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MINNESOTA
DEPARTMENT OF
COMMERCE

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May 7, 2002

The Honorable Gregory Davids
Minnesota House of Representatives
549 State Office Building
100 Constitution Avenue
Saint Paul, MN 55155

The Honorable Linda Scheid
Minnesota Senate
303 Capitol
75 Constitution Avenue
Saint Paul, MN 55155

Patrick Flahaven
Secretary of the Senate
231 Capitol
75 Constitution Avenue
Saint Paul, MN 55155

Edward Burdick
Chief Clerk of the House
211 State Capitol
75 Constitution Avenue
Saint Paul, MN 55155

VIA INTEROFFICE

RE: Minnesota Department of Commerce
Report on Fair Housing Education

Dear Lady and Gentlemen:

Enclosed please find the Commissioner of Commerce's Report on the above-mentioned subject. If you have any additional questions, please feel free to contact Staff Attorney, Mary Lippert, at the following:

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Very truly yours,

Heidi Retterath

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Enclosure

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MINNESOTA DEPARTMENT OF COMMERCE

REPORT ON FAIR HOUSING EDUCATION

For more information, please contact:

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FAIR HOUSING EDUCATION

A Report To The Legislature In Response To Laws of Minnesota 2001 Chapter 208 Section 27

Laws of Minnesota 2001 Chapter 208 Section 27 directs that:

> The commissioner of commerce shall examine the issue of whether licensed occupations under the jurisdiction of the department and related to the purchase or financing of residential housing, including, but not limited to, appraisers, and employees of licensed mortgage originators and servicers, should be required to attend continuing education courses in state and federal fair housing law, and other antidiscrimination laws, in order to further consumer protection. The commissioner shall report the results of the examination to the commerce committees of the legislature by February 1, 2001.

Background

During the 2001 legislative session, the Minnesota Association of Realtors supported a legislative proposal to reduce the number of hours of continuing education involving federal and state fair housing laws required for real estate licensees. The Realtors reasoned that the annual requirement led to unnecessary redundancy and waste in the continuing education process, as the laws in this area change very little and course material tended to be repeated from year to year. Discussion of this issue led to concerns being expressed about whether other industries related to the purchase of residential housing may be in need of similar education. Ultimately, it was agreed that the commissioner of commerce would look into the issue and issue this report.

Cost of Preparing This Report

Minnesota Statutes section 3.197 requires the department to include in any report to the legislature the cost of preparing the report, including any costs incurred by another agency or at another level of government. The department of commerce estimates that it spent approximately $1,000 to prepare this report, which includes management time for preliminary consultation, staff time to review enforcement records and interview enforcement personnel, a staff attorney's time to research, design, and draft the report, support staff time to produce the document, and photocopying costs.

Fair Housing Law

Fair housing laws cover most kinds of housing, and most kinds of transactions involving housing. Exemptions from fair housing laws generally involve owners selling or renting their own homes without the use of a real estate broker, and housing owned or operated by private clubs.

Fair housing laws prohibit various kinds of discrimination based on race, color, national origin, sex, familial status, or handicap. With respect to the purchase of residential housing, prohibited kinds of discrimination include:

- Refusal to sell housing
- Refusal to negotiate for housing
- Making housing unavailable
- Setting different terms, conditions, or privileges for sale of a dwelling
- Falsely denying that housing is available for showing or sale
- For profit, persuading owners to sell (blockbusting)
- Denying someone access to a service, such as MLS, related to the sale of housing.

With respect to the financing of residential housing, prohibited kinds of discrimination include:

- Refusal to make a mortgage loan
- Refusal to provide information regarding loans
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees
- Discrimination in appraising property.

Department of Commerce Regulation of Residential Purchases and Finance

The Department of Commerce has jurisdiction over five different licensed businesses and occupations related to the purchase or financing of residential housing. They are:

1) abstracters;
2) appraisers;
3) real estate brokers and salespeople;
4) residential building contractors; and
5) mortgage originators.

Abstracters, appraisers, and real estate brokers and salespeople are licensed as individuals. Residential building contractors are licensed as business entities, with the additional requirement that each licensed business must appoint a "qualifying person." Mortgage originators are licensed only as businesses.

Questions Presented

In examining whether each of these industries and occupations should be required to attend continuing education courses in state and federal fair housing law, the commissioner considered a number of questions calculated to assess the need for, potential effectiveness of, and probable cost of such an education program. The questions are:

- **Does the licensed entity play a role in the residential housing purchase process which provides an opportunity for unlawful discrimination**? If the licensed entity's involvement in the sale of residential property provides no opportunity to discriminate against an individual, there would be no rationale for requiring continuing education related to fair housing.

- **Has a significant level of unlawful discrimination been reported in connection with the licensed occupation?** Whenever a new requirement is proposed which imposes an additional burden or expense on regulated individuals or businesses, one of the primary considerations for both the regulator and the industry is whether the problem sought to be addressed by the new requirement can be objectively documented. Because additional regulation requires time, money, and other resources both from the affected entities and from the agency implementing and enforcing the regulation, we should decline to impose such requirements on the basis of speculation or anecdotal reports of harm.

- **Does a mechanism exist to require and provide fair housing education to the licensed occupation?** If the occupation or business already involves licensing of individuals, and already requires continuing education, imposing a fair housing education requirement would add only nominal additional regulatory burden or expense. The requirement could be imposed by simple legislative amendment. In industries where the license is granted to the business entity (corporation, partnership, or LLC) and not to the individual, or where there is no continuing education required, imposing a fair housing continuing education requirement would be much more expensive and problematic.

- **If no mechanism currently exists, could one be effectively and economically created for the licensed occupation?** In industries where individuals are licensed but no continuing education is currently required, legislative action would be required to implement such a requirement. Systems would need to be put in place to review and approve course offerings geared to that industry, and to monitor and enforce compliance by the licensed individuals. In industries where no individual licensing is currently required, a requirement for continuing education would involve the additional step of identifying the individuals working for the licensed entities for whom the education would be appropriate, and devising a mechanism for enforcement of the requirement despite the absence of the individual license.

<u>**Abstracters**</u>

Real estate title records are kept in one of two ways, either through a land registration (Torrens) system or by recording every mortgage, deed, easement, judgment, etc. related to the property in the land records of the county recorder's office in the county where the property is situated. Abstracters examine the land records and update the <u>abstract</u> of the property, which is a list of every transaction related to that property. An abstracter deals with objective records and has no opportunity to influence the outcome of his/her review. In addition, it would be rare for an abstracter to deal personally with, or even to be aware of the identity of, the parties to a transaction. This occupation does not play a role where unfair discrimination could occur.

<u>**Appraisers**</u>

Real estate appraisers visit the property and provide an objective report as to its market value. The market value of a home is determined by a number of factors including its size, age, condition, location, floor plan, amenities, and physical appearance. Appraisers could have an opportunity to engage in unfair discrimination in assessing the value of a home. In addition, appraisers are individually licensed and subject to a continuing education requirement. However, a review of the Department's enforcement records does not support a conclusion that discrimination by appraisers is occurring at a significant level. Virtually all complaints investigated by the Department in this industry arise out of a homeowner's dissatisfaction with the outcome of an appraisal, or with a lender's dissatisfaction about the accuracy or thoroughness of the appraisal process. Department investigators are unaware of any complaints based on allegations of discrimination. Although continuing education related to fair housing laws would be appropriate to this occupation, it does not appear that any basis currently exists to impose such a requirement as a condition of license renewal.

Real estate brokers and salespeople

Individual real estate brokers and salespeople are currently subject to a continuing education requirement for fair housing laws.

Residential building contractors

Residential building contractors are licensed as businesses, not as individuals. However, each licensed entity must have one individual designated and registered as the qualifying person, or "QP," for the business. This person must pass an examination about building code standards and construction techniques, and must take seven hours of continuing education each year. Only the QP from each licensed company, no matter how large the company, is required to take continuing education.

Typically, contractors sell the homes they build through licensed real estate brokers, who are already subject to fair housing education requirements. However, a significant number do sell newly constructed homes directly to consumers. Complaints made to the Department regarding building contractors deal overwhelmingly with delay and quality of work issues. Staff are not aware of complaints based on allegations of unfair discrimination, nor has a pattern of discrimination been discernable . It would appear that no basis currently exists on which to impose a requirement for fair housing education. In addition, it is questionable whether such a requirement would be effective, given the license scheme which imposes continuing education on only one individual within a given company.

Mortgage Originators and Servicers

Mortgage originators and servicers, like building contractors, are licensed as businesses and not as individuals. Unlike building contractors, mortgage licensees are not required to license even one individual; no exam or education is required. Several factors went into the choice of this type of licensing program. One factor was the desire of legislators and industry members to establish a level playing field for state and federally chartered lenders. Because of federal preemption issues, individual licensing could not be required for loan officers of national banks and their affiliates; it was believed to be fair to provide the same level of regulation for those licensed by the state. A second factor was the extreme volatility of the mortgage market, which makes it difficult to impose extensive education or exam requirements. Mortgage companies may need to rapidly add staff during times of low interest rates due to the high number of refinance transactions, only to lay off staff a few months later as interest rates rise and activity declines.

Mortgage lenders have the opportunity to practice discrimination. The array of mortgage products available is baffling even to the most educated and experienced consumer. In addition, at the time of applying for a mortgage loan, many consumers are under pressures of time, economic urgency, and often a housing crisis.

Abuses taking place in the mortgage industry, especially those involving practices known as predatory lending, disproportionately affect minority and immigrant populations. Whether this is deliberate unlawful discrimination or merely opportunism is an open question. Victims of predatory lending practices are primarily individuals with poorer credit histories and, consequently, fewer credit options. Although discrimination has not been the basis of complaints to the Department about the lending industry, certainly a pattern has emerged where victims of predatory lending too frequently prove to be members of protected classes. It is unclear whether discrimination itself is a motivating factor, or whether protected classes merely provide a vulnerable target for predatory practices.

Requiring continuing education on fair housing within the mortgage origination and servicing industry would require a restructuring of the current license program. Individual loan officers would need to be identified and individually licensed or registered, possibly with a requirement of pre-license education and a qualifying examination. As a possible alternative, licensed companies could take responsibility for requiring fair housing education for their loan officers and provide proof to the Department that the requirement was being met.

Summary and Recommendation

The Department of Commerce regulates five occupations whose members are involved in residential real estate purchases. Of those five, only real estate licensees are required to take continuing education related to fair housing laws. Of the other four, only mortgage origination has exhibited any pattern of possible discrimination, and it is unclear whether the pattern results from deliberate discrimination or opportunism. Implementing a fair housing education requirement for mortgage originators would involve either a complete restructuring of the current license program, or establishing a system to elicit reliable documentation from each mortgage originator licensee that all its loan officers were in compliance with the requirement.

Because of the ambiguous evidence of discrimination, and because of the likely complications of instituting continuing education requirements relating to fair housing where no individual licensing currently exists and where the population of individual industry members is subject to constant fluctuation and turnover, we believe that additional inquiry is necessary before any proposal to implement such a program is put forward. We recommend that the Department and mortgage industry representatives jointly explore possible methods of implementing a fair housing education requirement for members of the industry in order to determine whether the level of need for, and the likely benefits to be derived from, such a requirement warrant the additional regulatory burden for licenses and the additional demands on the state's resources.

The Department respectfully submits this Report on Fair Housing Education.

JAMES C. BERNSTEIN
Commissioner