

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED
AMENDMENT OF RULES RELATING TO
MINNESOTA STATUTES CHAPTER 82
REAL ESTATE BROKERS AND SALESPERSONS

STATEMENT OF NEED
AND REASONABLENESS

Commissioner of Commerce Thomas H. Borman ("Commissioner") presents herein his Statement of Need and Reasonableness for the Proposed Amendment to existing rules relating to Minnesota Statutes Ch. 82 (1988) (Real Estate Brokers and Salespersons).

The above-captioned rules are amendments to existing rules. The general statutory authority to promulgate rules under Minn. Stat. Ch. 82 is set forth at Minn. Stat. §82.28- (1988). The existing rules were last amended on 11SR394. On September 18, 1989, the Department published in the State Register, Vol. 14, page 809, a Notice of Intent To Solicit Outside Opinions concerning changes in these rules.

The Commissioner has determined that the proposed amendment of those rules is reasonably necessary to carry out and make effective the provisions and purposes of Minn. Stat. Ch. 82 (1988). The need for and reasonableness of each of the proposed amendments to existing rules is as follows:

Minn. Rule pt. 2800.0100, subp. 6, Definitions:
and
Minn. Rule pt. 2805.0100 subp. 6, Definitions;

Subpart 6 is amended by adding a prohibition to the receipt of a fee or commissioned by operation of an override clause commission by a licensee, if the seller, after expiration of the listing, executes a new valid listing agreement with another licensee. This amendment is necessary due to the proposed amendment to rule 2805.0200 (see infra) which will void a existing listing agreement when a seller has entered into another listing contract. This amendment is needed to resolve recurring problems in the industry which too often result in litigation involving the seller.

Minn. Rule pt. 2800.7200 Course Approval, subp. 7
Allocation of Course Hours.

The addition of this new subpart is necessary to provide the Commissioner with flexibility in the allocation of course hours of a given course. Such allocation is reasonable because it is unrealistic to require each course to assign the same number of hours for various topics in each course.

This proposed rule allows the Commissioner to approve courses on a case by case basis with different hour allocations as long as all requirements are met.

Minn. Rule Pt. 2805.0900 Penalty for Noncompliance With Standards of Conduct.

The addition of a second paragraph to this rule is needed to clarify the intent and purpose of the real estate rules dealing with standards of conduct.

The addition is reasonable because it conforms to the language of Minn. Rule pt. 2805.1800 in that the Commissioner may initiate action against a licensee for conduct other than specifically set forth in the rule. To deny the Commissioner this latitude would severely restrict the authority of the Commissioner to enforce the real estate licensing law.

Minn. Rule pt. 2805.1200 Listing Agreement

The amendments to the rule are needed due to the requests of the industry and the public to address a current problem with the listing agreements. The listing agreement has become a tool of litigation often requiring the seller to pay commission to two different real estate brokers if the seller regrettably signed a second listing agreement while a first listing was still in force or remained valid due to an override clause. The new rule invalidates an override clause if the seller executes a new listing agreement with another broker. The rule requires a protective list to include such a statement.

Minn. Rule pt. 2805.1700 Compensation

The Department has received a number of complaints from purchasers in which the licensee fails to return earnest money received from a purchaser as down payment on a purchase agreement when the deal fails through no fault of the purchaser. The licensee claims that he is entitled to some compensation from the owner and returns the earnest money. The licensee has no greater right to the earnest money than the owner and since in this scenario, the owner has no right to the buyer's money, neither does the licensee. However, in the past, the Department has been without specific language in the rules to require the return of the buyer's funds. Therefore it is necessary to amend pt. 2805.1700 to make clear the licensee's obligation.