

1.1 A bill for an act

1.2 relating to commerce; regulating various licensees and other entities; modifying
1.3 informational requirements, continuing education requirements, and notice
1.4 requirements; making various housekeeping, technical, and clarifying changes;
1.5 reorganizing various provisions relating to real estate brokers, salespersons, and
1.6 closing agents; modifying the membership requirements of, and appointment
1.7 authority to, the real estate appraiser advisory board; amending Minnesota
1.8 Statutes 2008, sections 45.0112; 60A.084; 60A.204; 60K.31, subdivision
1.9 10; 61A.092, subdivision 3; 62A.17, subdivision 5; 62A.65, subdivision
1.10 2; 62E.02, subdivision 15; 62E.14, subdivision 4c; 62L.05, subdivision 4;
1.11 62S.24, subdivision 8; 62S.266, subdivision 4; 62S.29, subdivision 1; 72A.20,
1.12 subdivisions 36, 37; 72A.492, subdivision 2; 80A.41; 82.17, subdivision 15, by
1.13 adding a subdivision; 82.19; 82.21, subdivision 2; 82.24, subdivision 3; 82.29,
1.14 subdivisions 4, 5, 8; 82.31, subdivisions 1, 2; 82.33, subdivisions 1, 2, by adding
1.15 a subdivision; 82.34, subdivisions 1, 2, 4, 5, 13; 82.39; 82.41, subdivisions 1, 2,
1.16 by adding a subdivision; 82.45, subdivision 3, by adding subdivisions; 82.48,
1.17 subdivisions 2, 3; 82B.05, as amended; Minnesota Statutes 2009 Supplement,
1.18 sections 45.027, subdivision 1; 45.30, subdivision 4; 60A.9572, subdivision
1.19 6; 65A.29, subdivision 13; 82.31, subdivision 4; 82.32; proposing coding for
1.20 new law in Minnesota Statutes, chapter 82; repealing Minnesota Statutes 2008,
1.21 sections 82.19, subdivision 3; 82.22, subdivisions 1, 6, 7, 8, 9; 82.31, subdivision
1.22 6; 82.34, subdivision 16; 82.41, subdivisions 3, 7; 332.335; Minnesota Statutes
1.23 2009 Supplement, section 65B.133, subdivision 3.

1.24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.25 Section 1. Minnesota Statutes 2008, section 45.0112, is amended to read:

1.26 **45.0112 STREET AND E-MAIL ADDRESSES REQUIRED.**

1.27 Licensees or applicants for licenses issued by the commissioner shall provide to the
1.28 commissioner a residence telephone number, a street address where the licensee actually
1.29 resides, ~~and~~ a street address where the licensee's business is physically located, and a
1.30 current e-mail address for business use. A post office box address is not sufficient to

2.1 satisfy this requirement. The individual shall notify the department of any change in street
2.2 address, e-mail address for business use, or residence telephone number within ten days.

2.3 Sec. 2. Minnesota Statutes 2009 Supplement, section 45.027, subdivision 1, is
2.4 amended to read:

2.5 Subdivision 1. **General powers.** In connection with the duties and responsibilities
2.6 entrusted to the commissioner, and Laws 1993, chapter 361, section 2, the commissioner
2.7 of commerce may:

2.8 (1) make public or private investigations within or without this state as the
2.9 commissioner considers necessary to determine whether any person has violated or is
2.10 about to violate any law, rule, or order related to the duties and responsibilities entrusted
2.11 to the commissioner;

2.12 (2) require or permit any person to file a statement in writing, under oath or otherwise
2.13 as the commissioner determines, as to all the facts and circumstances concerning the
2.14 matter being investigated;

2.15 (3) hold hearings, upon reasonable notice, in respect to any matter arising out of the
2.16 duties and responsibilities entrusted to the commissioner;

2.17 (4) conduct investigations and hold hearings for the purpose of compiling
2.18 information related to the duties and responsibilities entrusted to the commissioner;

2.19 (5) examine the books, accounts, records, and files of every licensee, and of every
2.20 person who is engaged in any activity regulated; the commissioner or a designated
2.21 representative shall have free access during normal business hours to the offices and
2.22 places of business of the person, and to all books, accounts, papers, records, files, safes,
2.23 and vaults maintained in the place of business;

2.24 (6) publish information which is contained in any order issued by the commissioner;

2.25 (7) require any person subject to duties and responsibilities entrusted to the
2.26 commissioner, to report all sales or transactions that are regulated. The reports must
2.27 be made within ten days after the commissioner has ordered the report. The report is
2.28 accessible only to the respondent and other governmental agencies unless otherwise
2.29 ordered by a court of competent jurisdiction; and

2.30 (8) assess a ~~licensee~~ natural person or entity subject to the jurisdiction of the
2.31 commissioner the necessary expenses of the investigation performed by the department
2.32 when an investigation is made by order of the commissioner. The cost of the investigation
2.33 shall be determined by the commissioner and is based on the salary cost of investigators
2.34 or assistants and at an average rate per day or fraction thereof so as to provide for the
2.35 total cost of the investigation. All money collected must be deposited into the general

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3.1 fund. A natural person licensed under chapter 60K or 82 shall not be charged costs of
3.2 an investigation if the investigation results in no finding of a violation. This clause
3.3 does not apply to a natural person or entity already subject to the assessment provisions
3.4 of sections 60A.03 and 60A.031.

3.5 Sec. 3. Minnesota Statutes 2009 Supplement, section 45.30, subdivision 4, is amended
3.6 to read:

3.7 Subd. 4. **Credit earned.** (a) Upon completion of approved courses, students must
3.8 earn one hour of continuing education credit for each hour approved by the commissioner.
3.9 Continuing education courses must be attended in their entirety in order to receive credit
3.10 for the number of approved hours.

3.11 (b) Qualified instructors will earn three hours of continuing education credit for
3.12 each classroom hour of approved instruction that they deliver (1) independently, or (2)
3.13 as part of a team presentation in a course of two hours or less, if they attend the course
3.14 in its entirety. For licensees other than appraisers, no more than half of the continuing
3.15 education hours required for renewal of a license may be earned as a qualified instructor at
3.16 the rate of three hours of continuing education credit for each classroom hour of approved
3.17 instruction. For licensed appraisers, no more than one-half of the continuing education
3.18 hours required for renewal of a license may be earned as a qualified instructor. No credit
3.19 will be earned if the licensee has previously obtained credit for the same course as either
3.20 a student or instructor during the same licensing period.

3.21 (c) A licensee must not receive credit for more than eight hours of continuing
3.22 education in one day.

3.23 Sec. 4. Minnesota Statutes 2008, section 60A.084, is amended to read:

3.24 **60A.084 NOTIFICATION ON GROUP POLICIES.**

3.25 An employer providing life or health benefits may not change benefits, limit
3.26 coverage, or otherwise restrict participation until the certificate holder or enrollee has
3.27 been notified of any changes, limitations, or restrictions. Notice in a format which
3.28 meets the requirements of the ~~Employee Retirement Income Security Act, United States~~
3.29 ~~Code Annotated, title 29, sections 1001 to 1461, United States Department of Labor~~ is
3.30 satisfactory for compliance with this section.

3.31 Sec. 5. Minnesota Statutes 2008, section 60A.204, is amended to read:

3.32 **60A.204 ADDITIONAL CHARGES AND FEES AND COMMISSIONS.**

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4.1 ~~Subdivision 1. **Placement fees.** A surplus lines licensee may charge, in addition to~~
4.2 ~~the premium charged by an eligible or ineligible surplus lines insurer, a fee to cover the~~
4.3 ~~cost incurred in the placement of the policy which exceeds \$25, but only to the extent that~~
4.4 ~~the actual additional cost incurred for services performed by persons or entities unrelated~~
4.5 ~~to the licensee exceeds that amount.~~

4.6 ~~Subd. 2. **Regulation of fees.** A surplus lines licensee may charge a fee charged~~
4.7 ~~pursuant to subdivision 1 shall and commission, in addition to the premium, that is not be~~
4.8 ~~excessive or discriminatory. The licensee shall maintain complete documentation of all~~
4.9 ~~fees and commissions charged. Those fees shall not be included as part of the premium for~~
4.10 ~~purposes of the computation of the premium taxes.~~

4.11 ~~Subd. 3. **Commission charges.** Notwithstanding the provisions of subdivision 1, a~~
4.12 ~~licensee may add a commission charge if the insurer quotes a rate net of commission and~~
4.13 ~~the commission is not excessive or discriminatory.~~

4.14 Sec. 6. Minnesota Statutes 2009 Supplement, section 60A.9572, subdivision 6, is
4.15 amended to read:

4.16 Subd. 6. **Disclosures.** The applicant shall provide information on forms required
4.17 by the commissioner. The commissioner shall have authority, at any time, to require
4.18 the applicant to fully disclose the identity of all stockholders who hold more than ten
4.19 percent of the shares of the company, partners, officers, members, and employees, and
4.20 the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a
4.21 license in the name of a legal entity if not satisfied that any officer, employee, stockholder,
4.22 partner, or member of the legal entity who may materially influence the applicant's
4.23 conduct meets the standards of sections 60A.957 to 60A.9585.

4.24 Sec. 7. Minnesota Statutes 2008, section 60K.31, subdivision 10, is amended to read:

4.25 Subd. 10. **Limited lines insurance.** "Limited lines insurance" means those lines
4.26 of insurance defined in section 60K.38, subdivision 1, paragraph (c), or any other line of
4.27 insurance that the commissioner considers necessary to recognize for the purposes of
4.28 complying with section 60K.39, subdivision ~~5~~ 6.

4.29 Sec. 8. Minnesota Statutes 2008, section 61A.092, subdivision 3, is amended to read:

4.30 Subd. 3. **Notice of options.** Upon termination of or layoff from employment
4.31 of a covered employee, the employer shall inform the employee within 14 days after
4.32 termination or layoff of:

4.33 (1) the employee's right to elect to continue the coverage;

5.1 (2) the amount the employee must pay monthly to the employer to retain the
5.2 coverage;

5.3 (3) the manner in which and the office of the employer to which the payment to
5.4 the employer must be made; and

5.5 (4) the time by which the payments to the employer must be made to retain coverage.

5.6 The employee has 60 days within which to elect coverage. The 60-day period shall
5.7 begin to run on the date coverage would otherwise terminate or on the date upon which
5.8 notice of the right to coverage is received, whichever is later.

5.9 If the covered employee or covered dependent dies during the 60-day election period
5.10 and before the covered employee makes an election to continue or reject continuation,
5.11 then the covered employee will be considered to have elected continuation of coverage.
5.12 The beneficiary previously selected by the former employee or covered dependent would
5.13 then be entitled to a death benefit equal to the amount of insurance that could have been
5.14 continued less any unpaid premium owing as of the date of death.

5.15 Notice must be in writing and sent by first class mail to the employee's last known
5.16 address which the employee has provided to the employer.

5.17 A notice in substantially the following form is sufficient: "As a terminated or laid
5.18 off employee, the law authorizes you to maintain your group insurance benefits, in an
5.19 amount equal to the amount of insurance in effect on the date you terminated or were laid
5.20 off from employment, for a period of up to 18 months. To do so, you must notify your
5.21 former employer within 60 days of your receipt of this notice that you intend to retain this
5.22 coverage and must make a monthly payment of \$..... at by the of
5.23 each month."

5.24 Sec. 9. Minnesota Statutes 2008, section 62A.17, subdivision 5, is amended to read:

5.25 Subd. 5. **Notice of options.** Upon the termination of or lay off from employment of
5.26 an eligible employee, the employer shall inform the employee within ~~ten~~ 14 days after
5.27 termination or lay off of:

5.28 ~~(a)~~ (1) the right to elect to continue the coverage;

5.29 ~~(b)~~ (2) the amount the employee must pay monthly to the employer to retain the
5.30 coverage;

5.31 ~~(c)~~ (3) the manner in which and the office of the employer to which the payment to
5.32 the employer must be made; and

5.33 ~~(d)~~ (4) the time by which the payments to the employer must be made to retain
5.34 coverage.

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6.1 If the policy, contract, or health care plan is administered by a trust, the employer is
6.2 relieved of the obligation imposed by clauses ~~(a)~~ (1) to ~~(d)~~ (4). The trust shall inform the
6.3 employee of the information required by clauses ~~(a)~~ (1) to ~~(d)~~ (4).

6.4 The employee shall have 60 days within which to elect coverage. The 60-day period
6.5 shall begin to run on the date plan coverage would otherwise terminate or on the date upon
6.6 which notice of the right to coverage is received, whichever is later.

6.7 Notice must be in writing and sent by first class mail to the employee's last known
6.8 address which the employee has provided the employer or trust.

6.9 A notice in substantially the following form shall be sufficient: "As a terminated or
6.10 laid off employee, the law authorizes you to maintain your group medical insurance for
6.11 a period of up to 18 months. To do so you must notify your former employer within 60
6.12 days of your receipt of this notice that you intend to retain this coverage and must make a
6.13 monthly payment of \$..... to at by the of each month."

6.14 Sec. 10. Minnesota Statutes 2008, section 62A.65, subdivision 2, is amended to read:

6.15 Subd. 2. **Guaranteed renewal.** No individual health plan may be offered, sold,
6.16 issued, or renewed to a Minnesota resident unless the health plan provides that the plan
6.17 is guaranteed renewable at a premium rate that does not take into account the claims
6.18 experience or any change in the health status of any covered person that occurred after
6.19 the initial issuance of the health plan to the person. The premium rate upon renewal
6.20 must also otherwise comply with this section. A health carrier must not refuse to renew
6.21 an individual health plan ~~prior to enrollment in Medicare Parts A and B~~, except for
6.22 nonpayment of premiums, fraud, or misrepresentation.

6.23 Sec. 11. Minnesota Statutes 2008, section 62E.02, subdivision 15, is amended to read:

6.24 Subd. 15. **Medicare.** "Medicare" means ~~part A and part B of the United States~~
6.25 ~~Social Security Act, title XVIII, as amended, United States Code, title 42, sections 1394, et~~
6.26 ~~seq. the Health Insurance for the Aged Act, title XVIII of the Social Security Amendments~~
6.27 of 1965, United States Code, title 42, sections 1395 to 1395hhh, as amended, or title I,
6.28 part I, of Public Law 89-97, as amended.

6.29 Sec. 12. Minnesota Statutes 2008, section 62E.14, subdivision 4c, is amended to read:

6.30 Subd. 4c. **Waiver of preexisting conditions for persons whose coverage is**
6.31 **terminated or who exceed the maximum lifetime benefit.** (a) A Minnesota resident
6.32 may enroll in the comprehensive health plan with a waiver of the preexisting condition
6.33 limitation described in subdivision 3 if that persons's application for coverage is received

7.1 by the writing carrier no later than 90 days after termination of prior coverage and if the
7.2 termination is for reasons other than fraud or nonpayment of premiums.

7.3 For purposes of this paragraph, termination of prior coverage includes exceeding the
7.4 maximum lifetime benefit of existing coverage.

7.5 Coverage in the comprehensive health plan is effective on the date of termination
7.6 of prior coverage. The availability of conversion rights does not affect a person's rights
7.7 under this paragraph.

7.8 This section does not apply to prior coverage provided under policies designed
7.9 primarily to provide coverage payable on a per diem, fixed indemnity, or nonexpense
7.10 incurred basis, or policies providing only accident coverage.

7.11 (b) An eligible individual, as defined under the Health Insurance Portability and
7.12 Accountability Act (HIPAA), United States Code, chapter 42, section 300gg-41(b) may
7.13 enroll in the comprehensive health insurance plan with a waiver of the preexisting
7.14 condition limitation described in subdivision 3 and a waiver of the evidence of rejection or
7.15 similar events described in subdivision 1, clause (c). The eligible individual must apply
7.16 for enrollment under this paragraph by submitting a substantially complete application
7.17 that is received by the writing carrier no later than 63 days after termination of prior
7.18 coverage, and coverage under the comprehensive health insurance plan is effective as
7.19 of the date of receipt of the complete application. The six-month durational residency
7.20 requirement provided in section 62E.02, subdivision 13, does not apply with respect to
7.21 eligibility for enrollment under this paragraph, but the applicant must be a Minnesota
7.22 resident as of the date that the application was received by the writing carrier. A person's
7.23 eligibility to enroll under this paragraph does not affect the person's eligibility to enroll
7.24 under any other provision.

7.25 (c) A qualifying individual, as defined in the Internal Revenue Code of 1986, section
7.26 35(e)(2)(B), who is eligible under the Federal Trade Act of 2002 for the ~~credit~~ Health
7.27 Coverage Tax Credit (HCTC) for health insurance costs under the Internal Revenue Code
7.28 of 1986, section 35, may enroll in the comprehensive health insurance plan with a waiver
7.29 of the preexisting condition limitation described in subdivision 3, and without presenting
7.30 evidence of rejection or similar requirements described in subdivision 1, paragraph (c).
7.31 The six-month durational residency requirement provided in section 62E.02, subdivision
7.32 13, does not apply with respect to eligibility for enrollment under this paragraph, but the
7.33 applicant must be a Minnesota resident as of the date of application. A person's eligibility
7.34 to enroll under this paragraph does not affect the person's eligibility to enroll under any
7.35 other provision. This paragraph is intended solely to meet the minimum requirements

8.1 necessary to qualify the comprehensive health insurance plan as qualified health coverage
8.2 under the Internal Revenue Code of 1986, section 35(e)(2).

8.3 Sec. 13. Minnesota Statutes 2008, section 62L.05, subdivision 4, is amended to read:

8.4 Subd. 4. **Benefits.** The medical services and supplies listed in this subdivision are
8.5 the benefits that must be covered by the small employer plans described in subdivisions
8.6 2 and 3. Benefits under this subdivision may be provided through the managed care
8.7 procedures practiced by health carriers:

8.8 (1) inpatient and outpatient hospital services, excluding services provided for the
8.9 diagnosis, care, or treatment of chemical dependency or a mental illness or condition,
8.10 other than those conditions specified in clauses (10), ~~and (11), and (12)~~. The health
8.11 care services required to be covered under this clause must also be covered if rendered
8.12 in a nonhospital environment, on the same basis as coverage provided for those same
8.13 treatments or services if rendered in a hospital, provided, however, that this sentence must
8.14 not be interpreted as expanding the types or extent of services covered;

8.15 (2) physician, chiropractor, and nurse practitioner services for the diagnosis or
8.16 treatment of illnesses, injuries, or conditions;

8.17 (3) diagnostic x-rays and laboratory tests;

8.18 (4) ground transportation provided by a licensed ambulance service to the nearest
8.19 facility qualified to treat the condition, or as otherwise required by the health carrier;

8.20 (5) services of a home health agency if the services qualify as reimbursable services
8.21 under Medicare;

8.22 (6) services of a private duty registered nurse if medically necessary, as determined
8.23 by the health carrier;

8.24 (7) the rental or purchase, as appropriate, of durable medical equipment, other than
8.25 eyeglasses and hearing aids, unless coverage is required under section 62Q.675;

8.26 (8) child health supervision services up to age 18, as defined in section 62A.047;

8.27 (9) maternity and prenatal care services, as defined in sections 62A.041 and 62A.047;

8.28 (10) inpatient hospital and outpatient services for the diagnosis and treatment of
8.29 certain mental illnesses or conditions, as defined by the International Classification of
8.30 Diseases-Clinical Modification (ICD-9-CM), seventh edition (1990) and as classified
8.31 as ICD-9 codes 295 to 299; and

8.32 ~~(11) ten hours per year of outpatient mental health diagnosis or treatment for~~
8.33 ~~illnesses or conditions not described in clause (10);~~

8.34 ~~(12) 60 hours per year of outpatient treatment of chemical dependency; and~~

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9.1 ~~(13)~~ (11) 50 percent of eligible charges for prescription drugs, up to a separate
9.2 annual maximum out-of-pocket expense of \$1,000 per individual for prescription drugs,
9.3 and 100 percent of eligible charges thereafter.

9.4 Sec. 14. Minnesota Statutes 2008, section 62S.24, subdivision 8, is amended to read:

9.5 Subd. 8. **Exchange for long-term care partnership policy; addition of policy**
9.6 **rider.** (a) ~~If authorized by federal law or a federal waiver is granted~~ With respect to the
9.7 long-term care partnership program referenced in section 256B.0571, issuers of long-term
9.8 care policies may voluntarily exchange a current long-term care insurance policy for a
9.9 long-term care partnership policy that meets the requirements of Public Law 109-171,
9.10 section 6021, after the effective date of the state plan amendment implementing the
9.11 partnership program in this state. The exchange may be in the form of: (1) an amendment
9.12 or rider; or (2) a disclosure statement indicating that the coverage is now partnership
9.13 qualified.

9.14 (b) ~~If authorized by federal law or a federal waiver is granted~~ With respect to the
9.15 long-term care partnership program referenced in section 256B.0571, ~~allowing to allow~~ an
9.16 existing long-term care insurance policy to qualify as a partnership policy by addition of a
9.17 policy rider or amendment or disclosure statement, the issuer of the policy is authorized to
9.18 add the rider or amendment or disclosure statement to the policy after the effective date of
9.19 the state plan amendment implementing the partnership program in this state.

9.20 (c) The commissioner, in cooperation with the commissioner of human services,
9.21 shall pursue any federal law changes or waivers necessary to allow the implementation
9.22 of paragraphs (a) and (b).

9.23 Sec. 15. Minnesota Statutes 2008, section 62S.266, subdivision 4, is amended to read:

9.24 Subd. 4. **Contingent benefit upon lapse.** (a) After rejection of the offer required
9.25 under subdivision 2, for individual and group policies without nonforfeiture benefits
9.26 issued after July 1, 2001, the insurer shall provide a contingent benefit upon lapse.

9.27 (b) If a group policyholder elects to make the nonforfeiture benefit an option to
9.28 the certificate holder, a certificate shall provide either the nonforfeiture benefit or the
9.29 contingent benefit upon lapse.

9.30 (c) The contingent benefit on lapse must be triggered every time an insurer increases
9.31 the premium rates to a level which results in a cumulative increase of the annual premium
9.32 equal to or exceeding the percentage of the insured's initial annual premium based on
9.33 the insured's issue age provided in this paragraph, and the policy or certificate lapses
9.34 within 120 days of the due date of the premium increase. Unless otherwise required,

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10.1 policyholders shall be notified at least 30 days prior to the due date of the premium
10.2 reflecting the rate increase.

10.3 Triggers for a Substantial Premium Increase

10.4		Percent Increase Over
10.5	Issue Age	Initial Premium
10.6	29 and Under	200
10.7	30-34	190
10.8	35-39	170
10.9	40-44	150
10.10	45-49	130
10.11	50-54	110
10.12	55-59	90
10.13	60	70
10.14	61	66
10.15	62	62
10.16	63	58
10.17	64	54
10.18	65	50
10.19	66	48
10.20	67	46
10.21	68	44
10.22	69	42
10.23	70	40
10.24	71	38
10.25	72	36
10.26	73	34
10.27	74	32
10.28	75	30
10.29	76	28
10.30	77	26
10.31	78	24
10.32	79	22
10.33	80	20
10.34	81	19
10.35	82	18
10.36	83	17
10.37	84	16
10.38	85	15
10.39	86	14
10.40	87	13
10.41	88	12
10.42	89	11
10.43	90 and over	10

11.1 (d) A contingent benefit on lapse must also be triggered for policies with a fixed
11.2 or limited premium paying period every time an insurer increases the premium rates to a
11.3 level that results in a cumulative increase of the annual premium equal to or exceeding the
11.4 percentage of the insured's initial annual premium set forth below based on the insured's
11.5 issue age, the policy or certificate lapses within 120 days of the due date of the premium
11.6 so increased, and the ratio in paragraph ~~(e)~~ (f), clause (2), is 40 percent or more. Unless
11.7 otherwise required, policyholders shall be notified at least 30 days prior to the due date of
11.8 the premium reflecting the rate increase.

11.9 Triggers for a Substantial Premium Increase

11.10	Issue Age	Percent Increase Over Initial Premium
11.11	Under 65	50%
11.12	65-80	30%
11.13	Over 80	10%

11.14 This provision shall be in addition to the contingent benefit provided by paragraph
11.15 (c) and where both are triggered, the benefit provided must be at the option of the insured.

11.16 (e) On or before the effective date of a substantial premium increase as defined in
11.17 paragraph (c), the insurer shall:

11.18 (1) offer to reduce policy benefits provided by the current coverage without the
11.19 requirement of additional underwriting so that required premium payments are not
11.20 increased;

11.21 (2) offer to convert the coverage to a paid-up status with a shortened benefit period
11.22 according to the terms of subdivision 5. This option may be elected at any time during the
11.23 120-day period referenced in paragraph (c); and

11.24 (3) notify the policyholder or certificate holder that a default or lapse at any time
11.25 during the 120-day period referenced in paragraph (c) is deemed to be the election of
11.26 the offer to convert in clause (2).

11.27 (f) On or before the effective date of a substantial premium increase as defined in
11.28 paragraph (d), the insurer shall:

11.29 (1) offer to reduce policy benefits provided by the current coverage without the
11.30 requirement of additional underwriting so that required premium payments are not
11.31 increased;

11.32 (2) offer to convert the coverage to a paid-up status where the amount payable for
11.33 each benefit is 90 percent of the amount payable in effect immediately prior to lapse times
11.34 the ratio of the number of completed months of paid premiums divided by the number of
11.35 months in the premium paying period. This option may be elected at any time during the
11.36 120-day period referenced in paragraph (d); and

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12.1 (3) notify the policyholder or certificate holder that a default or lapse at any time
12.2 during the 120-day period referenced in paragraph (d) shall be deemed to be the election
12.3 of the offer to convert in clause (2) if the ratio is 40 percent or more.

12.4 Sec. 16. Minnesota Statutes 2008, section 62S.29, subdivision 1, is amended to read:

12.5 Subdivision 1. **Requirements.** An insurer or other entity marketing long-term care
12.6 insurance coverage in this state, directly or through its producers, shall:

12.7 (1) establish marketing procedures and agent training requirements to assure that
12.8 any marketing activities, including any comparison of policies by its agents or other
12.9 producers, are fair and accurate;

12.10 (2) establish marketing procedures to assure excessive insurance is not sold or issued;

12.11 (3) display prominently by type, stamp, or other appropriate means, on the first page
12.12 of the outline of coverage and policy, the following:

12.13 "Notice to buyer: This policy may not cover all of the costs associated with
12.14 long-term care incurred by the buyer during the period of coverage. The buyer is advised
12.15 to review carefully all policy limitations.";

12.16 (4) provide copies of the disclosure forms required in section 62S.081, subdivision
12.17 4, to the applicant;

12.18 (5) inquire and otherwise make every reasonable effort to identify whether a
12.19 prospective applicant or enrollee for long-term care insurance already has long-term care
12.20 insurance and the types and amounts of the insurance;

12.21 (6) establish auditable procedures for verifying compliance with this subdivision;

12.22 (7) if applicable, provide written notice to the prospective policyholder and
12.23 certificate holder, at solicitation, that a senior insurance counseling program approved by
12.24 the commissioner, the Senior LinkAge Line, is available and the name, address, and
12.25 telephone number of the program;

12.26 (8) use the terms "noncancelable" or "level premium" only when the policy or
12.27 certificate conforms to section 62S.14; and

12.28 (9) provide an explanation of contingent benefit upon lapse provided for in section
12.29 62S.266.

12.30 Sec. 17. Minnesota Statutes 2009 Supplement, section 65A.29, subdivision 13, is
12.31 amended to read:

12.32 Subd. 13. **Notice of possible cancellation.** (a) A written notice must be provided
12.33 to all applicants for homeowners' insurance, at the time the application is submitted,
12.34 containing the following language in bold print: "THE INSURER MAY ELECT

13.1 TO CANCEL COVERAGE AT ANY TIME DURING THE FIRST ~~60~~ 59 DAYS
13.2 FOLLOWING ISSUANCE OF THE COVERAGE FOR ANY REASON WHICH IS
13.3 NOT SPECIFICALLY PROHIBITED BY STATUTE."

13.4 (b) If the insurer provides the notice on the insurer's Web site, the insurer or agent
13.5 may advise the applicant orally or in writing of its availability for review on the insurer's
13.6 Web site in lieu of providing a written notice, if the insurer advises the applicant of the
13.7 availability of a written notice upon the applicant's request. The insurer shall provide the
13.8 notice in writing if requested by the applicant. An oral notice shall be presumed delivered
13.9 if the agent or insurer makes a contemporaneous notation in the applicant's record of
13.10 the notice having been delivered or if the insurer or agent retains an audio recording of
13.11 the notification provided to the applicant.

13.12 Sec. 18. Minnesota Statutes 2008, section 72A.20, subdivision 36, is amended to read:

13.13 Subd. 36. **Limitations on the use of credit information.** (a) No insurer or group of
13.14 affiliated insurers may reject, cancel, or nonrenew a policy of private passenger motor
13.15 vehicle insurance as defined under section 65B.01 or a policy of homeowner's insurance
13.16 as defined under section 65A.27, for any person in whole or in part on the basis of credit
13.17 information, including a credit reporting product known as a "credit score" or "insurance
13.18 score," without consideration and inclusion of any other applicable underwriting factor.

13.19 (b) If credit information, credit scoring, or insurance scoring is to be used in
13.20 underwriting, the insurer must disclose to the consumer that credit information will be
13.21 obtained and used as part of the insurance underwriting process.

13.22 (c) Insurance inquiries and non-consumer-initiated inquiries must not be used as part
13.23 of the credit scoring or insurance scoring process.

13.24 (d) If a credit score, insurance score, or other credit information relating to a
13.25 consumer, with respect to the types of insurance referred to in paragraph (a), is adversely
13.26 impacted or cannot be generated because of the absence of a credit history, the insurer
13.27 must exclude the use of credit as a factor in the decision to reject, cancel, or nonrenew.

13.28 (e) Insurers must upon the request of a policyholder reevaluate the policyholder's
13.29 score. Any change in premium resulting from the reevaluation must be effective upon
13.30 the renewal of the policy. An insurer is not required to reevaluate a policyholder's score
13.31 pursuant to this paragraph more than twice in any given calendar year.

13.32 (f) Insurers must upon request of the applicant or policyholder provide reasonable
13.33 underwriting exceptions based upon prior credit histories for persons whose credit
13.34 information is unduly influenced by expenses related to a catastrophic injury or illness,

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14.1 temporary loss of employment, or the death of an immediate family member. The insurer
14.2 may require reasonable documentation of these events prior to granting an exception.

14.3 (g) A credit scoring or insurance scoring methodology must not be used by an
14.4 insurer if the credit scoring or insurance scoring methodology incorporates the gender,
14.5 race, nationality, or religion of an insured or applicant.

14.6 (h) Insurers that employ a credit scoring or insurance scoring system in underwriting
14.7 of coverage described in paragraph (a) must have on file with the commissioner:

14.8 (1) the insurer's credit scoring or insurance scoring methodology; and

14.9 (2) information that supports the insurer's use of a credit score or insurance score as
14.10 an underwriting criterion.

14.11 (i) Insurers described in paragraph ~~(g)~~ (h) shall file the required information with the
14.12 commissioner within 120 days of August 1, 2002, or prior to implementation of a credit
14.13 scoring or insurance scoring system by the insurer, if that date is later.

14.14 (j) Information provided by, or on behalf of, an insurer to the commissioner under
14.15 this subdivision is trade secret information under section 13.37.

14.16 Sec. 19. Minnesota Statutes 2008, section 72A.20, subdivision 37, is amended to read:

14.17 Subd. 37. **Electronic transmission of required information.** (a) A health carrier,
14.18 as defined in section 62A.011, subdivision 2, is not in violation of this chapter for
14.19 electronically transmitting or electronically making available information otherwise
14.20 required to be delivered in writing under chapters 62A to 62Q and 72A to an enrollee as
14.21 defined in section 62Q.01, subdivision 2a, or to a health plan as defined in paragraph (b),
14.22 and with the requirements of those chapters if the following conditions are met:

14.23 (1) the health carrier informs the group policyholder or the enrollee or both that
14.24 electronic transmission or access is available and, at the discretion of the health carrier, the
14.25 enrollee is given one of the following options:

14.26 (i) electronic transmission or access will occur only if the group policyholder or the
14.27 enrollee or both affirmatively requests to the health carrier that the required information
14.28 be electronically transmitted or available and a record of that request is retained by the
14.29 health carrier; or

14.30 (ii) electronic transmission or access will automatically occur if the group
14.31 policyholder or the enrollee or both has not opted out of that manner of transmission by
14.32 request to the health carrier and requested that the information be provided in writing. If
14.33 the group policyholder or the enrollee or both opts out of electronic transmission, a record
14.34 of that request must be retained by the health carrier;

15.1 (2) the group policyholder or the enrollee or both is allowed to withdraw the request
15.2 at any time;

15.3 (3) if the information transmitted electronically contains individually identifiable
15.4 data, it must be transmitted to a secured mailbox. If the information made available
15.5 electronically contains individually identifiable data, it must be made available at a
15.6 password-protected secured Web site;

15.7 (4) the group policyholder or the enrollee or both is provided a customer service
15.8 number on the enrollee's member card that may be called to request a written copy of
15.9 the document; and

15.10 (5) the electronic transmission or electronic availability meets all other requirements
15.11 of this chapter including, but not limited to, size of the typeface and any required time
15.12 frames for distribution.

15.13 (b) For the purpose of this section, "health plan" means a health plan as defined
15.14 in section 62A.011 or a policy of accident and sickness insurance as defined in section
15.15 62A.01.

15.16 Sec. 20. Minnesota Statutes 2008, section 72A.492, subdivision 2, is amended to read:

15.17 Subd. 2. **Covered persons.** The rights granted by sections 72A.49 to 72A.505
15.18 extend to:

15.19 (1) a person who is a resident of this state and is the subject of information collected,
15.20 received, or maintained in connection with an insurance transaction; ~~and~~ or

15.21 (2) a person who is a resident of this state and engages in or seeks to engage in
15.22 an insurance transaction.

15.23 Sec. 21. Minnesota Statutes 2008, section 80A.41, is amended to read:

15.24 **80A.41 SECTION 102; DEFINITIONS.**

15.25 In this chapter, unless the context otherwise requires:

15.26 (1) "Accredited investor" means an accredited investor as the term is defined in Rule
15.27 501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

15.28 (2) "Administrator" means the commissioner of commerce.

15.29 (3) "Agent" means an individual, other than a broker-dealer, who represents a
15.30 broker-dealer in effecting or attempting to effect purchases or sales of securities or
15.31 represents an issuer in effecting or attempting to effect purchases or sales of the issuer's
15.32 securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual
15.33 having a similar status or performing similar functions is an agent only if the individual

16.1 otherwise comes within the term. The term does not include an individual excluded by
16.2 rule adopted or order issued under this chapter.

16.3 (4) "Bank" means:

16.4 (A) a banking institution organized under the laws of the United States;

16.5 (B) a member bank of the Federal Reserve System;

16.6 (C) any other banking institution, whether incorporated or not, doing business
16.7 under the laws of a state or of the United States, a substantial portion of the business
16.8 of which consists of receiving deposits or exercising fiduciary powers similar to those
16.9 permitted to be exercised by national banks under the authority of the Comptroller of the
16.10 Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which
16.11 is supervised and examined by a state or federal agency having supervision over banks,
16.12 and which is not operated for the purpose of evading this chapter; and

16.13 (D) a receiver, conservator, or other liquidating agent of any institution or firm
16.14 included in subparagraph (A), (B), or (C).

16.15 (5) "Broker-dealer" means a person engaged in the business of effecting transactions
16.16 in securities for the account of others or for the person's own account. The term does
16.17 not include:

16.18 (A) an agent;

16.19 (B) an issuer;

16.20 (C) a depository institution; provided such activities are conducted in accordance
16.21 with such rules as may be adopted by the administrator;

16.22 (D) an international banking institution; or

16.23 (E) a person excluded by rule adopted or order issued under this chapter.

16.24 (6) "Depository institution" means:

16.25 (A) a bank; or

16.26 (B) a savings institution, trust company, credit union, or similar institution that
16.27 is organized or chartered under the laws of a state or of the United States, authorized
16.28 to receive deposits, and supervised and examined by an official or agency of a state or
16.29 the United States if its deposits or share accounts are insured to the maximum amount
16.30 authorized by statute by the Federal Deposit Insurance Corporation, the National Credit
16.31 Union Share Insurance Fund, or a successor authorized by federal law. The term does
16.32 not include:

16.33 (i) an insurance company or other organization primarily engaged in the business
16.34 of insurance;

16.35 (ii) a Morris Plan bank; or

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17.1 (iii) an industrial loan company that is not an "insured depository institution" as
17.2 defined in section 3(c)(2) of the Federal Deposit Insurance Act, United States Code, title
17.3 12, section 1813(c)(2), or any successor federal statute.

17.4 (7) "Federal covered investment adviser" means a person registered under the
17.5 Investment Advisers Act of 1940.

17.6 (8) "Federal covered security" means a security that is, or upon completion of a
17.7 transaction will be, a covered security under Section 18(b) of the Securities Act of 1933
17.8 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

17.9 (9) "Filing" means the receipt under this chapter of a record by the administrator or
17.10 a designee of the administrator.

17.11 (10) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

17.12 (11) "Guaranteed" means guaranteed as to payment of all principal and all interest.

17.13 (12) "Institutional investor" means any of the following, whether acting for itself or
17.14 for others in a fiduciary capacity:

17.15 (A) a depository institution or international banking institution;

17.16 (B) an insurance company;

17.17 (C) a separate account of an insurance company;

17.18 (D) an investment company as defined in the Investment Company Act of 1940;

17.19 (E) a broker-dealer registered under the Securities Exchange Act of 1934;

17.20 (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets
17.21 in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as
17.22 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
17.23 registered under the Securities Exchange Act of 1934, an investment adviser registered
17.24 or exempt from registration under the Investment Advisers Act of 1940, an investment
17.25 adviser registered under this chapter, a depository institution, or an insurance company;

17.26 (G) a plan established and maintained by a state, a political subdivision of a state, or
17.27 an agency or instrumentality of a state or a political subdivision of a state for the benefit
17.28 of its employees, if the plan has total assets in excess of \$10,000,000 or its investment
17.29 decisions are made by a duly designated public official or by a named fiduciary, as
17.30 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
17.31 registered under the Securities Exchange Act of 1934, an investment adviser registered
17.32 or exempt from registration under the Investment Advisers Act of 1940, an investment
17.33 adviser registered under this chapter, a depository institution, or an insurance company;

17.34 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository
17.35 institution, and its participants are exclusively plans of the types identified in subparagraph

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18.1 (F) or (G), regardless of the size of their assets, except a trust that includes as participants
18.2 self-directed individual retirement accounts or similar self-directed plans;

18.3 (I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26
18.4 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust,
18.5 limited liability company, or partnership, not formed for the specific purpose of acquiring
18.6 the securities offered, with total assets in excess of \$10,000,000;

18.7 (J) a small business investment company licensed by the Small Business
18.8 Administration under Section 301(c) of the Small Business Investment Act of 1958 (15
18.9 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

18.10 (K) a private business development company as defined in Section 202(a)(22) of
18.11 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets
18.12 in excess of \$10,000,000;

18.13 (L) a federal covered investment adviser acting for its own account;

18.14 (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
18.15 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

18.16 (N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted
18.17 under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

18.18 (O) any other person, other than an individual, of institutional character with total
18.19 assets in excess of \$10,000,000 not organized for the specific purpose of evading this
18.20 chapter; or

18.21 (P) any other person specified by rule adopted or order issued under this chapter;

18.22 (13) "Insurance company" means a company organized as an insurance company
18.23 whose primary business is writing insurance or reinsuring risks underwritten by insurance
18.24 companies and which is subject to supervision by the insurance commissioner or a similar
18.25 official or agency of a state.

18.26 (14) "Insured" means insured as to payment of all principal and all interest.

18.27 (15) "International banking institution" means an international financial institution
18.28 of which the United States is a member and whose securities are exempt from registration
18.29 under the Securities Act of 1933.

18.30 (16) "Investment adviser" means a person that, for compensation, engages in the
18.31 business of advising others, either directly or through publications or writings, as to the
18.32 value of securities or the advisability of investing in, purchasing, or selling securities or
18.33 that, for compensation and as a part of a regular business, issues or promulgates analyses
18.34 or reports concerning securities. The term includes a financial planner or other person
18.35 that, as an integral component of other financially related services, provides investment

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19.1 advice to others for compensation as part of a business or that holds itself out as providing
19.2 investment advice to others for compensation. The term does not include:

19.3 (A) an investment adviser representative;

19.4 (B) a lawyer, accountant, engineer, or teacher whose performance of investment
19.5 advice is solely incidental to the practice of the person's profession;

19.6 (C) a broker-dealer or its agents whose performance of investment advice is solely
19.7 incidental to the conduct of business as a broker-dealer and that does not receive special
19.8 compensation for the investment advice;

19.9 (D) a publisher of a bona fide newspaper, news magazine, or business or financial
19.10 publication of general and regular circulation;

19.11 (E) a federal covered investment adviser;

19.12 (F) a bank or savings institution;

19.13 (G) any other person that is excluded by the Investment Advisers Act of 1940 from
19.14 the definition of investment adviser; or

19.15 (H) any other person excluded by rule adopted or order issued under this chapter.

19.16 (17) "Investment adviser representative" means an individual employed by or
19.17 associated with an investment adviser or federal covered investment adviser and who
19.18 makes any recommendations or otherwise gives investment advice regarding securities,
19.19 manages accounts or portfolios of clients, determines which recommendation or advice
19.20 regarding securities should be given, provides investment advice or holds herself or
19.21 himself out as providing investment advice, receives compensation to solicit, offer, or
19.22 negotiate for the sale of or for selling investment advice, or supervises employees who
19.23 perform any of the foregoing. The term does not include an individual who:

19.24 (A) performs only clerical or ministerial acts;

19.25 (B) is an agent whose performance of investment advice is solely incidental to
19.26 the individual acting as an agent and who does not receive special compensation for
19.27 investment advisory services;

19.28 (C) is employed by or associated with a federal covered investment adviser, unless
19.29 the individual has a "place of business" in this state as that term is defined by rule adopted
19.30 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a)
19.31 and is

19.32 (i) an "investment adviser representative" as that term is defined by rule adopted
19.33 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

19.34 (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the
19.35 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

19.36 (D) is excluded by rule adopted or order issued under this chapter.

20.1 (18) "Issuer" means a person that issues or proposes to issue a security, subject to
20.2 the following:

20.3 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
20.4 deposit for a security, or share in an investment company without a board of directors or
20.5 individuals performing similar functions is the person performing the acts and assuming
20.6 the duties of depositor or manager pursuant to the trust or other agreement or instrument
20.7 under which the security is issued.

20.8 (B) The issuer of an equipment trust certificate or similar security serving the same
20.9 purpose is the person by which the property is or will be used or to which the property
20.10 or equipment is or will be leased or conditionally sold or that is otherwise contractually
20.11 responsible for assuring payment of the certificate.

20.12 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease
20.13 or in payments out of production under a lease, right, or royalty is the owner of an interest
20.14 in the lease or in payments out of production under a lease, right, or royalty, whether
20.15 whole or fractional, that creates fractional interests for the purpose of sale.

20.16 (19) "Nonissuer transaction" or "nonissuer distribution" means a transaction or
20.17 distribution not directly or indirectly for the benefit of the issuer.

20.18 (20) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an
20.19 offer to sell, a security or interest in a security for value. The term does not include a
20.20 tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15
20.21 U.S.C. Section 78n(d)).

20.22 (21) "Person" means an individual; corporation; business trust; estate; trust;
20.23 partnership; limited liability company; association; joint venture; government;
20.24 governmental subdivision, agency, or instrumentality; public corporation; or any other
20.25 legal or commercial entity.

20.26 (22) "Place of business" of a broker-dealer, an investment adviser, or a federal
20.27 covered investment adviser means:

20.28 (A) an office at which the broker-dealer, investment adviser, or federal covered
20.29 investment adviser regularly provides brokerage or investment advice or solicits, meets
20.30 with, or otherwise communicates with customers or clients; or

20.31 (B) any other location that is held out to the general public as a location at which
20.32 the broker-dealer, investment adviser, or federal covered investment adviser provides
20.33 brokerage or investment advice or solicits, meets with, or otherwise communicates with
20.34 customers or clients.

20.35 (23) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01 to 80A.31.

21.1 (24) "Price amendment" means the amendment to a registration statement filed under
21.2 the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus
21.3 supplement filed under the Securities Act of 1933 that includes a statement of the offering
21.4 price, underwriting and selling discounts or commissions, amount of proceeds, conversion
21.5 rates, call prices, and other matters dependent upon the offering price.

21.6 (25) "Principal place of business" of a broker-dealer or an investment adviser means
21.7 the executive office of the broker-dealer or investment adviser from which the officers,
21.8 partners, or managers of the broker-dealer or investment adviser direct, control, and
21.9 coordinate the activities of the broker-dealer or investment adviser.

21.10 (26) Only for purposes of calculating the number of purchasers under section
21.11 80A.46(1) and 80A.46(14), "purchaser" does not include:

21.12 (A) any relative, spouse, or relative of the spouse of a purchaser who has the same
21.13 principal residence as the purchaser;

21.14 (B) any trust or estate in which a purchaser and any of the persons related to him as
21.15 specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50
21.16 percent of the beneficial interest (excluding contingent interests);

21.17 (C) any corporation or other organization of which a purchaser and any of the
21.18 persons related to the purchaser as specified in Regulation D, Rule 501(e)(1)(i) or
21.19 (e)(1)(ii) collectively are beneficial owners of more than 50 percent of the equity securities
21.20 (excluding directors' qualifying shares) or equity interests; and

21.21 (D) any accredited investor.

21.22 A corporation, partnership, or other entity must be counted as one purchaser. If,
21.23 however, that entity is organized for the specific purpose of acquiring the securities offered
21.24 and is not an accredited investor, then each beneficial owner of equity securities or equity
21.25 interests in the entity shall count as a separate purchaser for all provisions of Regulation
21.26 D, except to the extent provided in Regulation D, Rule 501(e)(1).

21.27 A noncontributory employee benefit plan within the meaning of Title I of the
21.28 Employee Retirement Income Security Act of 1974 shall be counted as one purchaser
21.29 where the trustee makes all investment decisions for the plan.

21.30 (27) "Record," except in the phrases "of record," "official record," and "public
21.31 record," means information that is inscribed on a tangible medium or that is stored in an
21.32 electronic or other medium and is retrievable in perceivable form.

21.33 (28) "Sale" includes every contract of sale, contract to sell, or disposition of, a
21.34 security or interest in a security for value, and "offer to sell" includes every attempt or
21.35 offer to dispose of, or solicitation of an offer to purchase, a security or interest in a
21.36 security for value.

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22.1 (A) A security given or delivered with, or as a bonus on account of, any purchase of
22.2 securities or any other thing is considered to constitute part of the subject of the purchase
22.3 and to have been offered and sold for value.

22.4 (B) A gift of assessable stock is considered to involve an offer and sale.

22.5 (C) A sale or offer of a warrant or right to purchase or subscribe to another security
22.6 of the same or another issuer and a sale or offer of a security that gives the holder a present
22.7 or future right or privilege to convert the security into another security of the same or
22.8 another issuer, are each considered to include an offer of the other security.

22.9 (29) "Securities and Exchange Commission" means the United States Securities and
22.10 Exchange Commission.

22.11 (30) "Security" means a note; stock; treasury stock; security future; bond; debenture;
22.12 evidence of indebtedness; certificate of interest or participation in a profit-sharing
22.13 agreement; collateral trust certificate; preorganization certificate or subscription;
22.14 transferable share; investment contract; voting trust certificate; certificate of deposit for a
22.15 security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle,
22.16 option, or privilege on a security, certificate of deposit, or group or index of securities,
22.17 including an interest therein or based on the value thereof; put, call, straddle, option, or
22.18 privilege entered into on a national securities exchange relating to foreign currency; or,
22.19 in general, an interest or instrument commonly known as a "security"; or a certificate of
22.20 interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or
22.21 warrant or right to subscribe to or purchase, any of the foregoing. The term:

22.22 (A) includes both a certificated and an uncertificated security;

22.23 (B) does not include an insurance or endowment policy or annuity contract under
22.24 which an insurance company promises to pay a fixed or variable sum of money either in a
22.25 lump sum or periodically for life or other specified period;

22.26 (C) does not include an interest in a contributory or noncontributory pension or
22.27 welfare plan subject to the Employee Retirement Income Security Act of 1974;

22.28 (D) includes as an "investment contract," among other contracts, an interest in
22.29 a limited partnership and a limited liability company and an investment in a viatical
22.30 settlement or similar agreement; and

22.31 (E) does not include any equity interest of a closely held corporation or other entity
22.32 with not more than 35 holders of the equity interest of such entity offered or sold pursuant
22.33 to a transaction in which 100 percent of the equity interest of such entity is sold as a means
22.34 to effect the sale of the business of the entity if the transaction has been negotiated on
22.35 behalf of all purchasers and if all purchasers have access to inside information regarding
22.36 the entity before consummating the transaction.

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23.1 (31) "Self-regulatory organization" means a national securities exchange registered
23.2 under the Securities Exchange Act of 1934, a national securities association of
23.3 broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency
23.4 registered under the Securities Exchange Act of 1934, or the Municipal Securities
23.5 Rulemaking Board established under the Securities Exchange Act of 1934.

23.6 (32) "Sign" means, with present intent to authenticate or adopt a record:

23.7 (A) to execute or adopt a tangible symbol; or

23.8 (B) to attach or logically associate with the record an electronic symbol, sound,
23.9 or process.

23.10 (33) "State" means a state of the United States, the District of Columbia, Puerto
23.11 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
23.12 jurisdiction of the United States.

23.13 (34) "Associated with" with respect to a person means any partner, officer, director,
23.14 or manager of such person or any person occupying a similar status or performing
23.15 similar functions or any person directly or indirectly controlling, controlled by, or in
23.16 common control with, such person, but does not include a person whose primary duties
23.17 are ministerial or clerical.

23.18 Sec. 22. Minnesota Statutes 2008, section 82.17, is amended by adding a subdivision
23.19 to read:

23.20 Subd. 1a. **Brokerage; business entity.** "Brokerage" or "business entity" means a
23.21 corporation, partnership, limited liability company, limited liability partnership, or other
23.22 business structure that holds a real estate broker license.

23.23 Sec. 23. Minnesota Statutes 2008, section 82.17, subdivision 15, is amended to read:

23.24 Subd. 15. **Protective list.** "Protective list" means the written list of names and
23.25 addresses of prospective ~~purchasers~~ buyers with whom a licensee has negotiated the sale
23.26 or rental of the property or to whom a licensee has exhibited the property before the
23.27 expiration of the listing agreement. For the purposes of this subdivision, "property" means
23.28 the property that is the subject of the listing agreement in question.

23.29 Sec. 24. Minnesota Statutes 2008, section 82.19, is amended to read:

23.30 **82.19 COMPENSATION.**

23.31 Subdivision 1. **Licensee to receive only from broker.** A licensee shall not
23.32 accept a commission, compensation, referral fee, or other valuable consideration for the
23.33 performance of any acts requiring a real estate license from any person except the real

24.1 estate broker to whom the licensee is licensed or to whom the licensee was licensed at the
24.2 time of the transaction.

24.3 Subd. 1a. **Commission-splitting, rebates, referral fee, and fees.** (a) In connection
24.4 with a real estate or business opportunity transaction, a real estate broker or real estate
24.5 salesperson shall not offer, pay, or give, and a person shall not accept, any compensation
24.6 or other thing of value from a real estate broker or real estate salesperson by way of
24.7 commission-splitting, rebate, referral fees, finder's fees, or otherwise.

24.8 (b) This subdivision does not apply to transactions:

24.9 (1) between a licensed real estate broker or salesperson and the parties to the
24.10 transaction;

24.11 (2) among persons licensed as provided in this chapter;

24.12 (3) between a licensed real estate broker or salesperson and persons from other
24.13 jurisdictions similarly licensed in that jurisdiction;

24.14 (4) involving timeshare or other recreational lands where the amount offered or paid
24.15 does not exceed \$150, and payment is not conditioned upon any sale but is made merely
24.16 for providing the referral and the person paying the fee is bound by any representations
24.17 made by the person receiving the fee; and

24.18 (5) involving a person who receives a referral fee from a person or an agent of a
24.19 person licensed under this section, provided that in any 12-month period, no recipient may
24.20 earn more than the value of one month's rent, that the recipient is a resident of the property
24.21 or has lived there within 60 days of the payment of the fee, and that the person paying the
24.22 fee is bound by any representations made by the recipient of the fee.

24.23 **Subd. 2. Undisclosed compensation.** A licensee shall not accept, give, or charge
24.24 any undisclosed compensation or realize any direct or indirect remuneration that inures to
24.25 the benefit of the licensee on an expenditure made for a principal.

24.26 Subd. 2a. **Sharing of compensation with other brokers.** The seller may, in
24.27 the listing agreement, authorize the seller's broker to disburse part of the broker's
24.28 compensation to other brokers, including the buyer's brokers solely representing the buyer.

24.29 **Subd. 3. Limitation on broker when transaction not completed.** When the owner
24.30 fails or is unable to consummate a real estate transaction, through no fault of the purchaser,
24.31 the listing broker may not claim any portion of any trust funds deposited with the broker
24.32 by the purchaser, absent a separate agreement with the purchaser.

24.33 Subd. 3a. **Directing payment of compensation.** A licensed real estate broker
24.34 or salesperson may assign or direct that commissions or other compensation earned in
24.35 connection with a real estate or business opportunity transaction be paid to a corporation,

25.1 limited liability company, or sole proprietorship of which the licensed real estate broker
25.2 or salesperson is the sole owner.

25.3 Subd. 3b. **Closing agent fee.** A real estate closing agent may not charge a fee for
25.4 closing services to a borrower, and a borrower may not be required to pay such a fee at
25.5 settlement, if the fee was not previously disclosed in writing at least one business day
25.6 before the settlement. This disclosure requirement is satisfied if a disclosure is made or
25.7 an estimate given under section 507.45.

25.8 Sec. 25. Minnesota Statutes 2008, section 82.21, subdivision 2, is amended to read:

25.9 Subd. 2. **Listing agreements. (a) Requirement.** Licensees shall obtain a signed
25.10 listing agreement or other signed written authorization from the owner of real property or
25.11 from another person authorized to offer the property for sale or lease before advertising to
25.12 the general public that the real property is available for sale or lease.

25.13 For the purposes of this section "advertising" includes placing a sign on the owner's
25.14 property that indicates that the property is being offered for sale or lease.

25.15 (b) **Contents.** All listing agreements must be in writing and must include:

25.16 (1) a definite expiration date;

25.17 (2) a description of the real property involved;

25.18 (3) the list price and any terms required by the seller;

25.19 (4) the amount of any compensation or commission or the basis for computing
25.20 the commission;

25.21 (5) a clear statement explaining the events or conditions that will entitle a broker to
25.22 a commission;

25.23 (6) a clear statement explaining if the agreement may be canceled and the terms
25.24 under which the agreement may be canceled;

25.25 ~~(6)~~ (7) information regarding an override clause, if applicable, including a statement
25.26 to the effect that the override clause will not be effective unless the licensee supplies the
25.27 seller with a protective list within 72 hours after the expiration of the listing agreement;

25.28 ~~(7)~~ (8) the following notice in not less than ten point boldface type immediately
25.29 preceding any provision of the listing agreement relating to compensation of the licensee:

25.30 "NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR
25.31 MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN
25.32 EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT.";

25.33 ~~(8)~~ (9) for residential property listings, the following "dual agency" disclosure
25.34 statement:

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26.1 If a buyer represented by broker wishes to buy the seller's property, a dual agency
26.2 will be created. This means that broker will represent both the seller(s) and the buyer(s),
26.3 and owe the same duties to the buyer(s) that broker owes to the seller(s). This conflict
26.4 of interest will prohibit broker from advocating exclusively on the seller's behalf. Dual
26.5 agency will limit the level of representation broker can provide. If a dual agency should
26.6 arise, the seller(s) will need to agree that confidential information about price, terms, and
26.7 motivation will still be kept confidential unless the seller(s) instruct broker in writing to
26.8 disclose specific information about the seller(s). All other information will be shared.
26.9 Broker cannot act as a dual agent unless both the seller(s) and the buyer(s) agree to it. By
26.10 agreeing to a possible dual agency, the seller(s) will be giving up the right to exclusive
26.11 representation in an in-house transaction. However, if the seller(s) should decide not to
26.12 agree to a possible dual agency, and the seller(s) want broker to represent the seller(s), the
26.13 seller(s) may give up the opportunity to sell the property to buyers represented by broker.

26.14 **Seller's Instructions to Broker**

26.15 Having read and understood this information about dual agency, seller(s) now
26.16 instructs broker as follows:

26.17 Seller(s) will agree to a dual agency representation and will consider
26.18 offers made by buyers represented by broker.

26.19 Seller(s) will not agree to a dual agency representation and will not
26.20 consider offers made by buyers represented by broker.

26.21 ;

26.22 Seller Real Estate Company Name

26.23 By:

26.24 Seller Salesperson

26.25 Date : ;

26.26 ~~(9)~~ (10) a notice requiring the seller to indicate in writing whether it is acceptable to
26.27 the seller to have the licensee arrange for closing services or whether the seller wishes to
26.28 arrange for others to conduct the closing; and

26.29 ~~(10)~~ (11) for residential listings, a notice stating that after the expiration of the
26.30 listing agreement, the seller will not be obligated to pay the licensee a fee or commission
26.31 if the seller has executed another valid listing agreement pursuant to which the seller is
26.32 obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of
26.33 the real property in question. This notice may be used in the listing agreement for any
26.34 other type of real estate.

26.35 (c) **Prohibited provisions.** Except as otherwise provided in paragraph (d), clause
26.36 (2), licensees shall not include in a listing agreement a holdover clause, automatic

27.1 extension, or any similar provision, or an override clause the length of which is more than
27.2 six months after the expiration of the listing agreement.

27.3 (d) **Override clauses.** (1) Licensees shall not seek to enforce an override clause
27.4 unless a protective list has been furnished to the seller within 72 hours after the expiration
27.5 of the listing agreement.

27.6 (2) A listing agreement may contain an override clause of up to two years in length
27.7 when used in conjunction with the purchase or sale of a business. The length of the
27.8 override clause must be negotiable between the licensee and the seller of the business. The
27.9 protective list provided in connection with the override clause must include the written
27.10 acknowledgment of each party named on the protective list, that the business which is the
27.11 subject of the listing agreement was presented to that party by the licensee.

27.12 (e) **Protective lists.** A broker or salesperson has the burden of demonstrating that
27.13 each person on the protective list has, during the period of the listing agreement, either
27.14 made an affirmative showing of interest in the property by responding to an advertisement
27.15 or by contacting the broker or salesperson involved or has been physically shown the
27.16 property by the broker or salesperson. For the purpose of this section, the mere mailing or
27.17 other distribution by a licensee of literature setting forth information about the property in
27.18 question does not, of itself, constitute an affirmative showing of interest in the property on
27.19 the part of a subsequent purchaser.

27.20 For listings of nonresidential real property which do not contain the notice described
27.21 in paragraph (b), clause ~~(10)~~ (11), the protective list must contain the following notice in
27.22 boldface type:

27.23 "IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE
27.24 PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME
27.25 APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS
27.26 TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK
27.27 COMPETENT ADVICE."

27.28 Sec. 26. Minnesota Statutes 2008, section 82.24, subdivision 3, is amended to read:

27.29 Subd. 3. **Broker payment consolidation.** For all license renewal fees, recovery
27.30 fund renewal fees, and recovery fund assessments pursuant to this section and section
27.31 82.43, the broker must remit the fees or assessments for the company, broker, and all
27.32 salespersons licensed to the broker, in the form of a single ~~check~~ payment.

27.33 Sec. 27. Minnesota Statutes 2008, section 82.29, subdivision 4, is amended to read:

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28.1 Subd. 4. **Broker's examination.** (a) The examination for a real estate broker's
28.2 license shall be more exacting than that for a real estate salesperson, and shall require a
28.3 higher degree of knowledge of the fundamentals of real estate practice and law.

28.4 (b) Every application for a broker's examination shall be accompanied by proof that
28.5 the applicant has had a minimum of two years of actual experience within the previous
28.6 five-year period prior to application as a licensed real estate salesperson in this or in
28.7 another state having comparable requirements or is, in the opinion of the commissioner,
28.8 otherwise or similarly qualified by reason of education or practical experience. The
28.9 applicant shall have completed educational requirements in accordance with subdivision 8.

28.10 (c) An applicant for a limited broker's license pursuant to section 82.34, subdivision
28.11 13, shall not be required to have a minimum of two years of actual experience as a real
28.12 estate person in order to obtain a limited broker's license ~~to act as principal only.~~

28.13 Sec. 28. Minnesota Statutes 2008, section 82.29, subdivision 5, is amended to read:

28.14 Subd. 5. **Waivers.** The commissioner may ~~waive~~ grant a waiver of the real estate
28.15 licensing experience requirement for the broker's examination to a qualified applicant for
28.16 a waiver.

28.17 (a) ~~An~~ A qualified applicant for a waiver shall provide evidence of is an individual
28.18 who:

28.19 (1) ~~successful completion of a minimum of 90 quarter credits or 270 classroom~~
28.20 ~~hours of real estate-related studies~~ has a degree in real estate from an accredited college
28.21 or university;

28.22 (2) ~~a minimum of five consecutive years of practical experience in real estate-related~~
28.23 ~~areas~~ is a licensed practicing attorney whose practice involves real estate law; or

28.24 (3) ~~successful completion of 30 credits or 90 classroom hours and three consecutive~~
28.25 ~~years of practical experience in real estate-related areas~~ is a public officer whose official
28.26 duties are related to real estate.

28.27 (b) A request for a waiver shall be submitted to the commissioner in writing on a
28.28 form prescribed by the commissioner and be accompanied by documents necessary to
28.29 evidence qualification as set forth in paragraph (a).

28.30 (c) The waiver will lapse if the applicant fails to successfully complete the broker's
28.31 examination within one year from the date of the granting of the waiver.

28.32 Sec. 29. Minnesota Statutes 2008, section 82.29, subdivision 8, is amended to read:

28.33 Subd. 8. **Instruction; new licenses.** (a) ~~Every~~ An applicant for a salesperson's
28.34 license shall be required to successfully complete a course of study in the real estate field

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29.1 consisting of 30 hours of instruction approved by the commissioner before taking the
29.2 examination specified in subdivision 1. ~~Every~~ An applicant for a salesperson's license
29.3 shall be required to successfully complete an additional course of study in the real estate
29.4 field consisting of 60 hours of instruction approved by the commissioner, of which three
29.5 hours shall consist of training in state and federal fair housing laws, regulations, and
29.6 rules, and of which two hours must consist of training in laws and regulations on agency
29.7 representation and disclosure, before filing an application for the license. This subdivision
29.8 does not apply to salespeople licensed in Minnesota before July 1, 1969.

29.9 (b) An applicant for a broker's license must successfully complete a course of study
29.10 in the real estate field consisting of 30 hours of instruction approved by the commissioner,
29.11 of which three hours shall consist of training in state and federal fair housing laws,
29.12 regulations, and rules. The course must have been completed within 12 months prior to
29.13 the date of application for the broker's license.

29.14 ~~(c) An applicant for a real estate closing agent's license must successfully complete~~
29.15 ~~a course of study relating to closing services consisting of eight hours of instruction~~
29.16 ~~approved by the commissioner.~~

29.17 Sec. 30. Minnesota Statutes 2008, section 82.31, subdivision 1, is amended to read:

29.18 Subdivision 1. **Qualification of applicants.** ~~Every~~ An applicant for a real estate
29.19 broker, or real estate salesperson, ~~or real estate closing agent~~ license shall be at least 18
29.20 years of age at the time of making application for said license.

29.21 Sec. 31. Minnesota Statutes 2008, section 82.31, subdivision 2, is amended to read:

29.22 Subd. 2. **Application for license; contents.** (a) ~~Every~~ An applicant for a license
29.23 as a real estate broker, or real estate salesperson, ~~or closing agent~~ shall make an
29.24 application in ~~writing upon forms prepared and furnished~~ the format prescribed by the
29.25 commissioner. ~~Each~~ The application shall be signed and sworn to by the applicant and
29.26 ~~shall be~~ accompanied by the license fee required by this chapter.

29.27 (b) Each application for a real estate broker license, or real estate salesperson
29.28 license, ~~or real estate closing agent license~~ shall contain such information as required
29.29 by the commissioner consistent with the administration of the provisions and purposes
29.30 of this chapter.

29.31 (c) ~~Each~~ The application for a real estate salesperson license shall give the applicant's
29.32 legal name, age, residence address, and the name and place of business of the real estate
29.33 broker on whose behalf the salesperson is to be acting.

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30.1 ~~(d) Each application for a real estate closing agent license shall give the applicant's~~
30.2 ~~name, age, residence address, and the name and place of business of the closing agent.~~

30.3 ~~(e)~~ (d) The commissioner may require such further information as the commissioner
30.4 deems appropriate to administer the provisions and further the purposes of this chapter.

30.5 ~~(f) Applicants~~ (e) An applicant for a real estate salesperson license shall submit
30.6 to the commissioner, along with the application for licensure, a copy of the course
30.7 completion certificate for courses I, II, and III and passing examination results.

30.8 Sec. 32. Minnesota Statutes 2009 Supplement, section 82.31, subdivision 4, is
30.9 amended to read:

30.10 Subd. 4. **Corporate and partnership Business entity; brokerage licenses.** (a) A
30.11 ~~corporation~~ business entity applying for a license shall have at least one ~~officer~~ principal
30.12 individually licensed to act as broker for the ~~corporation~~ brokerage. The ~~corporation~~
30.13 principal broker's license shall extend no authority to act as broker to any person other
30.14 than the ~~corporate~~ business entity. Each ~~officer~~ principal who intends to act as a broker
30.15 shall obtain a license.

30.16 (b) A ~~partnership~~ business entity applying for a license shall have at least one ~~partner~~
30.17 principal individually licensed to act as broker for the ~~partnership~~ business entity. Each
30.18 ~~partner~~ principal who intends to act as a broker shall obtain a license.

30.19 (c) ~~Applications~~ An application for a license made by a corporation shall be verified
30.20 by the president and one other officer. ~~Applications~~ An application made by a partnership
30.21 shall be verified by at least two partners.

30.22 (d) ~~Any partner or officer~~ A principal who ceases to act as broker for a ~~partnership~~
30.23 ~~or corporation~~ business entity shall notify the commissioner upon said termination. The
30.24 individual licenses of all salespersons acting on behalf of a ~~corporation or partnership,~~
30.25 brokerage are automatically ineffective upon the revocation or suspension of the license of
30.26 the ~~partnership or corporation~~ brokerage. The commissioner may suspend or revoke the
30.27 license of an ~~officer or partner~~ principal licensee without suspending or revoking the
30.28 license of the ~~corporation or partnership~~ business entity.

30.29 (e) The application of all ~~officers~~ principals of a ~~corporation or partners in a~~
30.30 ~~partnership~~ business entity who intend to act as a ~~broker~~ brokers on behalf of a ~~corporation~~
30.31 ~~or partnership~~ business entity shall accompany the initial license application of the
30.32 ~~corporation or partnership~~ business entity. ~~Officers or partners~~ Principals intending to act
30.33 as brokers subsequent to the licensing of the ~~corporation or partnership~~ business entity
30.34 shall procure an individual real estate broker's license prior to acting in the capacity of a
30.35 broker. No ~~corporate officer, or partner,~~ principal who maintains a salesperson's license

31.1 may exercise any authority over any trust account administered by the broker nor may
31.2 they be vested with any supervisory authority over the broker.

31.3 (f) The ~~corporation or partnership~~ business entity applicant shall make available
31.4 upon request, such records and data required by the commissioner for enforcement
31.5 of this chapter.

31.6 (g) The commissioner may require further information, as the commissioner deems
31.7 appropriate, to administer the provisions and further the purposes of this chapter.

31.8 Sec. 33. Minnesota Statutes 2009 Supplement, section 82.32, is amended to read:

31.9 **82.32 LICENSING: CONTINUING EDUCATION AND INSTRUCTION.**

31.10 (a) All real estate salespersons and all real estate brokers shall be required to
31.11 successfully complete 30 hours of real estate continuing education, either as a student or
31.12 a lecturer, in courses of study approved by the commissioner, during the initial license
31.13 period and during each succeeding 24-month license period. At least 15 of the 30 credit
31.14 hours must be completed during the first 12 months of the 24-month licensing period.
31.15 Licensees may not claim credit for continuing education not actually completed as of the
31.16 date their report of continuing education compliance is filed.

31.17 (b) The commissioner may adopt rules defining the standards for course and
31.18 instructor approval, and may adopt rules for the proper administration of prelicense
31.19 instruction as required under section 82.29, subdivision 8, and continuing education as
31.20 required under this section and sections 82.29; 82.31, ~~subdivisions~~ subdivision 5 and 6;
31.21 82.33, subdivisions 1 and 4 to 6; and 82.44. The commissioner may not approve a course
31.22 which can be completed by the student at home or outside the classroom without the
31.23 supervision of an instructor except accredited courses using new delivery technology,
31.24 including interactive technology, and the Internet. The commissioner may approve
31.25 courses of study in the real estate field offered in educational institutions of higher learning
31.26 in this state or courses of study in the real estate field developed by and offered under
31.27 the auspices of the National Association of Realtors, its affiliates, or private real estate
31.28 schools. Courses in motivation, salesmanship, psychology, or time management shall not
31.29 be approved by the commissioner for continuing education credit. The commissioner may
31.30 approve courses in any other subjects, including, but not limited to, communication,
31.31 marketing, negotiation, and technology for continuing education credit.

31.32 (c) As part of the continuing education requirements of this section and sections
31.33 82.29; 82.31, subdivisions 5 and 6; 82.33, subdivisions 1 and 4 to 6; and 82.44, the
31.34 commissioner shall require that all real estate brokers and salespersons receive:

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32.1 (1) at least one hour of training during each license period in courses in laws or
32.2 regulations on agency representation and disclosure; and

32.3 (2) at least one hour of training during each license period in courses in state and
32.4 federal fair housing laws, regulations, and rules, other antidiscrimination laws, or courses
32.5 designed to help licensees to meet the housing needs of immigrant and other underserved
32.6 populations.

32.7 Clauses (1) and (2) do not apply to real estate salespersons and real estate brokers
32.8 engaged solely in the commercial real estate business who file with the commissioner
32.9 a verification of this status along with the continuing education report required under
32.10 paragraph (a).

32.11 (d) The commissioner is authorized to establish a procedure for renewal of course
32.12 accreditation.

32.13 (e) Approved continuing education courses may be sponsored or offered by a broker
32.14 of a real estate company and may be held on the premises of a company licensed under
32.15 this chapter. All continuing education course offerings must be open to any interested
32.16 individuals. Access may be restricted by the education provider based on class size
32.17 only. Courses must not be approved if attendance is restricted to any particular group of
32.18 people. A broker must comply with all continuing education rules prescribed by the
32.19 commissioner. The commissioner shall not approve any prelicense instruction courses
32.20 offered by, sponsored by, or affiliated with any person or company licensed to engage in
32.21 the real estate business.

32.22 (f) Credit may not be earned if the licensee has previously obtained credit for the
32.23 same course as either a student or instructor during the same licensing period.

32.24 (g) The real estate education course completion certificate must be in the form set
32.25 forth by the commissioner. Students are responsible for maintaining copies of course
32.26 completion certificates.

32.27 (h) An approved prelicense 30-hour broker course may be used for continuing
32.28 education credit by a real estate salesperson or broker if the course is completed during
32.29 the appropriate licensing period.

32.30 Sec. 34. Minnesota Statutes 2008, section 82.33, subdivision 1, is amended to read:

32.31 Subdivision 1. **Duration.** ~~No~~ The renewal of a salesperson's license ~~shall be~~ is not
32.32 effective beyond a date two years after the granting of ~~such~~ the salesperson's license unless
32.33 the salesperson has furnished evidence of compliance with section 82.29, subdivision 8.

32.34 The commissioner shall cancel the license of ~~any~~ a salesperson who fails to comply with

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33.1 section 82.29, subdivision 8. ~~This subdivision shall not apply to salespeople licensed in~~
33.2 ~~Minnesota prior to July 1, 1969.~~

33.3 Sec. 35. Minnesota Statutes 2008, section 82.33, is amended by adding a subdivision
33.4 to read:

33.5 Subd. 1a. **Broker's responsibility.** (a) A broker shall renew the license of each
33.6 eligible salesperson who is and will continue to be associated with the broker. For
33.7 the purposes of this subdivision, an eligible salesperson is one who has demonstrated
33.8 compliance with all renewal requirements before June 15 of the renewal year.

33.9 (b) When a broker does not intend to renew the license of an eligible salesperson
33.10 who is associated with the broker, the broker must notify the salesperson in writing 30
33.11 days before June 15 of the renewal year.

33.12 (c) When the broker responsible for the salesperson's license renewal does not renew
33.13 an eligible salesperson's license before the renewal deadline, the broker shall pay on the
33.14 salesperson's behalf any additional higher license fees that result.

33.15 Sec. 36. Minnesota Statutes 2008, section 82.33, subdivision 2, is amended to read:

33.16 Subd. 2. **Timely renewals.** ~~Persons~~ A person whose applications have application
33.17 for a license renewal has not been properly and timely filed and who have has not received
33.18 notice of ~~denial~~ approval of renewal are deemed to have been approved for renewal and
33.19 may not continue to transact business either as a real estate broker, salesperson, or closing
33.20 agent whether or not the renewed license has been received on or before July 1 after June
33.21 30 of the renewal year until approval of renewal is received. Application for renewal of a
33.22 license shall be deemed to have been is timely filed if received by the commissioner by, or
33.23 mailed with proper postage and postmarked by:

33.24 (1) all requirements for renewal, including continuing education requirements,
33.25 have been completed by June 15 of the renewal year. ~~Applications for renewal shall be~~
33.26 deemed properly filed if made; and

33.27 (2) the application is submitted before the renewal deadline in the manner
33.28 prescribed by the commissioner upon forms duly executed and sworn to, accompanied
33.29 by fees prescribed by this chapter, and ~~contain~~ containing any information which the
33.30 commissioner may require requires.

33.31 Sec. 37. Minnesota Statutes 2008, section 82.34, subdivision 1, is amended to read:

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34.1 Subdivision 1. **Generally.** (a) The commissioner shall issue a license as a real estate
34.2 broker, ~~or real estate salesperson, or closing agent~~ to any person who qualifies for ~~such~~
34.3 the license under the terms of this chapter.

34.4 (b) The commissioner is authorized to establish by rule a special license for real
34.5 estate brokers and real estate salespeople engaged solely in the rental or management of
34.6 an interest or estate in real estate, to prescribe qualifications for the license, and to issue
34.7 the license consistent with the terms of this chapter. This clause shall not be construed to
34.8 require those owners or managers or their agents or employees who are excluded by section
34.9 82.23, clause (d), from the definition of real estate broker, to obtain the special license.

34.10 Sec. 38. Minnesota Statutes 2008, section 82.34, subdivision 2, is amended to read:

34.11 Subd. 2. **Additional broker's license.** An individual who holds a broker's license
34.12 in ~~his or her~~ the broker's own name or for or on behalf of a corporation or partnership
34.13 business entity must be issued an additional broker's license only upon demonstrating:

34.14 (1) that the additional license is necessary in order to serve a legitimate business
34.15 purpose;

34.16 (2) that the broker will be capable of supervising all salespersons over whom he or
34.17 she the broker will have supervisory responsibility or, in the alternative, that the broker
34.18 will have no supervisory responsibilities under the additional license; and

34.19 (3) that the broker:

34.20 (i) has a substantial at least 51 percent ownership interest in each corporation or
34.21 partnership business entity for or on whose behalf ~~he or she~~ the broker holds or will
34.22 hold a broker's license; or

34.23 (ii) is an elected or appointed officer, signing partner, or managing member of both
34.24 the business entity for which or on whose behalf the broker already holds a license, and
34.25 an affiliated business entity for which or on whose behalf the broker is applying for an
34.26 additional license.

34.27 ~~The requirement of a substantial ownership interest does not apply where the broker~~
34.28 ~~seeking the additional license or licenses is an officer of a corporation for or on whose~~
34.29 ~~behalf the broker already holds a license and the broker is applying for the additional~~
34.30 ~~license or licenses for or on behalf of an affiliated corporation or corporations of which he~~
34.31 ~~or she is also an officer.~~ For the purpose of this section and sections 82.31, subdivisions 1
34.32 to 4; 82.33, subdivisions 1 to 3; 82.35, subdivision 2; and 82.39, "affiliated ~~corporation~~
34.33 business entity" means a ~~corporation which is directly or indirectly controlled~~ business
34.34 entity that is majority-owned by the same persons as the ~~corporation~~ business entity for
34.35 which or on whose behalf the broker is already licensed to act.

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35.1 For the purposes of this section and sections 82.31, subdivisions 1 to 4; 82.33,
35.2 subdivisions 1 to 3; 82.35, subdivision 2; and 82.39, a legitimate business purpose
35.3 includes engaging in a different and specialized area of real estate or maintaining an
35.4 existing business name.

35.5 Sec. 39. Minnesota Statutes 2008, section 82.34, subdivision 4, is amended to read:

35.6 Subd. 4. **Issuance of license; salesperson.** A salesperson must be licensed to act
35.7 on behalf of a licensed broker and may not be licensed to act on behalf of more than
35.8 one broker in this state during the same period of time. ~~The license of each real estate~~
35.9 ~~salesperson shall be mailed to and remain in the possession of the licensed broker with~~
35.10 ~~whom the salesperson is or is to be associated until canceled or until such licensee leaves~~
35.11 ~~such broker.~~

35.12 Sec. 40. Minnesota Statutes 2008, section 82.34, subdivision 5, is amended to read:

35.13 Subd. 5. **Effective date of license.** ~~Licenses~~ A license renewed pursuant to this
35.14 chapter ~~are~~ is valid for a period of 24 months. ~~New licenses~~ A new license issued during a
35.15 24-month licensing period will expire on June 30 of the expiration year assigned to the
35.16 license. ~~Implementation of the 24-month licensing program must be staggered so that~~
35.17 ~~approximately one-half of the licenses will expire on June 30 of each even-numbered year~~
35.18 ~~and the other one-half on June 30 of each odd-numbered year. Those licensees who will~~
35.19 ~~receive a 12-month license on July 1, 1995, because of the staggered implementation~~
35.20 ~~schedule will pay for the license a fee reduced by an amount equal to one-half the fee~~
35.21 ~~for renewal of the license.~~

35.22 Sec. 41. Minnesota Statutes 2008, section 82.34, subdivision 13, is amended to read:

35.23 Subd. 13. **Limited broker's license.** ~~(a)~~ The commissioner shall have the authority
35.24 to issue a limited real estate broker's license authorizing the licensee to engage in
35.25 transactions as principal only. ~~Such license shall be issued only after receipt of the~~
35.26 ~~application described in section 82.31, subdivision 2, and payment of the fee prescribed~~
35.27 ~~by section 82.24, subdivision 1. No salesperson may be licensed to act on behalf of an~~
35.28 ~~individual holding a limited broker's license. An officer of a corporation or partner of a~~
35.29 ~~partnership licensed as a limited broker may act on behalf of that corporation or partnership~~
35.30 ~~without being subject to the licensing requirements.~~ following limited activities:

35.31 ~~(b) A limited broker's license shall also authorize the licensee to engage in~~
35.32 ~~negotiation of mortgage loans, other than residential mortgage loans, as described in~~
35.33 ~~section 82.17, subdivision 18, clause (b).~~

- 36.1 (1) the licensee to engage in transactions as principal only; or
36.2 (2) the licensee to engage in negotiations of mortgage loans, other than residential
36.3 mortgage loans, as described in section 82.17, subdivision 18, clause (b).

36.4 The license may be issued only after receipt of the application described in section
36.5 82.31, subdivision 2, and payment of the fee prescribed by section 82.24, subdivision 1. A
36.6 salesperson may not be licensed to act on behalf of an individual holding a limited broker's
36.7 license. A principal of a business entity licensed as a limited broker may act on behalf of
36.8 that business entity without being subject to the licensing requirements.

36.9 Sec. 42. Minnesota Statutes 2008, section 82.39, is amended to read:

36.10 **82.39 NOTICE TO COMMISSIONER.**

36.11 Subdivision 1. **Notice Change of application information.** Notice in writing
36.12 or in the format prescribed by the commissioner shall be given to the commissioner by
36.13 ~~each~~ a licensee of any change in of information contained in the license application on file
36.14 with the commissioner, including but not limited to personal name, trade name, address or
36.15 business location not later than ten days after such the change. ~~The commissioner shall~~
36.16 issue a new license if required for the unexpired period.

36.17 Subd. 2. **Mandatory. Licensees** The licensee shall notify the commissioner in
36.18 writing or in the format prescribed by the commissioner within ten days of the facts in
36.19 subdivisions 3 to 5.

36.20 Subd. 3. **Civil judgment. Licensees** The licensee must notify the commissioner
36.21 in writing within ten days of a final adverse decision or order of a court, whether or not
36.22 the decision or order is appealed, regarding any proceeding in which the licensee was
36.23 named as a defendant, and which alleged fraud, misrepresentation, or the conversion of
36.24 funds, if the final adverse decision relates to the allegations of fraud, misrepresentation, or
36.25 the conversion of funds.

36.26 Subd. 4. **Disciplinary action.** The licensee must notify the commissioner in writing
36.27 ~~within ten days~~ of the suspension or revocation of the licensee's real estate or other
36.28 occupational license issued by this state or another jurisdiction.

36.29 Subd. 5. **Criminal offense.** The licensee must notify the commissioner in writing
36.30 ~~within ten days~~ if the licensee is charged with, adjudged guilty of, or enters a plea of
36.31 guilty or nolo contendere to a charge of any felony, or of any gross misdemeanor alleging
36.32 fraud, misrepresentation, conversion of funds, or a similar violation of any real estate
36.33 licensing law.

36.34 Sec. 43. Minnesota Statutes 2008, section 82.41, subdivision 1, is amended to read:

S.F. No. 2839, as introduced - 86th Legislative Session (2009-2010) [10-4134]

37.1 Subdivision 1. **License required.** No person shall act as a real estate broker,
37.2 ~~or real estate salesperson, or real estate closing agent~~ unless licensed as ~~herein~~ provided
37.3 in this section.

37.4 Sec. 44. Minnesota Statutes 2008, section 82.41, subdivision 2, is amended to read:

37.5 Subd. 2. **Misrepresenting status as licensee.** No persons shall advertise or
37.6 represent themselves to be real estate brokers, ~~salespeople, or closing agents~~ or real estate
37.7 salespersons unless licensed as ~~herein~~ provided in this section.

37.8 Sec. 45. Minnesota Statutes 2008, section 82.41, is amended by adding a subdivision
37.9 to read:

37.10 Subd. 3a. **Limitation on broker when transaction not completed.** When the
37.11 owner fails or is unable to consummate a real estate transaction, through no fault of the
37.12 purchaser, the listing broker may not claim any portion of any trust funds deposited with
37.13 the broker by the purchaser, absent a separate agreement with the purchaser.

37.14 Sec. 46. Minnesota Statutes 2008, section 82.45, subdivision 3, is amended to read:

37.15 Subd. 3. **Retention.** A licensed real estate broker shall retain for ~~three~~ six years
37.16 copies of all listings, buyer representation and facilitator services contracts, deposit
37.17 receipts, purchase money contracts, canceled checks, trust account records, and such
37.18 other documents as may reasonably be related to carrying on a real estate brokerage
37.19 business. The retention period shall run from the date of the closing of the transaction,
37.20 or from the date of the document if the document is not consummated. The following
37.21 documents need not be retained:

37.22 (1) agency disclosure forms provided to prospective buyers or sellers, where no
37.23 contractual relationship is subsequently created and no services are provided by the
37.24 licensee; and

37.25 (2) facilitator services contracts or buyer representation contracts entered into with
37.26 prospective buyers, where the prospective buyer abandons the contractual relationship
37.27 before any services have been provided by the licensee.

37.28 Sec. 47. Minnesota Statutes 2008, section 82.45, is amended by adding a subdivision
37.29 to read:

37.30 Subd. 4. **Storage.** Storage of documents identified in subdivision 3 may be stored
37.31 by electronic means.

S.F. No. 2839, as introduced - 86th Legislative Session (2009-2010) [10-4134]

38.1 Sec. 48. Minnesota Statutes 2008, section 82.45, is amended by adding a subdivision
38.2 to read:

38.3 Subd. 5. **Destruction.** After the retention period specified in subdivision 3 has
38.4 elapsed and the broker no longer wishes to retain the documents, the broker must ensure
38.5 that the documents are disposed of according to the confidential record destruction
38.6 procedures of the Fair and Accurate Credit Transaction Act of 2003, Public Law 108-159.

38.7 Sec. 49. Minnesota Statutes 2008, section 82.48, subdivision 2, is amended to read:

38.8 Subd. 2. **Penalty for noncompliance.** The methods, acts, or practices set forth in
38.9 subdivisions 1 and 3 and sections 82.19; 82.22; 82.27; ~~82.31, subdivision 6;~~ 82.37; and
38.10 82.41, subdivision 11, are standards of conduct governing the activities of real estate
38.11 brokers and salespersons. Failure to comply with these standards shall constitute grounds
38.12 for license denial, suspension, or revocation, or for censure of the licensee.

38.13 Sec. 50. Minnesota Statutes 2008, section 82.48, subdivision 3, is amended to read:

38.14 Subd. 3. **Responsibilities of brokers.** (a) **Supervision of personnel.** ~~Brokers~~ A
38.15 broker shall adequately supervise the activities of ~~their~~ the broker's salespersons and
38.16 employees. Supervision includes the ongoing monitoring of listing agreements, purchase
38.17 agreements, other real estate-related documents which are prepared or drafted by the
38.18 broker's salespersons or employees or which are otherwise received by the broker's office,
38.19 and the review of all trust account books and records. If an individual broker maintains
38.20 more than one place of business, each place of business shall be under the broker's direction
38.21 and supervision. If a ~~partnership or corporate broker~~ brokerage maintains more than one
38.22 place of business, each place of business shall be under the direction and supervision of an
38.23 individual broker licensed to act on behalf of the ~~partnership or corporation~~ brokerage.

38.24 The primary broker shall maintain records specifying the name of each broker
38.25 responsible for the direction and supervision of each place of business. If an individual
38.26 broker, who may be the primary broker, is responsible for supervising more than one
38.27 place of business, the primary broker shall, upon written request of the commissioner,
38.28 file a written statement specifying the procedures which have been established to ensure
38.29 that all salespersons and employees are adequately supervised. Designation of another
38.30 broker to supervise a place of business does not relieve the primary broker of the ultimate
38.31 responsibility for the actions of licensees.

38.32 (b) **Preparation and safekeeping of documents.** ~~Brokers shall be~~ A broker is
38.33 responsible for the preparation, custody, safety, and accuracy of all real estate contracts,

39.1 documents, and records, even though another person may be assigned these duties by
39.2 the broker.

39.3 (c) **Documentation and resolution of complaints.** ~~Brokers~~ A broker shall
39.4 investigate and attempt to resolve complaints made regarding the practices of any
39.5 individual licensed to ~~them~~ the broker and shall maintain, with respect to each individual
39.6 licensed to ~~them~~ the broker, a complaint file containing all material relating to any
39.7 complaints received in writing for a period of three years.

39.8 (d) **Disclosure of listed property information.** A broker may allow any unlicensed
39.9 person, who is authorized by the broker, to disclose any factual information pertaining
39.10 to the properties listed with the broker, if the factual information is provided to the
39.11 unlicensed person in written form by the broker representing or assisting the seller(s).

39.12 Sec. 51. **[82.52] ADVERTISING REQUIREMENTS.**

39.13 A licensee shall identify himself or herself as either a broker or an agent salesperson
39.14 in any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other
39.15 disposition of real property, whether the advertising pertains to the licensee's own property
39.16 or the property of others.

39.17 If a salesperson or broker is part of a team or group within the brokerage, the licensee
39.18 may include the team or group name in the advertising only under the following conditions:

39.19 (1) the inclusion of the team or group name is authorized by the primary broker of
39.20 the brokerage to which the salesperson or broker is licensed; and

39.21 (2) the real estate brokerage name is included and more prominently displayed than
39.22 the team or group name in the advertising.

39.23 Sec. 52. **[82.53] REAL ESTATE CLOSING AGENT LICENSING.**

39.24 Subdivision 1. Generally. The commissioner shall issue a license as a closing agent
39.25 to a person who qualifies for the license under the terms of this chapter.

39.26 Subd. 2. Qualification of applicants. An applicant for a real estate closing agent
39.27 license must be at least 18 years of age at the time of making application for the license.

39.28 Subd. 3. Application for license; contents. (a) An applicant for a real estate closing
39.29 agent license shall make an application in the format prescribed by the commissioner. The
39.30 application must be accompanied by the license fee required by this chapter.

39.31 (b) An application for a real estate closing agent license must contain the information
39.32 required by the commissioner consistent with this chapter.

39.33 (c) An application for a real estate closing agent license shall give the applicant's
39.34 legal name, age, residence address, and the name and place of business of the closing agent.

40.1 (d) The commissioner may require further information the commissioner considers
40.2 appropriate to administer this chapter.

40.3 Subd. 4. **Instruction.** An applicant for a real estate closing agent's license must
40.4 successfully complete a course of study relating to closing services consisting of eight
40.5 hours of instruction approved by the commissioner.

40.6 Subd. 5. **Change of application information.** The commissioner must be notified
40.7 in the format prescribed by the commissioner of a change of information contained in the
40.8 license application on file with the commissioner within ten days of the change.

40.9 Subd. 6. **Exemption.** The following persons, when acting as closing agents, are
40.10 exempt from the requirements of sections 82.41 and 82.50 unless otherwise required
40.11 in this chapter:

40.12 (1) a direct employee of a title insurance company authorized to do business in this
40.13 state, or a direct employee of a title company, or a person who has an agency agreement
40.14 with a title insurance company or a title company in which the agent agrees to perform
40.15 closing services on the title insurance company's or title company's behalf and the title
40.16 insurance company or title company assumes responsibility for the actions of the agent as
40.17 if the agent were a direct employee of the title insurance company or title company;

40.18 (2) a licensed attorney or a direct employee of a licensed attorney;

40.19 (3) a licensed real estate broker or salesperson;

40.20 (4) a direct employee of a licensed real estate broker if the broker maintains all funds
40.21 received in connection with the closing services in the broker's trust account;

40.22 (5) a bank, trust company, savings association, credit union, industrial loan and thrift
40.23 company, regulated lender under chapter 56, public utility, or land mortgage or farm loan
40.24 association organized under the laws of this state or the United States, when engaged in
40.25 the transaction of businesses within the scope of its corporate powers as provided by law;

40.26 (6) a title insurance company authorized to do business in this state; and

40.27 (7) a title company that has a contractual agency relationship with a title insurance
40.28 company authorized to do business in this state, where the title insurance company
40.29 assumes responsibility for the actions of the title company and its employees or agents as
40.30 if they were employees or agents of the title insurance company.

40.31 **Sec. 53. [82.54] OTHER DISCLOSURE REQUIREMENTS.**

40.32 Subdivision 1. **Agent of broker disclosure.** A salesperson shall only conduct
40.33 business under the licensed name of and on behalf of the broker to whom the salesperson
40.34 is licensed. An individual broker shall only conduct business under the brokerage's
40.35 licensed name. A broker licensed to a business entity shall only conduct business under

41.1 the licensed business entity name. A licensee shall affirmatively disclose, before the
41.2 negotiation or consummation of any transaction, the licensed name of the brokerage under
41.3 whom the licensee is authorized to conduct business according to this section.

41.4 **Subd. 2. Financial interests or relative or business associate disclosure;**
41.5 **licensee.** (a) Before the negotiation or consummation of any transaction, a licensee shall
41.6 affirmatively disclose to the owner of real property that the licensee is a real estate broker
41.7 or agent salesperson, and in what capacity the licensee is acting, if the licensee directly, or
41.8 indirectly through a third party, purchases for himself or herself or acquires, or intends to
41.9 acquire, any interest in, or any option to purchase, the owner's property.

41.10 (b) When a principal in the transaction is a licensee or a relative or business associate
41.11 of the licensee, that fact must be disclosed in writing.

41.12 **Subd. 3. Material facts.** (a) A licensee shall disclose to a prospective purchaser
41.13 all material facts of which the licensee is aware, which could adversely and significantly
41.14 affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the
41.15 property of which the licensee is aware.

41.16 (b) It is not a material fact relating to real property offered for sale the fact or
41.17 suspicion that the property:

41.18 (1) is or was occupied by an owner or occupant who is or was suspected
41.19 to be infected with human immunodeficiency virus or diagnosed with acquired
41.20 immunodeficiency syndrome;

41.21 (2) was the site of a suicide, accidental death, natural death, or perceived paranormal
41.22 activity; or

41.23 (3) is located in a neighborhood containing any adult family home, community-based
41.24 residential facility, or nursing home.

41.25 (c) A licensee or employee of the licensee has no duty to disclose information
41.26 regarding an offender who is required to register under section 243.166, or about whom
41.27 notification is made under that section, if the broker or salesperson, in a timely manner,
41.28 provides a written notice that information about the predatory offender registry and
41.29 persons registered with the registry may be obtained by contacting local law enforcement
41.30 where the property is located or the Department of Corrections.

41.31 (d) A licensee or employee of the licensee has no duty to disclose information
41.32 regarding airport zoning regulations if the broker or salesperson, in a timely manner,
41.33 provides a written notice that a copy of the airport zoning regulations as adopted can be
41.34 reviewed or obtained at the office of the county recorder where the zoned area is located.

41.35 (e) A licensee is not required to disclose, except as otherwise provided in paragraph
41.36 (f), information relating to the physical condition of the property or any other information

42.1 relating to the real estate transaction, if a written report that discloses the information has
42.2 been prepared by a qualified third party and provided to the person. For the purposes of
42.3 this paragraph, "qualified third party" means a federal, state, or local governmental agency,
42.4 or any person whom the broker, salesperson, or a party to the real estate transaction
42.5 reasonably believes has the expertise necessary to meet the industry standards of practice
42.6 for the type of inspection or investigation that has been conducted by the third party
42.7 in order to prepare the written report and who is acceptable to the person to whom the
42.8 disclosure is being made.

42.9 (f) A licensee shall disclose to the parties to a real estate transaction any facts known
42.10 by the broker or salesperson that contradict any information included in a written report
42.11 described in paragraph (e), if a copy of the report is provided to the licensee.

42.12 (g) The limitation on disclosures in paragraphs (b) and (c) shall modify any common
42.13 law duties with respect to disclosure of material facts.

42.14 Subd. 4. **Nonperformance of party.** If a licensee is put on notice by a party to a
42.15 real estate transaction that the party will not perform according to the terms of a purchase
42.16 agreement or other similar written agreement to convey real estate, the licensee shall
42.17 immediately disclose the fact of that party's intent not to perform to the other party or
42.18 parties to the transaction. The licensee shall, if reasonably possible, inform the party who
42.19 will not perform of the licensee's obligation to disclose this fact to the other party or
42.20 parties to the transaction before making the disclosure. The obligation required by this
42.21 section does not apply to notice of a party's inability to keep or fulfill any contingency to
42.22 which the real estate transaction has been made subject.

42.23 Sec. 54. Minnesota Statutes 2008, section 82B.05, as amended by Laws 2009, chapter
42.24 63, section 62, is amended to read:

42.25 **82B.05 REAL ESTATE APPRAISER ADVISORY BOARD.**

42.26 Subdivision 1. **Members.** The Real Estate Appraiser Advisory Board consists of
42.27 ~~15~~ nine members appointed by the commissioner of commerce. Three of the members
42.28 must be ~~public members~~, ~~four must be~~ consumers of appraisal services, of whom one
42.29 member must be employed in the financial lending industry, and ~~eight~~ six must be real
42.30 estate appraisers who are currently licensed in good standing, of whom ~~not less than two~~
42.31 ~~three~~ members must be ~~trainee real property appraisers, licensed real property appraisers,~~
42.32 ~~or certified residential real property appraisers, not less than two~~ and three members must
42.33 be certified general real property appraisers, ~~and not less than~~. At least one member of the
42.34 board must be certified by the Appraisal Qualification Board of the Appraisal Foundation

43.1 to teach the Uniform Standards of Professional Appraisal Practice. The board is governed
43.2 by section 15.0575.

43.3 Subd. 3. **Terms.** The term of office for members is three years.

43.4 Upon expiration of their terms, members of the board shall continue to hold office
43.5 until the appointment and qualification of their successors. No person may serve as a
43.6 member of the board for more than two consecutive terms. The commissioner may
43.7 remove a member for cause.

43.8 ~~Subd. 4. **Practice of public members prohibited.** The public members of the board
43.9 may not be engaged in the practice of real estate appraising.~~

43.10 Subd. 5. **Conduct of meetings.** Places of regular board meetings must be decided
43.11 by the vote of members. Written notice must be given to each member of the time and
43.12 place of each meeting of the board at least ten days before the scheduled date of regular
43.13 board meetings. The board shall establish procedures for emergency board meetings and
43.14 other operational procedures, subject to the approval of the commissioner.

43.15 The members of the board shall elect a chair to preside at board meetings, a
43.16 vice-chair, and a secretary from among the members ~~to preside at board meetings.~~

43.17 A quorum of the board is ~~eight~~ five members.

43.18 The board shall meet at least once every ~~six~~ three months as determined by a
43.19 majority vote of the members or a call of the commissioner.

43.20 Subd. 6. **Compensation.** Each member of the board is entitled to a per diem
43.21 allowance of \$35 for each meeting of the board at which the member is present and for each
43.22 day or substantial part of a day actually spent in the conduct of the business of the board,
43.23 plus all appropriate expenses unless a greater amount is authorized by section 15.0575.

43.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

43.25 Sec. 55. **2010 APPOINTMENTS TO REAL ESTATE APPRAISER ADVISORY**
43.26 **BOARD.**

43.27 The terms of all members of the Real Estate Appraiser Advisory Board expire the
43.28 day following final enactment of this section. The commissioner of commerce shall, as
43.29 soon as practicable after this date, appoint members to an initial term of office as follows:
43.30 three years for one consumer of appraisal services member, one certified residential real
43.31 property appraiser member, and one certified general real property appraiser member;
43.32 two years for one consumer of appraisal services member, one certified residential real
43.33 property appraiser member, and one certified general real property appraiser member; and
43.34 one year for one consumer of appraisal services member, one certified residential real
43.35 property appraiser member, and one certified general real property appraiser member.

S.F. No. 2839, as introduced - 86th Legislative Session (2009-2010) [10-4134]

44.1 Upon the expiration of the term of office established in this section, the successor
44.2 must be appointed pursuant to Minnesota Statutes, section 82B.05.

44.3 All provisions of Minnesota Statutes, section 82B.05, not inconsistent with this
44.4 section apply to the initial board appointed pursuant to this section.

44.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

44.6 Sec. 56. **REPEALER.**

44.7 Minnesota Statutes 2008, sections 82.19, subdivision 3; 82.22, subdivisions 1, 6,
44.8 7, 8, and 9; 82.31, subdivision 6; 82.34, subdivision 16; 82.41, subdivisions 3 and 7;
44.9 and 332.335, are repealed.

44.10 Minnesota Statutes 2009 Supplement, section 65B.133, subdivision 3, is repealed.

65B.133 SURCHARGE DISCLOSURE.

Subd. 3. **Disclosure to policyholders.** An insurer or its agent shall mail or deliver a surcharge disclosure statement or written notice of the statement's availability on the insurer's Web site to the named insured either before or with the first notice to renew a policy on or after January 1, 1983. If a surcharge disclosure statement or written Web site notice has been provided pursuant to subdivision 2, no surcharge disclosure statement is required to be mailed or delivered to the same named insured pursuant to subdivision 3.

82.19 COMPENSATION.

Subd. 3. **Limitation on broker when transaction not completed.** When the owner fails or is unable to consummate a real estate transaction, through no fault of the purchaser, the listing broker may not claim any portion of any trust funds deposited with the broker by the purchaser, absent a separate agreement with the purchaser.

82.22 DISCLOSURE REQUIREMENTS.

Subdivision 1. **Advertising.** Each licensee shall identify himself or herself as either a broker or an agent salesperson in any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other disposition of real property, whether the advertising pertains to the licensee's own property or the property of others.

Subd. 6. **Agent of broker disclosure.** A salesperson shall only conduct business under the licensed name of and on behalf of the broker to whom the salesperson is licensed. An individual broker shall only conduct business under the broker's licensed name. A broker licensed to a corporation or partnership shall only conduct business under the licensed corporate or partnership name. A licensee shall affirmatively disclose, before the negotiation or consummation of any transaction, the licensed name of the broker under whom the licensee is authorized to conduct business in accordance with this section.

Subd. 7. **Financial interests disclosure; licensee.** (a) Prior to the negotiation or consummation of any transaction, a licensee shall affirmatively disclose to the owner of real property that the licensee is a real estate broker or agent salesperson, and in what capacity the licensee is acting, if the licensee directly, or indirectly through a third party, purchases for himself or herself or acquires, or intends to acquire, any interest in, or any option to purchase, the owner's property.

(b) When a principal in the transaction is a licensee or a relative or business associate of the licensee, that fact must be disclosed in writing.

Subd. 8. **Material facts.** (a) Licensees shall disclose to any prospective purchaser all material facts of which the licensees are aware, which could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the property of which the licensees are aware.

(b) It is not a material fact relating to real property offered for sale the fact or suspicion that the property:

(1) is or was occupied by an owner or occupant who is or was suspected to be infected with human immunodeficiency virus or diagnosed with acquired immunodeficiency syndrome;

(2) was the site of a suicide, accidental death, natural death, or perceived paranormal activity; or

(3) is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.

(c) A licensee or employee of the licensee has no duty to disclose information regarding an offender who is required to register under section 243.166, or about whom notification is made under that section, if the broker or salesperson, in a timely manner, provides a written notice that information about the predatory offender registry and persons registered with the registry may be obtained by contacting local law enforcement where the property is located or the Department of Corrections.

(d) A licensee or employee of the licensee has no duty to disclose information regarding airport zoning regulations if the broker or salesperson, in a timely manner, provides a written notice that a copy of the airport zoning regulations as adopted can be reviewed or obtained at the office of the county recorder where the zoned area is located.

(e) A licensee is not required to disclose, except as otherwise provided in paragraph (f), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a

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qualified third party and provided to the person. For the purposes of this paragraph, "qualified third party" means a federal, state, or local governmental agency, or any person whom the broker, salesperson, or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report and who is acceptable to the person to whom the disclosure is being made.

(f) A licensee shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report, if a copy of the report is provided to the licensee, described in paragraph (e).

(g) The limitation on disclosures set forth in paragraphs (b) and (c) shall modify any common law duties with respect to disclosure of material facts.

Subd. 9. Nonperformance of any party. If a licensee is put on notice by any party to a real estate transaction that the party will not perform in accordance with the terms of a purchase agreement or other similar written agreement to convey real estate, the licensee shall immediately disclose the fact of that party's intent not to perform to the other party or parties to the transaction. Whenever reasonably possible, the licensee shall inform the party who will not perform of the licensee's obligation to disclose this fact to the other party or parties to the transaction prior to making the disclosure. The obligation required by this section shall not apply to notice of a party's inability to keep or fulfill any contingency to which the real estate transaction has been made subject.

82.31 LICENSING: APPLICATION.

Subd. 6. Change of application information. The commissioner must be notified in writing of a change of information contained in the license application on file with the commissioner within ten days of the change.

82.34 LICENSING; OTHER REQUIREMENTS.

Subd. 16. Exemption. The following persons, when acting as closing agents, are exempt from the requirements of sections 82.41 and 82.50 unless otherwise required in this chapter:

(1) a direct employee of a title insurance company authorized to do business in this state, or a direct employee of a title company, or a person who has an agency agreement with a title insurance company or a title company in which the agent agrees to perform closing services on the title insurance company's or title company's behalf and the title insurance company or title company assumes responsibility for the actions of the agent as if the agent were a direct employee of the title insurance company or title company;

(2) a licensed attorney or a direct employee of a licensed attorney;

(3) a licensed real estate broker or salesperson;

(4) a direct employee of a licensed real estate broker if the broker maintains all funds received in connection with the closing services in the broker's trust account;

(5) any bank, trust company, savings association, credit union, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of businesses within the scope of its corporate powers as provided by law;

(6) a title insurance company authorized to do business in this state; and

(7) a title company that has a contractual agency relationship with a title insurance company authorized to do business in this state, where the title insurance company assumes responsibility for the actions of the title company and its employees or agents as if they were the employees or agents of the title insurance company.

82.41 PROHIBITIONS.

Subd. 3. Commission-splitting, rebates, and fees. No real estate broker, salesperson, or closing agents shall offer, pay, or give, and no person shall accept, any compensation or other thing of value from any real estate broker, salesperson, or closing agents by way of commission-splitting, rebate, finder's fees, or otherwise, in connection with any real estate or business opportunity transaction. This subdivision does not apply to transactions (1) between a licensed real estate broker or salesperson and the parties to the transaction, (2) among persons licensed as provided herein, (3) between a licensed real estate broker or salesperson and persons from other jurisdictions similarly licensed in that jurisdiction, (4) involving timeshare or other recreational lands where the amount offered or paid does not exceed \$150, and payment is not conditioned upon any sale but is made merely for providing the referral and the person paying

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the fee is bound by any representations the person receiving the fee makes, and (5) involving a person who receives a referral fee from a person or an agent of a person licensed under this section, provided that in any 12-month period, no recipient may earn more than the value of one month's rent, that the recipient is a resident of the property or has lived there within 60 days of the payment of the fee, and that the person paying the fee is bound by any representations made by the recipient of the fee. A licensed real estate broker or salesperson may assign or direct that commissions or other compensation earned in connection with any real estate or business opportunity transaction be paid to a corporation, limited liability company, or sole proprietorship of which the licensed real estate broker or salesperson is the sole owner.

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

332.335 EXEMPTION FROM LICENSURE.

Subdivision 1. **Requirements.** An exempt out-of-state collection agency, as defined by section 332.31, subdivision 7, that has obtained a certificate of exemption under subdivision 2 is exempt from the collector registration requirements and collection agency licensing requirements of this chapter, but is subject to all other provisions of sections 45.027 and 332.31 to 332.45.

Subd. 2. **Certificate of exemption.** To qualify as an exempt out-of-state collection agency, a person, except for those excluded from the definition of collection agency under section 332.32, must, before initiating collection activity, obtain a certificate of exemption from the commissioner. A certificate of exemption must be issued upon the applicant's filing an application on a form approved by the commissioner if the applicant is found to be qualified under this chapter. The form must include:

(1) a signed statement that the exempt out-of-state collection agency holds a valid license to do business as a collection agency in another state whose requirements for licensing are similar to the requirements imposed under this chapter along with a copy of the licensing document from the other state;

(2) certification that the exempt out-of-state collection agency will not solicit or collect claims for any creditor who has a business presence in this state. A creditor has a business presence in this state if either the creditor or an affiliate or subsidiary of the creditor has an office in this state;

(3) certification that the exempt out-of-state collection agency will not establish a physical presence in this state and that all collection activity in this state will be conducted exclusively by means of interstate communications including telephone, mail, or facsimile transmission;

(4) evidence of a corporate surety bond substantially similar, as determined by the commissioner, to the bond required under section 332.34;

(5) appointment of the commissioner as the exempt out-of-state collection agency's agent for service of process in this state; and

(6) written acknowledgment that the exempt out-of-state collection agency agrees to be subject to the jurisdiction of Minnesota courts and the Minnesota Administrative Procedure Act, chapter 14, in connection with the commissioner's enforcement of Minnesota law pertaining to collection activities in Minnesota, including compliance with this chapter and chapter 45.

Subd. 3. **Notice.** An exempt out-of-state collection agency must advise the commissioner of any material changes to the information submitted in the most recent application within ten days of the change.

Subd. 4. **Loss of exemption.** In addition to fines and other authorized sanctions, a certificate of exemption is considered revoked if the exempt out-of-state collection agency is found to be in violation of any provision of chapter 45 or 332, or the Fair Debt Collection Practices Act of 1977, United States Code, title 15, sections 1691 to 1693r.