and forms.

The general statutory authority to promulgate rules under Minn. Stat. ch. 82 is set forth at Minn. Stat. Section 82.28 (1980). Where specific statutory authority is relied upon, it will be so noted.

The Commissioner has determined that the proposed adoption, repeal or amendment of these rules and forms is reasonably necessary to carry out and make effective the provisions and purposes of Minn. Stat. ch. 82 (1980 and Supp. 1981), as amended, Minn. Laws 1982 ch. 478.

The need for and reasonableness of each of the proposed rules and amendments to existing rules is as follows:

## General Rules

### 4 MCAR Section 1.41500 (Definitions)

Paragraphs A, B and C - technical and stylistic changes to clarify the language of the existing rule (hereinafter "technical change").

Paragraph D - definition of "loan broker", see discussion under Section 1.41514 below ("Loan brokers. Standards of Conduct.").

Paragraph E - Clarifies, especially for purposes of proposed Rule 1.41516 A. concerning supervision of salespersons and employees, what is meant by "primary broker".

Paragraph F - definition of "overpayment" currently found at Section 1.41501. It is transferred to the definition section of the rules for purposes of uniformity. The reference to payment of an examination fee is deleted because the agency no longer conducts the licensing examination.

Paragraphs G, H, I and J - technical changes.

Paragraph K - definition of "rental service", see discussion under Section 1.41527 ("Rental services").

Paragraph L - "School" is defined for purposes of the rules relating to real estate education (1.41529 -1.41548).

### 4 MCAR Section 1.41501

A. Fees are required to be paid by means of check or money order for security and recordkeeping purposes.

B. The definition of "overpayment" has been deleted here and inserted at 1.41500 E. Minn. Stat. Section 82.21, Subd. 2 (1980) states that fees are nonreturnable, "except that an overpayment of any fee shall be the subject of a refund upon proper application." The revised rule requires, for agency bookkeeping purposes, that an "application" or request for a refund of an overpayment of a fee be received within three months. The proposed rule is intended to

encourage licensees and applicants to diligently request a refund, thereby avoiding possible confusion and the uncertainty which often results from the passage of time.

4 MCAR Section 1.41502

The revised rule clarifies that a passing grade for the salesperson's and broker's examinations requires a score of 75% or higher on both the uniform portion and the state portion of the examinations.

A provision is added requiring the Commissioner to reject the examination results of a person who has cheated on the examination and allowing the Commissioner to deny the license application of such a person. (Minn. Stat. Section 82.27, Subd. 1(b) (1980)).

4 MCAR Section 1.41503

Paragraph A - A provision is added to establish and clarify the circumstances under which a broker may hold more than one broker's license. The intent of the provision is to address situations where a corporation or franchisee intending to engage in real estate transactions requiring a broker's license may in effect attempt to "buy" a broker's license. The licensee acts as a broker in name only, does not participate in the real estate activities of the corporation and does not supervise the corporation's salespersons, as required by Minn. Stat. Section 82.20, Subd. 5 (1980).

Paragraph B - Changes are made for purposes of clarification only.

Paragraph C. 1. and 2. - Changes are made for purposes of clarification only.

Paragraph C. 3. - The intent of the proposal is to encourage applicants for the broker's examination who have been granted a waiver of the real estate experience requirement to diligently pursue licensure. A waiver which has lapsed due to the passage of time will, upon receipt of

a renewal request, be reviewed according to the criteria set forth in C. 1. a. - c. in order to determine whether the applicant still qualifies for the waiver. The proposal parallels Rule 1.41529 B., which requires applicants for a salesperson's license to successfully complete the salesperson's examination within one year after completing Course I.

4 MCAR Section 1.41504 (Documents furnished to the parties to a real estate transaction.)

The rule is repealed and its provisions are incorporated into Rule 1.41523 D.

4 MCAR Section 1.41505

Paragraph A - Changes are made for purposes of clarification, and language defining "trust funds" is deleted as it duplicates existing statutory language (Minn. Stat. Section 82.17, Subd. 7 1980).

Paragraphs B and C - Changes are made for purposes of clarification only.

Paragraph D - The proposed language clarifies that funds which would otherwise be required to be placed in a trust account do not lose their status as trust funds simply because the licensee is acting as a principal in the transaction. However, to assist a licensee who is selling his/her own property, this requirement can be waived if all parties agree in writing to a different disposition of the funds. The agreement permitting the different disposition of the funds must, however, state for the benefit of the non-licensee party that the funds would, absent the agreement, be placed in a real estate trust account.

4 MCAR Sections 1.41506 and 1.41507

No change.

4 MCAR Section 1.41508 (fraudulent, deceptive or dishonest practices) and Section 1.41509 (standards of conduct) are repealed and their provisions are addressed elsewhere in these rules as shown in the following table:

Section 1.41508	Section 1.41509
A.1. (New Rule 1.41528)	A.1.a. (New Rule 1.41519 B.1.)
A.2. (1.41528 A.9.)	A.1.b. (1.41521 A.)
A.3. (1.41528 A. 8 & 9)	A.1.c. (1.41518)
A.4. (1.41528)	A.1.d. (1.41518 & 1.41521 A.)
A.5. (1.41528)	A.1.e. (1.41528)
A.6. (1.41528)	A.1.f. (1.41519 D)
A.7. (1.41528)	A.1.g. (1.41519 D)
A.8. (1.41525 D)	A.1.h. (1.41519 E)
A.9. (1.41528)	A.1.i. (1.41521 B)
A.10. (1.41528)	A.1.j. (1.41516 A)
A.11. (1.41524 B)	A.1.k. (1.41521 B.)
A.12. (1.41528)	A.1.l. (1.41522)
A.13 (1.41528)	A.1.m. (1.41519 B)
A.14 (1.41528)	A.1.n. (1.41523 F)
A.15 (1.41528)	A.1.o. (1.41523 G)
A.16 (1.41528)	A.1.p. (1.41519 A)
A.17 (1.41521 C)	A.1.q. (1.41523 A)
A.18 (1.41525 A)	

4 MCAR Section 1.41510

No change

4 MCAR Sections 1.41511 and 1.41512

Repealed. The proposed Real Estate Education and Continuing Education rules are set out at Sections 1.41529-1.41548.

The forms following existing rule 1.41511 are repealed.

Proposed new forms are set forth at Rules 1.41553 - 1.41562 following the proposed rules.

4 MCAR Section 1.41513

No change

4 MCAR Section 1.41514 Loan Brokers; Standards of Conduct (Minn. Stat. Section 82.27, Subd. 2 (1980)). The proposed rule establishes standards of conduct for real estate brokers and salespersons when they act as loan brokers, as defined at Section 1.41500D, or hold themselves out as such. The agency has in recent years received numerous citizen complaints in connection with advance fee operations wherein promoters obtain substantial amounts of money from prospective borrowers on the promise that they will secure or attempt to secure a loan for them. All too often the loan never materializes. Such cases demonstrate the need for careful regulation of individuals in the loan brokerage business. As a Pennsylvania Crime Commission report concluded, "it is probable that advance fee schemes will become even more prevalent in light of recent economic developments which have resulted in a tightening of credit throughout the nation." Exhibit A, "Racketeering in the Commercial Loan Brokerage Industry", at 73. The proposed standards of conduct are patterned after several of the Commission's "Recommendations for for Legislation". Exhibit A at 77. The agency adopts the Commission's conclusions, which are incorporated herein by reference.

4 MCAR Section 1.41515

Corresponds to existing rule 1.41509.

4 MCAR Section 1.41516

Minn. Stat. Section 82.20, Subdivision 5 (1980) imposes responsibility upon a broker for the actions of salespersons acting on his behalf. Section 82.27, Subd. 1(d) makes the broker's failure to supervise his or her salespersons or employees grounds for disciplinary action against the broker's real estate license. The proposed rule enumerates five specific areas of broker responsibility and supervision. Supervision of agents is central not only to

the real estate licensing law but to the law of agency in general. It is assumed that a broker is more knowledgeable and experienced in real estate matters than are his salespersons. The intent of the rule is to attempt to assure that the consumer is competently represented, that legal documents are properly drafted and safeguarded, that information regarding listings is conveyed only by qualified individuals, and that trust account books and records are properly maintained.

4 MCAR Section 1.41517

A rule is created which allows the commissioner to issue a temporary broker's permit. Under existing rules, in the event of the death or incapacity of a broker, all real estate activities within that broker's office or company must cease. This often causes hardship and confusion for both consumers and licensees. The rule would allow a salesperson who has been licensed for two years (see Minn. Stat. Section 82.22, subd. 2(b)) and who is otherwise reasonably qualified to act as a broker to assume the responsibilities of a broker while preparing to take the broker's examination. The temporary permit would be renewable once if the applicant can demonstrate that the extension is not harmful to the public interest and that he or she has made a good faith effort to obtain a broker's license within the preceding 45 days.

4 MCAR Section 1.41518

The proposed rule is intended to clarify that a salesperson may conduct business only under the name of the broker on whose behalf the salesperson is licensed to act pursuant to Minn. Stat. Section 82.20, Subdivision 6 (1980). The rule corresponds to existing Rule 1.41509A.1. c. and d.

4 MCAR Sections 1.41519A.

A. Expands existing rule 1.41509 A. 1 m. and p. by requiring licensees to obtain the written consent of the owner of real property prior to advertising the property for sale or lease. Requiring that the consent be in the form of a written listing agreement protects both the seller and the licensee in the event of a subsequent dispute.

B.1.-6. Sets forth certain basic terms which must be included in the listing agreement, which are considered essential to a clear understanding on the part of licensees and consumers of their respective rights and obligations under the listing agreement.

B.7. The requirement that a boldface notice regarding the amount or rate of real estate commissions or fees be inserted in the listing agreement is intended to alert consumers to the fact that commissions may not be fixed by agreement between competing real estate firms or companies (Minnesota Anti-trust Law of 1971, Minn. Stat. Sections 325D.49 to 325D.66). This rule does not prohibit a real estate company or firm from establishing a fixed fee or commission for its services.

C. Corresponds to existing Rule 1.41509A.1 f. and g.

D. Corresponds to existing Rule 1.41509A. 1 (h).

Clarifies that a licensee may not enforce an override clause if he has failed to provide the seller with a written protective list within 72 hours following the expiration of the listing agreement.

E. The proposed rule is intended to clarify, with respect to the definition of "protective list," (Rule 1.41500 I.), the phrase "prospective purchasers with whom a licensee has negotiated the sale or rental of the property or to whom a licensee exhibited the property prior to the expiration of the listing agreement" (emphasis added). An override clause in a listing agreement recognizes that a salesperson's or broker's efforts during the term of the listing agreement to obtain a prospective purchaser or



lessee of the property in question may not result in a purchaser who is ready, willing and able to buy or lease until some time after the listing agreement has expired. The purpose of this rule, however, is to limit the names on the protective list to those individuals whose subsequent interest in the property can reasonably be attributed to the actions of the licensee during the term of the listing agreement.

The boldface notice is intended to warn sellers that they may be liable for two commissions should they re-list the property during a period covered by the override clause of an expired listing agreement. (See August 20, 1981 letter of Alice Lietzen, Executive Secretary, Crow River Board of Realtors, attached hereto as Exhibit B.)

#### 4 MCAR Sections 1.41520

The proposed rule requires full disclosure to a prospective seller concerning the terms of any guaranteed sales program. The availability of such a program is often an important factor in deciding whether or not to list with a particular real estate company or firm, especially in a depressed market or when an individual must sell by a certain date. Guarantee programs may, however, be limited only to very saleable properties, may guarantee the sale at a price below market value, or may fail to disclose the lowest net proceeds payable to the seller or that the seller will not share in any profit resulting from the ultimate sale of the property, factors which are crucial in order for a seller to make an informed and intelligent decision regarding the selection of a listing broker.

#### 4 MCAR Sections 1.41521

- A. Corresponds to existing Rule 1.41509A.1. b. and d.
- B. Expands existing Rule 1.41509A.1.i. by requiring a licensee to notify an owner that the licensee is a broker or salesperson, and in what capacity the licensee is acting, in

a situation where the licensee purchases or intends to purchase the owner's property, regardless of whether the property was listed with the licensee's firm or company.

Because licensees are generally more experienced and knowledgeable in real estate matters than the average consumer, awareness of this experience and of the capacity in which the licensee is acting may assist the owner in making an informed decision concerning the sale of his property.

C. Corresponds to existing Rule 1.41508 A.17.

D. The failure of a party to a real estate transaction to perform in accordance with the terms of a purchase agreement often significantly inconveniences or results in severe financial hardship to the other party to the transaction (e.g., the seller often makes a commitment to purchase other property in reliance upon the consummation of the first transaction, or the buyer ceases to pursue an opportunity to acquire different but equally suitable property.) Also, one party's refusal or inability to perform with respect to one agreement may also affect parties to other separate but interrelated transactions.

4 MCAR Sections 1.41522 Corresponds to existing Rule 1.41509 A.1.1.

4 MCAR Section 1.41523

Paragraph A. Corresponds to existing Rule 1.41509 A.1.q.

Paragraph B. This rule should be read in conjunction with paragraph A. above. It addresses a situation where a listing agent who has received an offer to purchase delays presenting the offer to the owner in order to convey the terms of the offer to his own client or another client of his company or firm, who may then make an offer which is only nominally higher. The duty of the listing agent, as a

fiduciary, is to the owner of the property. In the situation set forth above, the listing agent has put his own interests before those of his principal.

Paragraph C. Intended to alert buyers and sellers to the fact that potentially significant closing costs may be involved in a real estate transaction. Advance notice of such costs may influence the terms of an offer.

Paragraph D. Corresponds to existing Rule 1.41504 A., with the addition of truth-in-housing forms and energy audits. (Minn. Stat. Section 82.23, Subd. 2 (1980)).

Paragraph E. Requires a licensee to make a complete accounting to the buyer and seller at the time of closing, which acts as a check on the licensee and provides the parties to the transaction with a written record for tax and other purposes.

Paragraph F. Corresponds to existing Rule 1.41509 A.1.n.

A provision is added requiring a licensee to inquire whether the owner or lessor has entered into an exclusive agency (listing) agreement with another licensee. An owner or lessor who has executed an exclusive agency (listing) agreement has agreed to pay a fee or commission in exchange for the advice and efforts of a licensee, who should properly be consulted regarding any offers to purchase or lease. In addition, the rule may also have the effect of causing the owner or lessor to carefully consider his obligations under the agreement. The rule also protects the rights of the licensee who was a party to the exclusive agency (listing) agreement.

Paragraph G. Corresponds to existing Rule 1.41509 A.1.o. Owners of real estate, especially unsophisticated owners, may reasonably be expected to rely upon the advice of licensees who are or should be more knowledgeable concerning real estate related matters. A licensed broker or salesperson should not advise an owner or other party to breach any legally binding contract or agreement. The

licensee is not trained in the law and may be unaware of the possible consequences of such action to himself and to the breaching party.

Paragraph H. A buyer or seller should fully understand the extent of potential rights and obligations resulting from the purchase or sale of real estate and should not be discouraged from seeking legal advice regarding such rights and obligations.

#### 4 MCAR Section 1.41524

Paragraph A. A broker is responsible for the actions of his salespersons. The requirement that salespersons receive compensation only from their brokers is intended to alert brokers to the transactions in which their agents are involved.

Paragraph B. Corresponds to existing Rule 1.41508 A.11.

Paragraph C. Reiterates that trust funds may be disbursed only in connection with a proper accounting to the parties to a transaction. (See proposed Rule 1.41505 B.)

#### 4 MCAR Section 1.41525

Paragraph A. Corresponds to existing Rule 1.41508 A.18.

For the purpose of clarity the period within which the Commissioner must be notified of changes to the information contained in the license application is changed from a "reasonable time" to "within ten days of the change."

Paragraphs B, C and D. The information required to be submitted to the Commissioner concerning civil, criminal or administrative actions against the licensee is necessary in order to determine whether grounds exist for the suspension or revocation of his or her real estate license pursuant to Minn. Stat. Section 82.27, Subd. 1. (1980).

4 MCAR Section 1.41526

The requirement that brokers make the real estate licensing law and rules available to their salespersons is necessary in order to assist licensees in complying with the law. The agency has often been informed by licensees, in the course of investigating alleged improper conduct, that they were unaware of duties and obligations imposed upon them by the law and rules.

4 MCAR Section 1.41527

The proposed rule establishes standards of conduct for licensees when acting as a "rental service", as defined at proposed Rule 1.41500J. The definition conforms to a determination by the Minnesota Supreme Court that such activities require a real estate broker's license (State v. Beslanowitch, 248 N.W. 2d 286 (1976) (Exhibit C)).

Paragraph B. The agency has received complaints from landlords concerning rental services which contact the landlord, without identifying themselves, and make inquiries regarding the landlord's rental property. This information is later disseminated to clients of the rental service without the permission of the landlord.

Paragraphs C. and D. The agency has also received complaints from tenants that rental services have represented or advertised that particular units were available for rent when in fact the units had been leased for some time. The purpose of paragraphs C and D is to prevent rental services from promoting their services by means of misleading advertising or unverified representations.

4 MCAR Section 1.41528

A. Corresponds to existing Rule 1.41508 A.4.  
B. Corresponds to existing Rule 1.41509 A.1.k.  
C. Clarifies that trust funds received by a licensee acting as a principal in a real estate transaction are subject to the trust account requirements of Minn. Stat. Section 82.24, Subd. 1 (1980).

D. Corresponds to existing Rule 1.41508 A.15  
E. Corresponds to existing Rule 1.41508 A.7.  
F. Corresponds to existing Rule 1.41508 A.14  
G. Corresponds to existing Rule 1.41509 A.1.e.  
H. Corresponds to existing Rule 1.41508 A.13.  
I. Corresponds to existing Rule 1.41508 A.1.  
J. Corresponds to existing Rules 1.41508 A.2.  
K. Corresponds to existing Rule 1.41508 A.5.  
L. Corresponds to existing Rule 1.41508 A.6.  
M. Corresponds to existing Rule 1.41508 A.9.  
N. Corresponds to existing Rule 1.41508 A.10.  
O. Corresponds to existing Rule 1.41508 A.12.  
P. A provision is added which makes anticompetitive real estate activity a fraudulent, deceptive or dishonest practice. Such activity is inherently harmful to consumers and should constitute grounds for license suspension or revocation or for censure of the licensee. Anticompetitive real estate activity is defined to include a violation of the Minnesota Antitrust Law of 1971.

RULES RELATING TO REAL ESTATE EDUCATION

(4 MCAR SECTIONS 1.41529 to 1.41548)

4 MCAR Section 1.41529

Paragraph A. Corresponds to existing Rule 1.41511 A.1.a.  
Paragraph B. The requirement that applicants complete the salesperson's examination within a year of completing Course I corresponds to existing Rule 1.41511 A.1.b. An

exception is created for students pursuing a course of study in a two or four-year real estate education program who choose not to take the examination until after the completion of their course of study.

Paragraph C. The licensing statute (Section 82.22, Subd. 5) requires applicants for a real estate license to apply for the license within one year after successfully completing the examination.

To encourage applicants to diligently pursue licensure after taking the examination, a provision is added requiring the applicant to re-take Course I if he/she has failed to apply for a license within one year after taking the examination. The intent of pre-licensing real estate education is to assure that newly licensed individuals are at least minimally competent to serve the public. However, knowledge which is not reinforced by practical experience is soon forgotten. Under paragraph B of this rule, a prospective licensee is allowed to wait one year from the completion of Course I before he or she must complete the salesperson's examination. Paragraph C permits the prospective licensee to wait an additional year after successfully completing the salesperson's examination before applying for a license.

In the opinion of the Commissioner the likelihood of potential harm to the public is sufficient enough to warrant requiring not only reexamination of such applicants but also that they first repeat the initial 30 hour course of education.

Paragraph D. Corresponds to existing Rule 1.41511 A.1.b.

Paragraph E. Corresponds to existing Rule 1.41511A.1.b (fourth sentence) and clarifies the circumstances under which an applicant may receive credit for Course II and III prior to licensure.

Paragraph F. A provision is added regarding substituted course offerings. The rule clarifies that no course may be substituted for Course I. It allows a licensee engaged exclusively in a specialized area of real estate to substitute, upon written request, specialized courses for Courses II and III. The rule also permits the licensee, with respect to Courses II and III, to take substantially similar courses offered in other jurisdictions. Without this provision many licensees who engage exclusively in specialized areas of real estate would be forced to take courses which are of less benefit to them than the substituted courses.

Paragraph G. Existing Rule 1.41512 A. allows licensees to take pre-licensing Course I and post-licensing Course II and III for continuing education credit if the licensee has not previously received continuing education credit for the course. The proposed rule disallows continuing education credit for Courses I and II but continues to allow credit for Course III unless the licensee has previously taken a particular Course III for either post-licensing or continuing education credit.

The proposed outlines for Courses I and II are more specific and detailed than the existing outlines (see paragraphs J. and K. of this proposed rule.) A licensee will benefit little from repeating introductory courses designed to merely touch upon basic concepts.

Course III, however, as re-structured, consists of 9 separate 30 hour courses, each devoted to a specific topic (see paragraph L. of this rule.) A licensee who has, for instance, satisfied his or her final 30 hours of post-licensing education by taking a course in real estate law can also benefit from taking one of the other 8 courses for continuing education credit. In addition, many licensees prefer to take a more comprehensive course in an area of real estate in which they have a limited understanding or in which they would like to specialize.



Paragraph H. It is considered essential that the basic real estate education provided by Courses I, II and III be supplemented by the use of an appropriate textbook rather than limiting study to attendance at lectures. Corresponds to existing Rule 1.41511 E.

Paragraph I. Establishes criteria for determining what constitutes "successful completion" of Courses I, II and III, as required by Minn. Stat. Section 82.22, Subd. 6 (1980) and Paragraph A. of this rule. Corresponds to existing Rule 1.41511 G.

Paragraphs J., K., and L. Establish, pursuant to authority granted under Minn. Stat. Section 82.22, Subd.6 (c), a revised and detailed curriculum for statutorily required pre-licensing and post-licensing real estate education courses (Courses I, II and III). The proposed curricula are the product of extensive deliberations by a panel of individuals, appointed by the Commissioner, who are involved in various aspects of real estate education. Detailed curricula are deemed necessary in order to assure a greater degree of consistency among the courses being offered to prospective licensees.

Courses I and II are designed to acquaint students with the broad range of laws, procedures and practices which will affect their activities as licensees and to act as the necessary foundation for subsequent education.

Course III is designed to provide a more comprehensive review of one or more specific areas in which a licensee wishes to specialize or about which he/she desires a better understanding. The Course III outlines also includes, for the first time, a set of objectives for each of the 9 separate Course III formats. The objectives are designed to provide further structure to courses and to demonstrate to students how acquired knowledge can be practically employed.

4 MCAR Section 1.41530 (Minn. Stat. Section 82.23, Subd. 13 (c) (1980)).

Paragraph A. Corresponds to existing Rule 1.41512 B.

Paragraph B. Clarifies that credit will not be granted for attendance at less than the entire continuing education offering.

Paragraph C. Intended to accommodate the state computer system, which does not record fractions of an hour.

Paragraph D. Existing Rule 1.41512 C. 4.b. does not require continuing education courses to include examinations. The proposed rule allows the school offering the course to elect to require an examination if it determines, for example, that an examination is a desirable educational tool. Course III, however, is designed to include an examination, which must be taken even by licensees who have enrolled for continuing education credit.

Paragraph E. The use of a course syllabus is generally considered a beneficial educational tool.

Paragraph F. Corresponds in part to existing Rule 1.41512 I. Instructors are currently given 10 hours of continuing education credit for each hour of instruction when they initially teach a course and two hours of credit for each hour taught if a course is repeated. The proposal would allow three hours of continuing education credit for each hour of instruction only when the course is initially taught. The agency believes that the reduction in what is essentially an allowance for preparation time is reasonable in that it encourages licensee-instructors to attend courses in areas in which they are not experts. The current rule would allow a licensee to satisfy his/her 45 hour continuing education requirement by teaching only 4 1/2 hours of continuing education. The proposed rule also amends existing Rule 1.41512 H. by stating that a licensee may only earn credit once for any course.

Paragraph G. Corresponds to existing Rule 1.41512 B. 1.-5. The proposal would allow the Commissioner to disapprove courses designed to prepare students for passing any licensing examination. The agency has in the past received requests for real estate continuing education approval for courses designed to prepare students for the securities license examination. Although they may, in part, touch on certain real estate related topics, preparatory courses are not generally designed to impart substantive knowledge of real estate to licensed salespersons and brokers. Also, the proposed rule is consistent with proposed Rule 1.41529 G., which states that continuing education credit will not be given for Courses I and II.

Paragraph H. This paragraph is necessary, due to the attendance and examination provisions of Paragraphs B. and D., in order to clarify that:

1. a licensee need not take an entire "combination" Course III in order to receive continuing education credit as long as he/she takes a complete segment, and

2. he may not need to take the Course III exam in order to receive continuing education credit in certain circumstances.

#### 4 MCAR Section 1.41532

Paragraph A. Corresponds to existing Rules 1.41511 A., 1.41511 B. 5 and F.

Paragraphs B. and C. Correspond to existing Rule 1.41511 J.2 and I., and 1.41512 E. and K. (See also proposed Rule 1.41543 with respect to advertising.)

Paragraph D. Corresponds to existing Rule 1.41511 H. and 1.41512 D. The requirement that applications for course approval be submitted at least 30 days prior to the offering of the course provides the agency with enough time to review the request, while affording the school an opportunity to cure possible deficiencies in the application.

Paragraph E. Corresponds to existing Rule 1.41511 H.7 and 1.41512 D.4. It is no longer deemed necessary to require schools, at the time of application, to notify the Commissioner of all subsequent course offerings.

4 MCAR Section 1.41533 The proposed rule is intended to complement Rule 1.41541 (conflict of interest). The availability of real estate education should not be affected by the ability of some brokers or franchises to subsidize a prospective salesperson's educational expenses.

4 MCAR Section 1.41534 Elaborates on existing Rule 1.41511 D. The proposed rule establishes for the first time specific criteria for approval as a course coordinator. The proposed criteria recognize individuals who qualify because of real estate experience, experience in administering an educational program, or because of a combination of real estate and administrative experience. The proposal also establishes for the first time definite duties and responsibilities of course coordinators and generally identifies the coordinator as the individual who is ultimately responsible for administering the program and complying with all applicable laws and rules.

4 MCAR Section 1.41535 Elaborates upon existing Rule 1.41511 C. by establishing for the first time specific criteria for approval as an instructor. The proposed criteria require, in most cases, a combination of educational background and practical experience.

In arriving at these specific instructor criteria, the agency has made every effort to achieve a meaningful balance between the need of real estate schools throughout the state to be able to employ a sufficient number of instructors to meet the educational requirements of prospective licensees, as against the intent of the law, which is that licensees and prospective licensees should be at least minimally

competent to meet the real estate needs of the public. The rule also enumerates specific instructor responsibilities, which will clarify the extent of their obligations.

4 MCAR Section 1.41536 Establishes certain prohibited practices for coordinators and instructors.

Paragraph A. 1-4. Coordinators and instructors are specifically prohibited from promoting any particular broker or franchise. Courses offering statutorily required real estate education to a "captive" audience should not be the setting for encouraging students to join a particular real estate brokerage or franchise. Coordinators and instructors are also prohibited from requiring students to enroll in subsequent courses or participate in other programs offered by the school as a condition of admission into a specific course. Students should be free to select courses which address their particular needs and circumstances.

Paragraph A. 5-7. Designed to protect the integrity of the real estate licensing examination.

Paragraph B. The requirement that coordinators and instructors notify the commissioner of felony convictions or disciplinary action is necessary in order to assure that they continue to qualify to instruct prospective licensees.

4 MCAR Section 1.41537 Corresponds to existing Rule 1.41511 A.2.

4 MCAR Section 1.41538 Clarifies that waivers of real estate education will not be granted under any circumstances.

4 MCAR Section 1.41539 Corresponds to existing Rule 1.41411 F. Clarifies agency policy regarding the refund of fees by a school in the event a course is cancelled or postponed.

4 MCAR Section 1.41540 Corresponds to existing Rule 1.41511 N.

4 MCAR Section 1.41541 Corresponds substantially to existing Rule 1.41511 O.

4 MCAR Section 1.41542 Requires schools to provide all students with a legible copy of course materials.

4 MCAR Section 1.41543 Corresponds to existing Rule 1.41511 I. and adds language regarding deceptive advertising of approved courses.

4 MCAR Section 1.41544 Corresponds to existing Rule 1.41511 L.

4 MCAR Section 1.41545 Corresponds to existing Rule 1.41511 Q. Clarifies that the agency may audit a course without advance notice to the school.

4 MCAR Section 1.41546 Corresponds to existing Rule 1.41511 P.

4 MCAR Section 1.41547 Places the responsibility upon students to maintain copies of their education records.

4 MCAR Section 1.41548 Clarifies existing agency policy. Licensees are currently permitted to submit continuing education credits as they are earned. The proposed rule would require licensees, for agency bookkeeping purposes, to submit one form setting forth all 45 credits. Students are urged to submit the form as soon as they have completed the 45 hours of continuing education (Minn. Stat. Section 82.23, Subd. 13 (c) (1980)).

4 MCAR Section 1.41549. A new rule is created which implements the automatic license transfer provisions of Minn. Laws 1982 ch 478.

Paragraph A - Minn. Laws 1982, ch. 478 authorizes salespersons to automatically transfer their real estate license from one broker to another broker if the salesperson

commences his association with the new broker "immediately" after terminating activity on behalf of his prior broker. The Commissioner has determined that "immediately" should, for reasons of certainty, mean "within five days after terminating" association with the prior broker. The Commissioner has also determined that an automatic transfer should not be available to an individual who has failed to notify the Commissioner of any change in the information contained in his license application or of any actions brought against the licensee, knowledge of which is deemed material in determining whether the licensee remains qualified to hold a real estate license.

There are a large number of license transfers each year in the real estate industry, and while the automatic transfer provision was enacted to accommodate licensees, it should not, in the opinion of the Commissioner, be available to persons who have failed to comply with the licensing law and rules.

Paragraph B - sets forth existing agency policy concerning license transfers. Also, in order to assure that the transferring salesperson is at all times under the supervision of a broker, and only one broker, the rule requires the broker from whom the salesperson is transferring to sign the transfer form first and also states that the salesperson is unlicensed until his new broker signs the transfer form.

Paragraph C - The real estate licensing law is grounded on the concept that a salesperson is licensed to a broker who is responsible for the actions of that salesperson. Minn. Laws 1982 ch. 478 states that the automatic transfer is effective upon the "mailing" of the transfer. In order to establish the exact time at which the new broker assumes responsibility for the salesperson, the rule makes the transfer effective at the moment the new broker signs the transfer form (Form RE-10).

4 MCAR Section 1.41550. A new rule is created which constitutes the agency's interpretation of an aspect of the statutory definition of "real estate broker" or "broker" (Minn. Stat. Section 82.17, Subd. 4 (b) (1980)). The reference in the statute to any person who "negotiates or offers or attempts to negotiate a loan" has left many mortgagees and lenders uncertain whether they have either a corporate or an individual obligation to obtain a Minnesota real estate license. Such mortgagees and lenders do not "negotiate" loans but rather act as originators of loans and do not, therefore, in the opinion of the Commissioner, fall within the scope of the statutory definition. However, in order not to create an exemption which is too broad, and because of the difficulty in formulating a definition of "mortgagee" or "lender", the rule is limited to those mortgagees and lenders whose activities are regulated or supervised by various federal agencies or instrumentalities. The loan making activities of the enumerated mortgagees and lenders are also subject to regulation by the Minnesota Commissioner of Banks pursuant to Minn. Stat. Section 47.20, Subd. 1 (Supp. 1981).

4 MCAR Section 1.41551. Clarifies that existing rules govern with respect to actions pending or initiated prior to the effective date of these proposed rules.

4 MCAR Section 1.41552. Paragraphs A and B are intended to address situations where a licensee or applicant, against whom revocation, suspension or denial proceedings are pending or are likely to be instituted, decides to (a) withdraw from the status of licensee, (b) withdraw a pending license application or (c) allow an existing license to lapse, with the idea that he will then "lay low" for a time in the hope that the witnesses against him will leave the jurisdiction, die, lose interest in the matter or that the case against him will otherwise be made difficult to prove due to the passage of time, with the result that it will be difficult or impossible to establish a violation when he later applies for a license.



Paragraph A is patterned after a similar provision in the law regulating securities broker-dealers, agents and investment advisers (see Minn. Stat. ch. 80A.07, Subd. 5 (1980)).

Paragraph C is patterned after Section 80A.07, Subd. 4 of the Securities Act and would permit an expeditious revocation of a real estate license where the Commissioner finds that a licensee is no longer in existence, has ceased doing business, has been adjudged mentally incompetent or cannot be located after a reasonable search. The provision in the Securities Act (which is a uniform act) was designed to regularize the procedure for getting rid of "dead wood" in licensing files. It is proposed to be inserted in the real estate rules for the same reason (there are approximately three times as many real estate licensees in Minnesota than there are securities broker-dealers, agents and investment advisers.

#### FORMS

4 MCAR Section 1.41553 Course Completion Certificate (Form RE-1). See proposed Rule 1.41547.

4 MCAR Section 1.41554 Application for Coordinator Approval (Form RE-2). See proposed Rule 1.41534 B.

4 MCAR Section 1.41555 Application for Course Approval for Course I, II, and III (Form RE-3). See proposed Rule 1.41532 D.

4 MCAR Section 1.41556 Application for Instructor approval for Courses I, II, III (Form RE-4). See proposed Rule 1.41535 B.1.

4 MCAR Section 1.41557 Course II and III Record of Completion (Form RE-5). See proposed Rule 1.41534 C.9.

4 MCAR Section 1.41558 Application for Course Approval for Continuing Education (Form RE-6). See proposed Rule 1.41532 D.

4 MCAR Section 1.41559 Application for Instructor Approval for Continuing Education (Form RE-7). See proposed Rule 1.41535 B.1.

4 MCAR Section 1.41560 Notice of Subsequent Offerings of Continuing Education Courses (Form RE-8). See proposed Rule 1.41532 E.

4 MCAR Section 1.41561 Continuing Education Course Verification (Form RE-9). See proposed Rule 1.41548.

4 MCAR Section 1.41562 Real Estate Salesperson Automatic Transfer (Form RE-10). See proposed Rule 1.41549.

Date

June 25, 1982

Mary Alice Brophy  
MARY ALICE BROPHY  
Commissioner of Securities and  
Real Estate  
Department of Commerce  
State of Minnesota  
500 Metro Square Building  
St. Paul, Minnesota 55101

BERRY

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

PENNSYLVANIA CRIME COMMISSION  
COMMONWEALTH OF PENNSYLVANIA

STATE OF MINNESOTA

AUG 8 1980

DEPARTMENT OF COMMERCE  
STATE OF MINNESOTA

RACKETEERING IN THE COMMERCIAL LOAN BROKERAGE INDUSTRY

January 1980

William B. Anderson, Jr.  
Executive Director

Frank R. Booth  
Special Agent-in-Charge  
Southeast Regional Office

John J. Contino  
Counsel

Victor N. DiCicco  
Special Agent

Jack Murmylo  
Special Agent

Chairman  
Alvin B. Lewis, Jr., Esq.

Commissioners  
Justin M. Johnson, Esq.  
Malcolm L. Lazin, Esq.  
Kenneth B. Lee, Esq.

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In no event was any of the advance fee money forwarded to a source of funding for the benefit of Colletti's clients.<sup>87</sup>

V. CONCLUSION AND RECOMMENDATIONS

The Pennsylvania Crime Commission's investigation has shown that organized advance fee schemes are creating a substantial danger to the economic and general welfare of the Commonwealth. Apart from the schemes described in this report, the Crime Commission has received evidence which indicates that at least three additional advance fee schemes are presently being conducted in the Philadelphia area. While the exact magnitude of this type of activity may never be known, it is probable that advance fee schemes will become even more prevalent in light of recent economic developments which have resulted in a tightening of credit throughout the nation.

The results of the Crime Commission's investigation are a matter of serious concern for the business community, law enforcement authorities and the Legislature of Pennsylvania. The Commission has further formulated the following recommendations which are proposed as both preventive and remedial measures.

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87. During the Crime Commission's investigation of Colletti's advance fee scheme operation, it was learned that Colletti may also have been involved in stock and investment fraud schemes. At least one individual lost \$25,000 to Colletti through the purchase of worthless stock, while four additional individuals lost \$50,000 to Colletti in a land development deal.

A. Recommendations to Potential Borrowers

As a result of this investigation, the Pennsylvania Crime Commission has determined that certain precautions should be taken by businesspersons who are attempting to secure a loan from or through a source with which they are not familiar. Various common indicators often will be present when the individuals and entities involved in the loan activity are perpetrating a scam. Certain precautions and guidelines are set forth below to offer better protection to the borrower who is deciding whether to consummate a particular transaction.

1. Beware of a broker or lending institution which advertises the availability of millions of dollars for loan purposes at reasonable rates, even though the economy is in a period of tight money.

2. Attempt to secure the loan from a major, well established lending institution, such as a bank or insurance company first. If such an institution declines the requested financing, determine the reason and re-evaluate the need to secure funding.

3. Beware of a broker or lending institution which states that the requested funds can be secured easily, particularly if major lending institutions have already declined financing.

4. Beware of a lending institution which is located offshore or in a foreign country. Many small islands and

countries have lax banking regulations, leaving the borrower with little or no protection against fraud.

5. Employ the services of a financial expert, an accountant, an attorney or other professional who is thoroughly familiar with the financial field. The cost incurred in employing such an expert may in the long run save the potential borrower much anguish and much money.

6. Submit any proposals or contracts which are received from a broker or lending institution to a bank with which the borrower is acquainted in order to obtain an impartial opinion and evaluation.

7. Beware of a lending institution or broker which is not known to local bankers and which is comprised of officers and agents who are not known to local established lending institutions.

8. Contact consumer protection agencies and law enforcement agencies in the location of the broker or lending institution in order to verify the reputation and credibility of the company and its officers.

9. Obtain from the broker or lending institution, a list of individuals and corporations for whom funds have been successfully procured and verify the fact that such funds have been procured.

10. Do not place reliance on financial statements of the broker or lending institution that are unaudited. Reports such as Dun and Bradstreet statements, although



issued in good faith, often contain information that is supplied by the broker or lending institution and thus unverified by any outside source.

11. Carefully read all correspondence and documents that are received. Letters of commitment to produce loans often contain many conditions that realistically cannot be met.

12. Beware of high pressure sales tactics that stress the need to act swiftly and the urgent need to tender an advance fee.

13. Do not pay any fees in cash. Use a personal or company check. If the broker or lender refuses to accept such a check, advise him or her that you will be happy to have the bank certify your check.

14. Demand that all fees that are refundable in the event the loan is not secured, be placed in an escrow account which is held by an independent escrow agent or trustee. Many local banks will provide this service. Obtain a stipulation that any disbursements from such escrow account must first be approved by all parties.

15. If the fees that are paid are refundable, obtain a written statement to that effect.

16. If out-of-pocket expenses are requested by a broker, obtain an itemized accounting of the expenditures prior to payment. If your payment is to cover expenses that will be incurred in the future, place the funds in an escrow

account and receive a stipulation that the expenses will be paid only pursuant to a documented accounting.

17. Be honest with yourself. Evaluate the project and the feasibility of its success. Obtain several opinions as to the possibility of securing funding prior to applying for loans. Determine the exact amount of funds necessary and do not deter from that amount.

18. If it appears as though fraudulent activities have occurred, immediately contact local, State and federal law enforcement authorities within the area and report such activity.

B. Recommendations for Legislation

The fraudulent activities which have been described in this report can be effectively curtailed through the enactment of regulatory legislation. At the present time, there is no specific law in Pennsylvania governing persons whose business is to locate sources of financing for commercial ventures. Accordingly, the Pennsylvania Crime Commission recommends that the General Assembly of Pennsylvania review the findings presented in this report and consider the enactment of such legislation.

Based upon the patterns of fraudulent activities uncovered during the course of this investigation, the following provisions are suggested as a foundation for such legislation:

1. The extension of an existing State agency's jurisdiction to oversee the activities of loan brokers in Pennsylvania.

The commission should be invested with the powers necessary to enforce the substantive provisions of the law.

2. Such regulatory legislation should require the licensing of all individuals and entities who, in the regular course of business, attempt to locate, secure or obtain financing for commercial ventures.

3. The legislation should provide for the establishment of minimum educational standards and should also require the successful completion of a written examination as a prerequisite for licensing.

4. It should be required that all individuals who are licensed pursuant to the legislation be bonded.

5. The legislation should require the filing of an annual report by the licensed individual or entity detailing the financial condition of such individual or entity's business. This report should be available to the general public upon request.

6. Such legislation should also provide for the filing of an annual report by the licensed individual or entity, disclosing successfully consummated lending transactions. Such report should be made available to the client of a licensed broker or firm upon request, but only regarding the particular broker or firm employed by the client.

7. The legislation should require the registration of non-resident brokers who transact business in the Commonwealth of Pennsylvania.

8. Inclusion of the word "broker" as part of the business title of the licensed individual or entity should be mandatory.

9. The commission designated by the legislation should be given the power to draft rules and regulations governing the fees that may be charged by licensed individuals and entities for their services.

10. The rules and regulations should further detail under what circumstances fees may be charged for the referral of a client to another broker and the amount of such fees.

11. Mandatory utilization of an interest bearing escrow account for all fees paid by a client and provisions regulating the use and handling of such funds and account should be provided within the legislation.

12. A licensed individual or entity should also be required to furnish to each client a detailed accounting of all fees paid or payable by that client.

13. Every licensed individual and entity must be required to maintain a complete set of books and records including separate files for each client.

14. All licensed individuals and entities should be required to reveal the proposed source of funding to a client prior to the payment of any fees which are to be held in escrow.

15. The legislation should provide for the suspension or revocation of a license for violating the provisions of

the law or the rules and regulations of the commission or for the conviction of any criminal offense relating to fraudulent activity, misrepresentations or other deceptive practices.

16. There should be established a right of acknowledgment of action by the victim against any person violating the provisions of the law or the rules and regulations of the commission, including a provision for the recovery of treble damages.

C. Recommendations to Law Enforcement Authorities

1. The Pennsylvania Crime Commission recommends that State and local authorities empowered to enforce the laws of the Commonwealth more actively pursue the investigation and prosecution of the type of activities reported herein. The Commission has discovered that although many of the individuals who were defrauded reported their experiences to local authorities, no further action was taken.

2. It is recommended that federal, State and local prosecuting authorities review this report to determine whether the institution of criminal actions is warranted within their respective jurisdictions.

3. In 1973, the Pennsylvania General Assembly enacted the Corrupt Organizations Act.<sup>88</sup> The need for this statute

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88. 18 C.P.S.A. §911 et. seq.

was based upon the determination that organized crime exists on a large scale in Pennsylvania and that organized crime is corrupting legitimate businesses, injuring innocent investors, entrepreneurs, merchants and consumers. It was found that organized crime has created a substantial danger to the economic and general welfare of the State. The Act, however, has never been utilized successfully by any prosecutor. It is therefore recommended that State and local law enforcement authorities review the facts contained in this report to determine if the reported activities fall within the purview of that statute.



CROW RIV

EXHIBIT B

August 20, 1981

Minnesota Department of Commerce  
500 Metro Square Building  
St. Paul, Minn. 55101

STATE OF MINNESOTA

AUG 21 1981

DEPARTMENT OF COMMERCE

Attn: Mary Alice Brophy, Commissioner

Re: Exclusive Listing Contract of the real estate profession

Dear Commissioner Brophy,

There is a great concern among our Board members regarding language in the exclusive listing contract used by real estate people.

I have attached the exclusive listing contract of the Minnesota Association of Realtors and marked the paragraph of concern, in yellow. Also note I have marked the last sentence of that paragraph, which is the only listing agreement one can obtain with that sentence included.

It has been my belief for many years that the paragraph in question was established to protect the agent from the property being sold, by the seller, within days of the expiration of the listing, but that the paragraph didn't mean anything if the property was re-listed. The problem is that the majority of listing agreements used do not state what happens to the, "protection period", if the property is re-listed with another agent.

We have a very bad situation within our Board involving this very thing right now and I can see a potential for more of this occurring, especially during a depressed market such as we're experiencing now.

The National Association of Realtors saw the potential for problems and recommended to all State Associations, in November of 1979, that the last sentence be added to their respective exclusive listing agreements. However, there are many real estate licensees in the State that do not belong to the Association and those that do are not required to use the attached Association listing agreement.

We feel, therefore, the State should take the initiative and amend the regulation/statute pertaining to the listing agreement to include a sentence similar to the one on the attached State Association form. Without same, there is a great potential for a seller having to pay two commissions. One, to the agent who provided the list of prospects upon expiration and another to the second agent who lists the property, after expiration of the first listing, and sells the property to a buyer on that protective list.

I can't believe the number of people I have personally encountered who are willing to sign a contract without reading it first and/or understanding what they are signing. I also blame the agents, as so many of them do not fully explain the listing agreement, etc., prior to a signing.

Because of that fact, I and many others firmly believe it should then be the responsibility of the State to take the initiative and protect the consumer/seller.

I further feel the protection period found on many listing agreements (those without the additional sentence) is a restraint of trade and a violation of the sellers rights.

Please also note I have lined in yellow the word, "offered", in the same paragraph on attached listing. I personally know an agent who will call a potential buyer on a particular property or mention it in passing to someone on the street, NEVER SHOW THEM THE PROPERTY, but places their name on the protective list when the listing expires! I can't believe the desperation for a dollar on the part of some agents, but to me the word "offered", allows the agent to, "protect", every Tom, Dick or Harry on the list given to the seller. And as I said earlier, I think the potential for problems has increased greatly do to the depressed market conditions.

I firmly believe that an agent should not have the right to place anyones name on the protective list he has not personally shown the property to. I also firmly believe, as our State Association does, that the protection period and list of prospects should not mean a thing if the property is re-listed. So many agents use a 180 day protection period, which I also feel is extremely unfair to the seller who does not re-list his property, as soo many things can occur in a six month time span. Such as, an unqualified purchaser becomes qualified for one reason or another. That purchaser may then contact the Seller, 5 months later, wishing to purchase his home do the change in his financial abilities and the seller would be stuck paying the agent a commission. I can possibly justify a sixty or even ninety day protection period, in cases where the property is not re-listed, but too many things can change or occur in a six month time span.



If I am wrong in assuming your department has the authority to do something about this problem, I would greatly appreciate your approaching the legislators in support of this situation.

Looking forward to hearing from you on this matter, I remain,

Respectfully yours,

*Alice J. Lietzau*

Alice J. Lietzau  
Executive Secretary



REALTOR®

EXCLUSIVE LISTING CONTRACT  
MINNESOTA ASSOCIATION OF REALTORS®

....., Minn....., 19.....

To.....

Members ..... Board of REALTORS

In consideration of your agreement to list in your office the real estate described as.....

and of your efforts to find a purchaser for the same, I hereby grant to you the exclusive right to sell or to contract to sell said real estate within a period commencing this date and terminating on ....., 19....., for the price of .....

and I hereby agree to furnish an abstract of title certified to date (or a Certificate of Title and Registered Property Abstract) to said real estate and to execute a deed of general warranty in due form of law conveying a marketable title to the same, in which my wife or husband shall join, to such persons as you shall have sold or agreed to sell the same, and for your services, I hereby agree to pay you a fee of.....% of the purchase price thereof, upon any sale or contract for the sale of said real estate made while this agreement remains in force, whether such sale be made by yourselves or by myself or by any other person or whether at the price and upon the terms stated, or at a different price or upon other terms accepted by me.

It is further agreed that upon any sale or contract for the sale of said real estate made by me within .....days next after the termination of this agreement to any person to whom, during the period of this listing, you shall have shown or offered this property of which I shall have been notified in writing by you within 72 hours of termination date, or to any person who during the period of this listing makes inquiry of me regarding this real estate, I will pay you the full rate of commission as shown above and I further agree to furnish you complete information regarding such inquiry promptly after receiving same. However, I shall not be obligated to pay you such brokerage fee if during the protection period I have entered into another valid listing agreement pursuant to which I am required to pay a brokerage fee to another real estate broker for the sale or exchange of said real estate.

You are hereby authorized to place one neat "for sale" sign on said real estate, and to remove all other signs therefrom.

Accepted .....

(Firm)

Owner .....

By .....

Owner .....

Address .....

Address .....

Telephone .....

Telephone .....

MINNESOTA ASSOCIATION OF REALTORS RESIDENTIAL LISTING CONTRACT

ADDRESS \_\_\_\_\_ No. of BR \_\_\_\_\_ Dist. \_\_\_\_\_

TERMS: \_\_\_\_\_ DATE \_\_\_\_\_ PRICE \$ \_\_\_\_\_

LISTING BROKER \_\_\_\_\_ PHONE # \_\_\_\_\_

SALESPERSON \_\_\_\_\_ HOME PHONE \_\_\_\_\_

OWNER'S NAME \_\_\_\_\_ POSSESSION \_\_\_\_\_ YEAR BLT \_\_\_\_\_

Features and Sales Helps \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Blks. to Bus. \_\_\_\_\_

1ST FLOOR

2ND FLOOR

L. Rm. \_\_\_\_\_ x \_\_\_\_\_ Din. R. \_\_\_\_\_ x \_\_\_\_\_

Bedrooms \_\_\_\_\_ x \_\_\_\_\_ ; \_\_\_\_\_ x \_\_\_\_\_

Family R \_\_\_\_\_ x \_\_\_\_\_ Den \_\_\_\_\_ x \_\_\_\_\_

\_\_\_\_\_ x \_\_\_\_\_ ; \_\_\_\_\_ x \_\_\_\_\_ ; \_\_\_\_\_ x \_\_\_\_\_ ;

Kitchen \_\_\_\_\_ x \_\_\_\_\_ Brkfst \_\_\_\_\_ x \_\_\_\_\_

Baths CT ( ) PT ( ) \_\_\_\_\_ OTHER \_\_\_\_\_

Bedrooms \_\_\_\_\_ x \_\_\_\_\_ ; \_\_\_\_\_ x \_\_\_\_\_ ;

\_\_\_\_\_

\_\_\_\_\_ x \_\_\_\_\_ ; \_\_\_\_\_ x \_\_\_\_\_ ;

3rd floor or attic \_\_\_\_\_

Bath CT ( ) PT ( ) \_\_\_\_\_ Porch \_\_\_\_\_

1st Fl. sq. ft. \_\_\_\_\_ BSMT ( ) yes ( ) No

Bsmt. Bath \_\_\_\_\_ Amuse. Rm. \_\_\_\_\_ x \_\_\_\_\_

Ext. Finish \_\_\_\_\_

Fireplace: Up \_\_\_\_\_ Dn. \_\_\_\_\_

LOT SIZE \_\_\_\_\_

Garage \_\_\_\_\_ x \_\_\_\_\_ Att. \_\_\_\_\_ Det. \_\_\_\_\_

Reason for selling \_\_\_\_\_

INCLUSIONS: Carpeting: LR \_\_\_\_\_ DR \_\_\_\_\_ Stair \_\_\_\_\_ BR \_\_\_\_\_ Drapes: LR \_\_\_\_\_ DR \_\_\_\_\_ BR \_\_\_\_\_ Other \_\_\_\_\_

OTHER \_\_\_\_\_ Built-Ins \_\_\_\_\_

OTHER INCLUSIONS: \_\_\_\_\_

SCHOOLS: Elem. \_\_\_\_\_ Jr. High \_\_\_\_\_ Sr. High \_\_\_\_\_ Parochial \_\_\_\_\_

Sewer: Conn. \_\_\_\_\_ Water: Conn. \_\_\_\_\_ Private: Water \_\_\_\_\_ Gas: Conn. \_\_\_\_\_ Type Heat: Gas \_\_\_\_\_ Oil \_\_\_\_\_

In St. \_\_\_\_\_ In St. \_\_\_\_\_ Sewer \_\_\_\_\_ In St. \_\_\_\_\_ Other \_\_\_\_\_

Taxes & specials due in ( ) HS \_\_\_\_\_ Specials included in Total \_\_\_\_\_ Total Unpaid Specials \$ \_\_\_\_\_

19 \_\_\_\_\_ \$ \_\_\_\_\_ ( ) NHS ← 19 \_\_\_\_\_ \$ \_\_\_\_\_

First Mtg. Bal. \$ \_\_\_\_\_ Int. Rate \_\_\_\_\_ FHA \_\_\_\_\_ GI \_\_\_\_\_ Conv. \_\_\_\_\_ Held By \_\_\_\_\_

Monthly Pymt: PI \$ \_\_\_\_\_ Taxes & Specials \$ \_\_\_\_\_ Ins. \$ \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

Other Financing \_\_\_\_\_ Monthly Payments \_\_\_\_\_ Bal. Due \_\_\_\_\_ Int. Rate \_\_\_\_\_

MORTGAGE COMMITMENT \$ \_\_\_\_\_ Years \_\_\_\_\_ Int. \_\_\_\_\_ Thru \_\_\_\_\_

STATE of Minnesota, By Warren SPANNAUS, Its Attorney General, and John R. Larson, Its Commissioner of Securities, Appellant,

v.

Larry D. BESLANOWITCH, Individually, and d. b. a. Rental Directory, Respondent.

No. 46379.

Supreme Court of Minnesota.

Nov. 5, 1976.

Action was brought by State, by its Attorney General, for declaratory relief and to enjoin business activities of defendant which were claimed to constitute activities for which a real estate broker's license was required. The District Court, Olmsted County, Donald T. Franke, retired judge, entered judgment refusing to grant declaratory and injunctive relief sought and the State appealed. The Supreme Court, Peterson, J., held that statute defining real estate broker as person who, among other things, lists, sells, exchanges, rentals of interest or estate in real estate excludes from its regulatory scope the pure sale of rental information but includes within its scope the rendering of individualized service to meet the needs of specific persons.

Reversed and remanded.

MacLaughlin, J., filed a dissenting opinion in which Yetka and Marsden, JJ., joined.

#### 1. Brokers ⇌ 3

In contemplation of statute defining real estate broker as person who, among other things, lists, sells, exchanges, buys or rents real estate word "lists" refers to more than a mere physical process of compiling and publishing descriptions of property, and contemplates the additional activity of using such lists of properties for purpose of attempting to meet the individual needs of some specifically identified seller, buyer,

landlord, or tenant. M.S.A. §§ 82.01 et seq., 82.17, subd. 4(a), 82.19.

See publication Words and Phrases for other judicial constructions and definitions.

#### 2. Brokers ⇌ 3

Statute defining real estate broker who is required to be licensed as person who, among other things, lists, exchanges, sells, buys or rents interest or estate in real estate does not contemplate persons who merely compile and publish information about rental vacancies in a general manner. M.S.A. §§ 82.01 et seq., 82.17, subd. 4(a), 82.19.

#### 3. Brokers ⇌ 3

Where the essential elements of defendant's business included soliciting landlords for information about their vacancies, classifying and compiling information into a convenient form and charging potential customers who desired to have information, such activities without more did not require real estate brokers license but line was crossed when defendant's employee searched information bank for individual's need and made recommendations, or if potential tenant was called if anything meeting his individual needs became available. M.S.A. § 82.17, subd. 4(a).

#### 4. Brokers ⇌ 3

In contemplation of real estate broker licensing statute defining a real estate broker as a person who, among other things, negotiates sales or rentals of real estate term "negotiate" refers to more than mere sale of information. M.S.A. § 82.17, subd. 4(a).

See publication Words and Phrases for other judicial constructions and definitions.

#### Syllabus by the Court

While Minn.St. c. 82 does not require those who engage only in the business of selling information about residential real estate vacancies to obtain a real estate broker's license, it does require a person to obtain a license before he may attempt to meet the individual needs of a specifically identified landlord or tenant.

Warren Spannaus, J.  
Mark, Asst. Sol. Gen.  
Thomas R. Muck, Asst.  
R. Greller, Sp. Asst.  
for appellant.

Schacht, Kerr & S  
Karr, Rochester, for

Heard before RO  
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PETERSON, Justice

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Warren Spannaus, Atty. Gen., Richard G. Mark, Asst. Sol. Gen., Robert W. Herr and Thomas R. Muck, Asst. Attys. Gen., Barry R. Greller, Sp. Asst. Atty. Gen., St. Paul, for appellant.

Schacht, Kerr & Steiner and George R. Kerr, Rochester, for respondent.

Heard before ROGOSHESKE, MacLAUGHLIN, and MARS DEN, JJ., and considered and decided by the court en banc.

PETERSON, Justice.

The state, by the attorney general, contends that business activities conducted by defendant, Larry D. Beslanowitch, are activities for which a real estate broker's license is required. It appeals from the judgment of the district court refusing to grant the declaratory and injunctive relief it sought against defendant.

Defendant is a Montana resident who conducts business in a number of states. In Rochester, Minnesota, he calls his business Rental Directory. The employees of Rental Directory in Rochester solicit landlords for information about residential real estate vacancies and catalog the information they receive. They also advertise in the media so as to alert potential tenants to their services. When a potential tenant contacts Rental Directory, an employee explains the service which is provided and invites him to use it. The fee to the potential tenant (customer) is \$20 for a 30-day agreement or \$30 for a 1-year agreement. If he wishes to pay this fee, he is asked to fill out an information sheet specifying what kind of rental he is seeking. The employees of Rental Directory then supply him with the names and addresses of landlords who they think might have vacancies meeting those specifications. The customer may receive additional information throughout the period of this agreement.

The evidence conflicted as to what further services the employees of Rental Directory furnished their customers. Defendant Beslanowitch testified that his employees were taught not to enter into any dialog with landlords or customers and that the

customers themselves contact the landlords and negotiate with them. He testified that after giving information to the customer about vacancies the only further contact Rental Directory would have with the customer was to provide information about still other vacancies. According to Beslanowitch, his employees never go with a customer to look over the potential rentals, and they never make any recommendations as to how much rent to charge, what facilities such as refrigerators or stoves should be provided, or whether pets ought to be allowed. He characterized the business as being the same kind of business a daily newspaper engages in—the advertising of properties for rent.

The testimony of Rental Directory customers, however, showed that on at least three occasions Jan Scripture, the manager of Rental Directory in Rochester, called a landlord as a convenience to the customers. Her purpose in these calls was to ascertain whether a landlord was home, whether pets were acceptable, and whether a stove or refrigerator came with the rental. The testimony also showed that Scripture had told or led at least three customers to believe that she would contact them if something new meeting their specifications came up, and that on one or two occasions she had indeed called a potential tenant to tell him about a new vacancy.

The evidence indicated that licensed real estate brokers in the Rochester area usually do not seek to service the residential rental market. Some of them, moreover, refer to Rental Directory their customers who wish to locate residential rentals, apparently because they do not themselves collect and maintain information about residential vacancies.

Minn.St. 82.19 prohibits any person from acting as a real estate broker unless he is licensed under chapter 82. Minn.St. 82.17, subd. 4, in relevant part, defines "real estate broker" as any person who:

"(a) For another and for commission, fee or other valuable consideration or with the intention or expectation of re-

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M.S.A. §§ 82.01 et seq.

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The line is crossed, however, when one engaged in defendant's business begins to provide special service to an individual landlord or tenant beyond the compilation and publication of information which might or might not be of value to any specific person. For example, if defendant represented to a landlord that he or his employees would actively attempt to locate a tenant to rent his property, and if he then proceeded to seek out such a tenant, he would be attempting to meet the individual needs of a specifically identified landlord and his activities would therefore come within the meaning of "lists" as used in Minn.St. 82.17, subd. 4(a).

The line is also crossed when one offers services tailored to the individual needs of a specific tenant. If, in exchange for a potential tenant's fee, defendant simply opened to him the entire information bank and did nothing more, the statute would not be applicable because there would be no attempt to meet the individual needs of a specific tenant. Defendant's only activity would be the sale of information to those who wish to buy it and without regard to its applicability to any specifically identified tenant. If, however, the Rental Directory employee handling a tenant's request queries him as to his individual needs and exactly what it is he seeks, and if the employee then searches the information bank for the tenant and makes recommendations as to which properties most nearly answer those needs, then the service rendered comes within the purview of the statute. Similarly, if an employee represents to a potential tenant that Rental Directory will call him if anything meeting his individual needs becomes available, or if the employee does in fact perform such a service, the statute becomes applicable.

[4] The issue which, if any, of defendant's business activities constitute an offer or attempt to negotiate a rental of an estate in real estate is closely related to the issue of which of defendant's activities constitute "listing" within the meaning of Minn.St. 82.17, subd. 4(a). In the contemplation of the statute the term "negotiate"

also refers to more than the mere sale of information. If defendant limits the service he provides to the collection of information about residential real estate vacancies, the compilation of that information into a convenient form, and the publication of the entire information bank to those who wish to avail themselves of it, then he is not offering or attempting to negotiate a rental of an estate in real estate within the meaning of the statute. If, however, he attempts to persuade a specifically identified prospective tenant to enter into a rental arrangement with a specifically identified landlord (or vice versa), then the statute becomes applicable.

It has been demonstrated that some of defendant's business activities fall within the purview of the statute while others do not. The district court refused to enjoin those activities which are violative of the statute, even though it was apparently persuaded that defendant's employees did on occasion engage in them. Because of the district court's construction of the statute, however, its findings were not specific as to the critical activities. Accordingly we reverse and remand for further proceedings not inconsistent with this opinion.

At several points in this litigation it has been suggested that defendant has engaged in false advertising and that not just some but literally all of his business activities should therefore be construed as falling within the purview of the statute. Certainly it is within the ability of the legislature to regulate even those who engage only in the sale of information, provided of course that its regulation complies with all constitutional requirements. It is not our function, however, to decide whether a given activity ought or ought not to be regulated. Our function is simply to construe and enforce the limits which the legislature has set, and not those limits which we may think it ought to set. We have decided that the legislative intent was to exclude from the regulatory scope of the statute the pure sale of information, but to include within its scope the rendering of individualized service to meet the needs of a specific person.

Should the legislature find that the social welfare requires regulation of the mere sale of information about residential real estate vacancies, regulation beyond the ordinary consumer fraud remedies, then it may deal with the specific problems it perceives. Until the legislature makes such a determination, however, it is our function to enforce only that extent of regulation which it has thus far prescribed.

Reversed and remanded.

MacLAUGHLIN, Justice (dissenting).

In my judgment Minn.St. c. 82 is a remedial statute intended for the protection of the public and should be liberally construed. As we stated in *Albers v. Fitschen*, 274 Minn. 375, 376, 143 N.W.2d 841, 843 (1966), the statute was "enacted in the public interest to prevent abuses by unqualified or unreliable real estate brokers and salesmen." To accomplish this goal the legislature broadly defined the term "real estate broker" to include anyone who:

"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." Minn.St. 82-17, subd. 4(a).

By using this broad definition it seems clear to me that the legislature intended the term

1. The majority suggests that a broad definition of the term "broker" would include newspapers. While newspapers through their real estate advertisements could be viewed as bringing together prospective tenants and landlords, I believe there are significant distinctions between a newspaper and defendant's business. The real estate broker statute is aimed at regulating those who are engaged in the business of brokering. A newspaper is clearly not engaged in the business of brokering. The fact that a newspaper's classified ads may have the effect of bringing together prospective tenants and landlords is truly incidental to the operation of the newspaper. Consequently, I do not believe it can be seriously contended that the legislature intended to regulate newspapers simply

"broker" to include anyone who is primarily engaged in the business of bringing together either a prospective real estate buyer and seller or a prospective tenant and landlord.<sup>1</sup> It also seems clear to me that this defendant is engaged in the business of bringing together prospective tenants and landlords. The defendant solicits landlords to list rental vacancies with it, and then, attempts to fill these vacancies with prospective tenants from whom it extracts a fee. By doing so defendant engages in the activities of a real estate broker as contemplated by Minn.St. 82.17, subd. 4(a). The fact that defendant does not actively participate in the negotiations of the terms should not be relevant to the question of whether the act is applicable to these activities. As stated in *People v. Sickinger*, 79 Misc.2d 572, 574, 360 N.Y. S.2d 796, 799 (1974): "\* \* \* [T]he brokerage function is exercised when parties are brought together, although the details may be worked out later without the broker." Instead of construing the act broadly, it appears to me that the majority opinion labors to narrowly construe the statute in a manner which excludes defendant.

Further, and most importantly, it seems apparent as a matter of common sense and common experience that, as stated by the New Jersey Real Estate Commission: "The possibility of fraud, misinterpretation and sharp or unconscionable practices [is] great in [the rental referral agency] field." *N. J. Real Estate Comm. v. Rentex, Inc.*, Docket No. Cam-12679, affirmed sub nom. *State v. Graham* (App.Div., decided Nov. 17, 1975).<sup>2</sup>

because of this incidental effect. There is no direct contract between the newspaper and a prospective tenant and it is clear in the public's mind that there is no agency association between the newspaper and the landlords who advertise in the classified ads. Therefore, a newspaper cannot, in my judgment, be equated with defendant's business and a broad definition of "broker" would not encompass the operation of a newspaper.

2. The trial court, in its memorandum states as follows: "While it is not at issue in the instant case, it does appear that a degree of misrepresentation occurs in the newspaper advertising of the defendant after several of the witnesses testified that the inviting property advertised at a very reasonable rental turned out to be not

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I believe that it was the intent of the legislature to protect the renting public from "fraud, misinterpretation and sharp or unconscionable practices" in this type of business when it enacted Minn.St. c. 82. By construing the statute liberally instead of narrowly, the commissioner of securities would be authorized to promulgate rules and regulations, with enforcement provisions, designed to protect consumers from "sharp" practices in the rental referral business. I would hold that the statute applies to the defendant and would reverse.

YETKA, Justice (dissenting).

I join in the dissent of Mr. Justice MacLaughlin.

MARSDEN, Justice (dissenting).

I agree with the views expressed by Mr. Justice MacLaughlin and join in his dissent.



Homer A. BONHIVER, as Receiver of American Allied Insurance Company, Respondent,

v.

Philip H. GRAFF, et al., Appellants,

Frank J. Delmont Agency, Inc., et al., intervenors, Respondents.

No. 45493.

Supreme Court of Minnesota.

Nov. 19, 1976.

Receiver brought action against accounting firm and individual accountant formerly employed by the firm to recover for damage sustained by insolvent insurer

available once they had paid their fee for the rental list."

It seems to me, taking a broader view, that defendant's deceptive practices are "at issue"

ance company. The receiver alleged that defendants had negligently failed to discover that the company's officers were misappropriating funds. The District Court, Ramsey County, Ronald E. Hachey, J., awarded monetary damages to the receiver and to a general insurance agent who intervened. Defendants appealed and other parties filed notices of review and the Supreme Court, Sheran, C. J., held that the action was timely; that the statute of limitations had been tolled as to the intervenor by his commencement of suit in federal court; that the receiver could maintain the action to recover for fraud committed by the company's own officers; that any negligence on the part of the insurance commissioner was at most concurrent negligence; that evidence was sufficient to establish the accountants' negligence; that defendants could be held liable even though they had not produced an audited or completed financial statement; that, except as to the intervenor's claim, the statute of limitations had not been tolled by the intervenor's class action filed in federal court; that defendants were liable to the intervenor for damages for loss of business reputation; that an award of \$88,350.94 damages to the receiver was proper; that the award of \$29,000 in damages to the intervenor insurance agent was proper; and that no prejudgment interest could be allowed.

Judgment affirmed.

1. Limitation of Actions ⇐43

For statute of limitations purposes, right of action does not accrue nor does time of limitation begin to run until damage is occasioned. M.S.A. §§ 541.01, 541.05(5).

2. Limitation of Actions ⇐55(3)

Where all negligent acts chargeable to accounting firm had been committed and damage to insurance company had occurred

in the instant case in the sense that the statute must be broadly construed to achieve the remedy for which it is intended.